IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.22922 OF 2015

Jothi ... Petitioner

.Vs.

1. The District Revenue Officer,
   Salem Revenue District,
   Salem.

2. The Revenue Divisional Officer,
   Mettur Revenue Division,
   Mettur Dam, Salem District.

3. The Tahsildar,
   Mettur Taluk,
   Mettur Dam,
   Salem District.

4. Balaraman
5. Venkatesan
6. K.Sreenivasan ... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the impugned order made in Na.Ka.No.2294 of 2015 (B2) dated 29.06.2015 passed by the third respondent and quash the same, consequently directing the respondents to restore the original patta in the name of petitioner in survey No.35/1B1 (New S.No.254/13), Thoramangalam Village, Mettur Taluk, Salem District.

For Petitioner : Mr.M.R.Jothimanian

For R1 to 3 : Mr.Richardson Wilson
Government Advocate

For R4 to 6 : Ms.N.Premalatha
For Mr.R.Nalliyappan

ORDER

This writ petition is filed to issue a Writ of Certiorarified Mandamus calling for the records of the impugned order made in Na.Ka.No.2294 of 2015 (B2) dated 29.06.2015 passed by the third respondent and quash the same, and consequently directing the respondents to restore the original patta in the name of petitioner in survey No.35/1B1 (New S.No.254/13), Thoramangalam Village, Mettur Taluk, Salem District.

2. The brief facts of the case is that the land comprised in survey No.254/13 (old survey no.35/1B1) to an extent of 1920 sq.ft. situated at Thoramangalam Village, Mettur Taluk, Salem District is in possession and enjoyment of the petitioner herein as per the petitioner and her family members. Therefore, her husband made an application to the second respondent for issuance of house site patta and the same was considered by the second respondent by proceedings dated 04.09.2001 in Mu.Mu.5835/2001(D). Based on the said proceedings, her husband was issued patta after sub-division of the survey No.35/1B1 into 254/13 to an extent of 1920 sq.ft. On the strength of the said patta, the husband of the petitioner settled the said property by the registered settlement deed dated 28.04.2014 registered vide document No.1334 of 2014 in favour of the petitioner. Thereafter, the petitioner demolished the old house and started construction of new residential house. The said property is classified as 'natham poramboke'. While being so, respondents 4 to 6 challenged the same by application before the third respondent to cancel the patta. In fact, the petitioner's husband was served with notice for enquiry to be held on 28.05.2015. On that day, her husband appeared and produced documents before the third respondent. However, the third respondent passed the order impugned in this writ petition, thereby cancelled the patta issued in favour of her husband.

3. The point for consideration is that whether the third respondent has got power to cancel the patta granted in favour of the petitioner's husband. The power is conferred on the revenue authorities under the Tamilnadu Patta Passbook Act, 1983 with regards to issuance of patta, appeal and revision under Sections 10, 12 and 13 of the Patta Passbook Act. Insofar as modification of entries in the Patta Passbook is contemplated under Section 10 of the Patta Passbook Act. It is relevant to extract the provision under Section 10 of the Patta Passbook Act hereunder:

> 10. Modification of entries in the patta pass book:

(1) Where any person claims that any modification is required in respect of any entry in the patta pass book already issued under section 3 either by reason of the death of any person or by the reason of the transfer of the land or by reason of any other subsequent change in circumstances, he shall make an application to the Tahsildar for the modification of the relevant entries in the patta pass book.

(2) An application under sub-section (1) shall contain such particulars, as may be prescribed, and shall be accompanied by the documents, if any, relied on by the applicant as evidence in support of his claim.

(3) (a) Before passing an order on an application under sub-section (1), the Tahsildar shall follow such procedure as may be prescribed and shall also give a reasonable opportunity to the parties concerned to make their representations either orally or in writing. If the Tahsildar decides that any modification should be made in respect of entries in the patta passbook, he shall pass an order accordingly and shall make such consequential changes in the patta pass book, as appear to him to be necessary, for giving effect to his order.

(b) If the Tahsildar decides that there is no case for effecting any modification of the entries in the patta pass book, he shall reject the application.

(c) An order under clause (a) or clause (b) shall contain the reasons for such order and shall be communicated to the parties concerned in such manner as may be prescribed.

4. Thus, the provision does not empower the Tahsildar to cancel the patta already granted. The third respondent has power to modify the entries made in the patta passbook, that too for limited purpose i.e. in case of death of the person who was holding the patta passbook or by reason of the transfer of interest in the land or by reason of any other subsequent change in the circumstances.

5. Therefore, the third respondent has no power to entertain the petition from the respondents 4 to 6 for cancellation of patta which was issued in favour of the petitioner's husband. In

fact, the said patta was issued by the Revenue Divisional Officer i.e. the second respondent herein in favour of her husband by the proceedings dated 04.09.2001 and directed the third respondent to issue patta in favour of the petitioner's husband.

6. The learned Government Advocate appearing for the respondents 1 to 3 filed counter and submitted that on the application received by the third respondent, notice was issued to the petitioner's husband to produce relevant documents to prove that the subject property belongs to him. He appeared and produced the xerox copy of the Revenue Divisional Officer i.e the second respondent's proceedings dated 04.09.2001 and the proceedings of the third respondent dated 24.11.2001 and further proceedings of the third respondent dated 04.04.2014. Thereafter, the third respondent found that the said proceedings are forged one and signature also forged one. Though they stated in their counter, no records are produced to substantiate the said contention. In fact, the petitioner applied for certificate copy of the chitta and FMB of the subject property and she was issued by the revenue officials. However, as stated supra, the third respondent has no power to cancel the patta issued in favour of the petitioner's husband. In fact, only on the recommendation of the second respondent, the petitioner's husband was issued patta. Thus, it is clear that the impugned order has been passed without jurisdiction by the third respondent and it is liable to be set aside.

7. Accordingly, the impugned order dated 29.06.2015 is set aside and the writ petition is allowed. However, the learned counsel for the respondents 4 to 6 submitted that simultaneously they also filed petition before the second respondent to cancel the patta issued in favour of the petitioner's husband. By the proceedings dated 04.09.2001, the second respondent only passed order, thereby recommended the case of the petitioner's husband for issuance of patta. Therefore, the respondents 4 to 6 are at liberty to challenge the patta issued in favour of the petitioner or her husband before the first respondent in the manner known to law. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The District Revenue Officer,
   Salem Revenue District,
   Salem.

2. The Revenue Divisional Officer,
   Mettur Revenue Division,
   Mettur Dam,
   Salem District.

3. The Tahsildar,
   Mettur Taluk,
   Mettur Dam,
   Salem District.

+1cc to Mr.M.R.Jothimanian, Advocate, S.R.No.55990
+1cc to the Government Pleader, S.R.No.56697

W.P.NO.22922 OF 2015

PMK(CO)
PBS/17/11/2021
PBS/22/11/2021