IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.07.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.29701 of 2015

V.Damodharan ... Petitioner

Vs.

1. The District Collector
   Kanchipuram, Kanchipuram District.

2. The Revenue Divisional Officer,
   Kanchipuram, Kanchipuram District.

3. The Tahsildar,
   Sriperumbudur Taluk,
   Kanchipuram District.

4. The Deputy Tahsildar,
   Sriperumbudur,
   Kanchipuram District.

5. Vendamirathammal ... Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 1 to 4 to cancel the Patta bearing Patta No.614 issued by the 4th respondent herein to Mrs.Vendamirthammal, the 5th respondent herein with regard to the property situated at Survey No.131/2, measuring to an extent of Hectare (0.21.50) (Acre 0.53 cents), Kanthur Village, Sriperumbudur Taluk, Kanchipuram District and consequently to restore the original Patta bearing Patta No.248 issued in the petitioner's name with regard to the said property situated at Survey No.131/2, measuring to an extent of Hectare (0.21.50) (Acre 0.53 cents), Kanthur Village, Sriperumbudur Taluk, Kanchipuram District.

For Petitioner : Mr.P.Balamurugan

For Respondents 1 to 4 : Ms.Akila Rajendran
Counsel for Government

For 5th Respondent : Mr.G.Anabaya Chozhan

ORDER

The prayer sought for herein is for a writ of mandamus directing the respondents 1 to 4 to cancel the Patta bearing Patta No.614 issued by the 4th respondent herein to Mrs.Vendamirthammal, the 5th respondent herein with regard to the property situated at Survey No.131/2, measuring to an extent of Hectare (0.21.50) (Acre 0.53 cents), Kanthur Village, Sriperumbudur Taluk, Kanchipuram District and consequently to restore the original Patta bearing Patta No.248 issued in the petitioner's name with regard to the said property situated at Survey No.131/2, measuring to an extent of Hectare (0.21.50) (Acre 0.53 cents), Kanthur Village, Sriperumbudur Taluk, Kanchipuram District.

2.The petitioner is Lawing land at Survey No.131/2 measuring to an extent of hectare 0.21.5 acre 0.53 cents at Kanthur Village, Sriperumbudur Taluk, Kanchipuram District in respect of which, though original Patta bearing Patta No.248 was issued in favour of the petitioner, subsequently the patta has been cancelled or in that patta, some modification has been made, whereby, the name of the 5th respondent, who is none other than the sister of the petitioner, has been inserted. Aggrieved over the said issuance of patta along with the name of the 5th respondent issued by the 4th respondent Tahsildar dated 14.08.2015, the petitioner has filed this writ petition with the aforesaid prayer.

3.Justifying the action on the part of the petitioner in filing the writ petition directly without exhausting an appeal remedy provided under Section 12 of the Tamil Nadu Patta Pass Book Act, 1983 (in short "the Act"), Mr.P.Balamurugan, learned counsel appearing for the petitioner has relied upon a Division Bench judgment of this Court in W.A.No.1275 of 2006 in the matter of Vishwas Footwear Company Limited Vs. The District Collector, Kancheepuram and others and has relied upon the following passages of the said judgment.

> 12. The only provision available for modification of the entries in the patta pass book is Section 10, which reads as under:-
>
> "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 reason of the transfer of interest in 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 pass-book, 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 in 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. By that provision, in the event any modification is required on an application by any person, it can be made either by reason of the death of any person or by reason of transfer of interest in the land or by reason of any subsequent change in the circumstances. This section also does not empower the Tahsildar to cancel the patta already granted, as the power of the Tahsildar to modify the entries in the patta pass book is limited only in case of death of the person who was holding the patta pass book or by reason of the transfer of interest in the land or by reason of any other subsequent change in the circumstances. In the event an application is made that the patta pass book has been wrongly issued in favour of any person and consequently claiming title over the land entitling such person to grant of patta, that person can only file a suit for declaration that the entries made in the patta pass book should be cancelled and consequently for a mandatory injunction for grant of patta.

13. Section 12 contemplates that any person aggrieved by an order made by the Tahsildar under the Act may within such period as may be prescribed appeal to such authority as may be prescribed. Rule 14 of the Rules empowers such an appeal to be filed before the officer in charge of Revenue Division in whose jurisdiction the property lies within a period of thirty days from the date of receipt of the order. In order to invoke the provisions of appeal, there must be an order passed by the Tahsildar either under section 3 or under section 5 or under section 10 of the Act and any person aggrieved by such order made by the Tahsildar could prefer appeal within a period of thirty days from the receipt of the order under Rule 14. If the above provisions of sections 3, 5 and 10 are read together with the rule 14, the only conclusion which could be arrived at by the Court is in the event an application is made for issuance of patta and if it is denied or if it is granted in favour of somebody, the person aggrieved, as the case may be, can file an appeal under section 12 of the Act. Hence, the provisions of section 12 must be read to empower the Revenue Divisional Officer to entertain an appeal challenging the grant of patta in favour of a person or persons and consequently seek for cancellation of the same. Nevertheless, such request must be made strictly in terms of the provisions of section 12 read with rule 14 of the rules, which prescribe a mandatory period of thirty days from the date when the entry was made.

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18. As far as the power of this Court to entertain a writ petition on disputed questions, we may refer to the following decisions of the Supreme Court in Arya Vysya Sabha and others v. The Commissioner of Hindu Charitable and Religious Institutions & Endowments , Hyderabad and others, (1976) 1 SCC 292, Rourkela Shramik Sangh v. Steel Authority of India Ltd., and another, (2003) 4 SCC 317 and Himmat Singh v. State of Haryana and others, (2006) 9 SCC 256. Therefore, when disputed questions are involved, this Court will not entertain the writ petition and adjudicate upon such dispute, as it is for the parties to approach the civil Court to decide the issue. However, in the event the order challenged in the writ petition is questioned on the ground of want of jurisdiction, certainly this Court would entertain the writ petition and particularly when such an order was passed when effective remedy is available before a civil Court for a person or persons who seek for cancellation of patta.

As already pointed out, though the fourth respondent has filed appeal to the Revenue Divisional Officer seeking for cancellation of patta, in view of the fact that the Revenue Divisional Officer cannot go into the civil dispute, his order cancelling the patta by deciding the disputed question of title is without jurisdiction. In this context, we may refer to the proviso to section 14 of the Act which bars the suit. The proviso reads that if any person is aggrieved as to any right of which he is in possession by an entry made in the patta pass book under this Act, he may institute a suit against any person denying or interested to deny his title to such right of declaration of his right under Chapter VI of the Specific Relief Act and the entry in the patta pass book shall be amended in accordance with any such declaration. By that proviso, in the event any grievance is made by the fourth respondent over the patta granted to the appellant, he should have approached the civil Court for necessary orders. In the event the Revenue Divisional Officer had no jurisdiction to go into the disputed question of title and in spite of that fact if he decides the same, on the very same yardstick, the further remedy is only a revision under section 13 of the Act which is limited to calling for and examining the records of either the Tahsildar or the appellate authority by the District Revenue Officer and such revisional power cannot be equated to appellate power. Hence, the contention of the fourth respondent that the appellant has got an effective remedy of appeal and without availing such remedy cannot file the writ petition, has no merit. Accordingly, the said contention is rejected."

4.By relying upon the said judgment, the learned counsel would contend that, without exhausting an appeal remedy, he can straight away approach this Court, as against the order of patta issued by the Tahsildar concerned, therefore, he seeks indulgence of this Court to issue a mandamus as prayed herein.

5.Heard Mr.G.Anabaya Chozhan, learned counsel appearing for the 5th respondent, who would submit that, in fact, no separate patta had been issued in the name of the 5th respondent and the earlier patta issued in faovur of the petitioner has been obtained by suppressing the partition effected between the parties. However, the said merits can be agitated by both parties if any appeal is filed by the petitioner before the Appellate Authority i.e., Revenue Divisional Officer concerned and since no such appeal has been filed, the petitioner cannot straight away approach this Court by filing the present writ petition with the aforesaid prayer.

6.Heard Ms.Akila Rajendran, learned Government Counsel appearing for the official respondents, who would submit that, under the provisions of the Tamil Nadu Patta Pass Book Act, 1983, the hierarchy of authorities have been provided, under which, the Tahsildar concerned will be the initial authority to issue a patta pass book under Section 3 of the Act and in case of any alienation or transfer, entries can be made in the patta pass book under Section 5 of the Act by the Tahsildar concerned and if 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 reason of the transfer of interest in the land or by reason of any other subsequent change in circumstances, such person shall make an application to the Tahsildar for the modification of the relevant entries in the patta pass book under Section 10 of the Act.

7.She would also submit that, as against any such order passed by the Tahsildar either under Section 3 or 5 or 10 of the Act, as stated above, if any aggrieved party, he or she can prefer an appeal under Section 12 of the Act to the Appellate Authority, who is the Revenue Divisional Officer concerned and if such an appeal is filed, the Appellate Authority to look into the same and after hearing the parties concerned, the appeal would be decided by the Appellate Authority. Therefore, the learned Government Counsel would submit that, without exhausting such an appellate remedy, which is not only an alternative remedy but also a statutory, effective, appellate remedy, the petitioner since seeks for a mandamus herein by approaching this Court directly, this writ petition cannot be entertained and therefore, on that ground, it has to be dismissed and the petitioner can be relegated to approach the Appellate Authority under the aforesaid provision of the said Act.

8.I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

9.Though the Division Bench judgment of this Court in Vishwas Footwear Company Limited Vs. The District Collector, Kancheepuram has heavily relied upon by the learned counsel appearing for the petitioner, one important facet of the said judgment has been conveniently forgotten by the petitioner side while citing the same for consideration before this Court. If at all the petitioner has got any grievance over the patta issued in favour of the 5th respondent on 14.08.2015 by the 4th respondent Tahsildar, appeal should have been filed as rightly pointed out by the learned Government Counsel in this regard, under Section 12 of the Act. If at all the petitioner has got satisfactory reasons to convince this Court that, such an appeal remedy need not be exhausted and for convincing reasons, the aggrieved party i.e., the petitioner herein can approach this Court directly challenging the impugned patta dated 14.08.2015, such a challenge could be made, even for argument sake, by filing a writ of certiorari challenging the impugned patta dated 14.08.2015.

10.However, in this case, the prayer sought for by the petitioner is a mere mandamus seeking some direction to the respondents 1 to 4 to cancel the patta.

11.Thereby the petitioner is trying to convert this Court while exercising the jurisdiction under Article 226 of the Constitution, as a mere appellate authority within the meaning of Section 12 of the Tamil Nadu Patta Pass Book Act. No doubt, law has been well settled that, when an alternative, efficacious, statutory remedy provided in most of the situation, such remedy has to be exhausted by the litigant, however, there are some exceptions for the said general rule, where if some convincing reasons are there, especially, by blatant violations of the provisions of the statute concerned, under which, the authority acted, including violation of principle of natural justice, that too in very rare cases, High Court can entertain such direct writ petitions challenging the impugned action on the part of the original authorities concerned under the very particular statute.

12.Even such an exceptional circumstances, cannot be made as a routine rule by filing a simple mandamus.

13.Here in the case in hand, the prayer sought for is a simple mandamus. It is also a well settled and celebrity principle that, there must be a demand before seeks for a writ of mandamus.

14.The writ of mandamus is a very powerful tool in the hands of the High Courts under Article 226 of the Constitution and it is one of the inherited principle from British legal system, under which, these kind of prerogative writs are issued.

15.When such an extraordinary remedy is sought for by a litigant, he must first convince the Court that, the litigant does not have any other alternative, efficacious, statutory appellate remedy before him and therefore he has been constrained to approach this Court by invoking the extraordinary jurisdiction for getting a prerogative writ.

16.Moreover, in the case in hand, though a prayer of mandamus has been sought for, absolutely there has been no demand on the part of the petitioner by filing an appeal to set aside or cancel the patta issued in this regard, which according to the petitioner, is not necessitated under various provisions of the Act.

17.If at all any simple mandamus is asked for, there must be a demand preceded by, without which, in the normal course of exercising the writ jurisdiction, it would not entertain such writ petitions.

18.Though this has been repeatedly pointed out by this Court from the beginning of the hearing, the learned counsel appearing for the petitioner was very adamant that, the non-exhaustion of the appellate remedy and non-making of a demand by way of representation or appeal to cancel the patta in question would not preclude the petitioner from approaching this Court directly seeking for a writ of mandamus.

19.The said stand of the petitioner, in the considered opinion of this Court, has not been dealt with in or supported by the said decision cited by the learned counsel appearing for the petitioner in Vishwas Footwear Company Limited.

20.In fact, in the said Division Bench judgment, it has been exhaustively discussed the various provisions of the Patta Pass Book Act, especially, Sections 3, 5 and 10 of the Act, where, the Tahsildar concerned is empowered to issue patta, make entries and modification of entries in the patta pass book already issued.

21.In respect of those actions undertaken on the part of the Tahsildar, Section 12 contemplates that, any person aggrieved by an order passed by the Tahsildar under the Patta Pass Book Act, has to file such an appeal as may be prescribed. It has also been discussed by the Division Bench that, Rule 14 makes it clear that the appeal shall be filed before the officer in charge of Revenue Division in whose jurisdiction the property lies within a period of thirty days.

22.Therefore, within a period of 30 days, the petitioner should have filed an appeal under Section 12 of the Act, as against the impugned patta, however, no such attempt has been made and the petitioner has not demonstrated any acceptable reason for not approaching the Appellate Authority which is a statutory appellate remedy, equally efficacious also. Therefore, that kind of circumstances if we confronted that too in a writ petition seeking for a mandamus, this Court feels that, the prayer sought for herein is failed on two counts. One is that, since it is a mere writ of mandamus before which, since there has been no demand, on that ground, the prayer cannot be acceded to and therefore, on that ground itself, it is liable to be rejected. Secondly, the writ petitioner, though there is a statutory appellate remedy under Section 12 of the Tamil Nadu Patta Pass Book Act available, has not chosen to exhaust the same and still he is stubborn to stick on with his stand that he would not make such an attempt.

23.Therefore, for that reason also, the prayer sought for herein, in the considered opinion of this Court, cannot be accepted.

24.However, since the right of the petitioner on the property, though is not a fundamental right conferred under the constitution, is a statutory right and therefore, in this context, if at all the petitioner has got any grievance over the patta issued in favour of the 5th respondent, it is open to him to make an appeal to the second respondent Revenue Divisional Officer. Though such appeal should have been made within 30 days period as contemplated under Rule 14, in view of the pendency of this writ petition for all these years, this Court feels that, a liberty can be given to the petitioner to file an appeal under Section 12 of the Act against the impugned patta dated 14.08.2015 to the second respondent Revenue Divisional Officer and once such appeal is filed, within two weeks period from the date of receipt of a copy of this order, by the petitioner, the same shall be decided on merits and in accordance with law, of course after hearing the petitioner as well as the 5th respondent, within a period of two months thereafter.

25.With this direction, this Writ Petition is disposed of. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS)

// True Copy//

Sub Assistant Registrar

Sgl

To

1. The District Collector
   Kanchipuram, Kanchipuram District.

2. The Revenue Divisional Officer,
   Kanchipuram, Kanchipuram District.

3. The Tahsildar,
   Sriperumbudur Taluk,
   Kanchipuram District.

4. The Deputy Tahsildar,
   Sriperumbudur,
   Kanchipuram District.

W.P.No.29701 of 2015

PCH(CO)
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