IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 15.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.30979 of 2015, 1945 of 2016 and 2316 of 2016
and
M.P.Nos.1 & 3 of 2015, W.M.P.Nos.2022 & 2023 of 2016
and
W.M.P.No.25253 of 2017

W.P.No.30979 of 2015

M.Tamilarasan ... Petitioner

-Vs-

1.The Tahsildar
Ponneri Taluk Office
Ponneri – 601 204.

2.Mrs.Konduru Shakila

3.The Revenue Divisional Officer,
Ponneri Taluk Office,
Ponneri.

4.The District Collector,
Thiruvallur District,
Thiruvallur.

*R3 & R4 are impleaded as per
order dated 11.12.2015 by MMS3
in M.P.No.2 of 2015

..Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Prohibition prohibiting the first respondent from initiating enquiry in Na.Ka.No.11066/2015/A2 on his file till the disposal of the suit initiated by the 2nd respondent in O.S.No.174 of 2014, 39/2015 on the file of the Subordinate Judge, Ponneri.

W.P.No.1945 of 2016

Konduru Shakila .. Petitioner

-Vs-

1. The Revenue Divisional Officer
   Ponneri Revenue Division, Ponneri - 601 204
   Tiruvallur District.

2. The Tahsildar
   Ponneri Taluk Office
   Ponneri - 601 204
   Tiruvallur District.

3. M.Tamilarasan

...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 2nd respondent to pass final order in the enquiry held in the representation of the petitioner dated 22.08.2015 for restoration of patta in the name of the petitioner in respect of the property being agricultural land comprised in Survey NO.17/3B measuring extent of 0.69.0 Hectare (i.e) 1.71 Acres situate at No.123 Kummanur Village, Ponneri Taluk, Tiruvallur District.

W.P.No.2316 of 2016

M.Tamilarasan ... Petitioner

-Vs-

1. The District Collector
   Thiruvallur District
   Thiruvallur.

2. The Revenue Divisional Officer
   Ponneri Taluk Office, Ponneri.

3. The Tahsildar
   Ponneri Taluk Office, Ponneri.

4. Mrs.Konduru Shakila

..Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records in respect of the impugned proceedings of 2nd respondent vide 2nd Summon in Na.Ka. No.4287/

2015/A1 dated 12.11.2015 and quash the same and may further direct the 2nd respondent to issue the Final Report of 3rd respondent vide Na.Ka. No.11006/ 2015/AA2 dated 5.10.2015.

For Petitioner in W.P.Nos. 30979/2015 & 2316/2016	:	Mrs.S.R.Shenbaga Babu
For Petitioner in W.P.No. 1945 of 2016	:	Mr.R.Munuswamy
For Respondents	:	Mr.R.Munuswamy -for R2 in WP 30979/2015 Mrs.Akila Rajendran, Government Counsel for RR 1,3&4 in WP 30979/2015 and for RR 1 & 2 in WP 1945/2016 & and for RR 1 to 3 in WP 2316/2016 Mrs.S.R.Shenbaga Babu for R3 in W.P.No.1945 of 2016 Mr.R.Munusamy for R4 in W.P.No.2316 of 2016

COMMON ORDER

Since the facts projected by both sides in these writ petitions are interconnected or overlapping and the parties to all these writ petitions are one and the same, and the issue raised in these writ petitions is also one and the same, which relates to the patta issued in favour of the petitioner in W.P.Nos.30979 of 2015 and 2316 of 2016, with the consent of the learned counsel appearing for both sides, all the three writ petitions were heard together and are being disposed of by this common order.

2. For the sake of brevity, the petitioner in W.P.No.1945 of 2016 viz., Konduru Shakila would be called as Shakila and the petitioner in the other Writ Petitions in W.P.Nos.30979 of 2015 and 2316 of 2016 M.Tamilarasan would be called as Tamilarasan.

3.The necessary facts which are required to be noted for the disposal of these three writ petitions are given below.

4. The agricultural property to the extent of 1.71 Acres at Kummanur Village, Ponneri Taluk, Tiruvallur District in Survey No.17/3B is the subject matter. The said property originally belonged to two persons viz., one Dhanalakshmi and one Bharathi.

The case of Shakila is that, on 23.02.2008, she purchased the property for a valid sale consideration by paying a sum of Rs.15,04,800/- by way of a bank draft and accordingly, the property was purchased through a registered sale deed.

5. Pursuant to the said purchase, the said Shakila applied for patta to the Revenue Authorities, who, after having considered the said sale, under which the said Shakila purchased the property in question, had issued Patta in Patta No.9123 of 2008 by an order dated 10.06.2008 to and in favour of the said Shakila.

6. It is further to be noted that, Tamilarasan, as he seems to have entered into a sale agreement with the original owners of the property ie., Dhanalakshmi and Bharathi, in order to seek for specific performance in respect of the very same subject property, had filed a civil suit in O.S.No.31 of 2007 before the Sub Court, Ponneri. The suit was pending between 2007 and 2008 and on 18.03.2008, the suit was decreed in favour of the said Tamilarasan. Pursuant to the said decree for specific performance, on 29.11.2011 the Court executed the sale deed, as the defendants in the suit ie., Dhanalakshmi and Bharathi did not come forward to execute the sale deed. That is how Tamilarasan also purchased the same property by way of Court executed sale deed on 29.11.2011. With the strength of the said purchase, Tamilarasan applied for patta to be issued in his name, which was also considered and the patta already issued in the name of Shakila in Patta No.9123 of 2008 dated 10.06.2008 was cancelled and the patta was issued in the name of Tamilarasan in November 2012.

7. Subsequently only, the said Shakila came to know about these developments as to why the patta granted in her favour was cancelled and why it was reissued in favour of Tamilarasan because of the Civil Court decree made in O.S.No.31 of 2007 and the subsequent Court execution of the sale deed dated 29.11.2011 and therefore, in order to declare the said decree passed by the Court in O.S.No.31 of 2007 as null and void and unexecutable, Shakila filed a suit in O.S.No.174 of 2014 before the Sub Court, Ponneri, where Tamilarasan and the original owners Dhanalakshmi and Bharathi were made as defendants.

8. It is further to be noted that, in the said suit, the plaintiff Shakila had obtained an interim order of injuction to the effect that, the subject property shall not be alienated by the defendants. When the matter stood thus, Shakila had made a request to the Revenue Officials ie., Revenue Divisional Officer, Ponneri Division and the Tahsildar, Ponneri Taluk, by way of a representation dated 22.08.2015 for restoration of the patta in her name by cancelling the patta issued in the name of

the said Tamilarasan.

9. In order to consider the said representation dated 22.08.2015 by the Revenue Officials, Shakila filed W.P.No.1945 of 2016 seeking a prayer of a writ of Mandamus to direct the Revenue Authorities ie., the Revenue Divisional Officer and Tahsildar, who stood as respondents 1 and 2 in the writ petition to consider the representation and to pass orders. That is how W.P.No.1945 of 2016 had been filed.

10. Pursuant to the said representation given by Shakila to the Revenue Authorities, it seems that the Revenue Authorities ie., Tahsildar, Ponneri seems to have proceeded to make a report and send the same to the Revenue Divisional Officer, by conducting an enquiry. Felt aggrieved over the said move on the part of the Revenue Authorities, Tamilarasan filed W.P.No.30979 of 2015 seeking for a writ of prohibition prohibiting the first respondent therein ie., Tahsildar, Ponneri from initiating or conducting any enquiry till the disposal of the suit filed by Shakila in O.S.No.174 of 2014.

11. Despite these developments, it seems that, since the said Shakila filed an application to cancel the patta issued in November 2012 in favour of Tamilarasan that was treated as an appeal within the meaning of Section 12 of the Patta Passbook Act and the matter had gone to the Revenue Divisional Officer, Ponneri Taluk. Therefore, he issued a summon on 12.11.2015 to the parties including the said Tamilarasan to appear before the Revenue Divisional Officer. Felt aggrieved over the said summon issued by the Revenue Divisional Officer, Tamilarasan filed another writ petition ie., W.P.No.2316 of 2016, where he seeks a prayer of certiorarified mandamus to call for the records and to quash the summons issued by the second respondent ie., Revenue Divisional Officer, Ponneri dated 12.11.2015. That is how all these three petitions came to be filed and were heard today.

12. Mr.Munusamy, learned counsel appearing for Shakila, by reiterating the aforesaid facts, would make vehement contention that, if at all the revenue authorities wanted to cancel the patta issued in favour of the said Shakila on 10.06.2008 in Patta No.9123 of 2008, notice should have been given to the parties especially the said Shakila, as the patta stood in her name. Therefore, without giving any notice to Shakila, the patta issued in her favour and was acted upon for four years ie., between 2008 and 2012, ought not to have been cancelled and the patta ought not to have been issued in the name of Tamilarasan. Therefore, on the ground of violation of principles of natural justice itself, the very order passed by the revenue authorities, issuing patta in the name of Tamilarasan in the year 2012 shall be cancelled and the patta issued in the name of

Shakila in 2008 shall be restored. Therefore, the prayer sought for by Shakila in W.P.No.1945 of 2016 shall be allowed, he contended.

13. Per contra, Mrs.Shenbaga Babu, learned counsel appearing for Tamilarasan in other two writ petitions would make submissions that, the said Tamilarasan having failed in his attempt to get the sale executed in his favour, has filed a suit in O.S.No.31 of 2007 seeking for specific performance and the suit was admittedly filed only in the year 2007. During the pendency of the suit, ie., only on 23.02.2008 the sale said to have been executed in favour of Shakila by the erstwhile owners Dhanalakshmi and Bharathi. Therefore, the sale effected on 23.02.2008 between the erstwhile owners and Shakila is lis pendens and therefore it shall not have any effect in the eye of law.

14. Moreover, knowing well that the decree is going to be passed in O.S.No.31 of 2007, the sale would have been made on 23.02.2008, by which the said Shakila might have purchased the property knowingly or unknowingly. But, the fact remains that the sale has been effected during the lis pendens.

15. Learned counsel would submit that, even though decree was passed in the said suit filed by Tamilarasan, the sale since has not been effected, as the original owners had not come forward to execute the sale by completing the decree of specific performance, the Court made execution of the sale on 29.11.2011. That is how Tamilarasan has got the property through Court sale and therefore, he was entitled to seek for patta. Accordingly, he made an application to the revenue authorities and after having considered the same, the revenue authorities issued patta in favour of Tamilarasan in 2012 by cancelling the earlier patta issued in favour of Shakila in the year 2008.

16. Therefore, the learned counsel for Tamilarasan would submit that, if at all the said Shakila is having any grievance with regard to the sale entered into between Shakila and the erstwhile owners during the pendency of the suit and in this regard, if she has already gone to the Civil Court and filed the subsequent suit in O.S.No.174 of 2014 against the judgment and decree passed by the said Court in O.S.No.31 of 2007, unless and until a decision is made in the said Civil Suit, no further precipitating action can be taken by the revenue authorities. Therefore, the patta issued in 2012 in favour of Tamilarasan shall hold good till a decision is taken by the Civil Court in the said suit in O.S.No.174 of 2014 filed by Shakila.

17. On the other hand, Ms.Akila Rajendran, learned Government Counsel appearing for the official respondents would

submit that, initially patta was issued in Patta No.9123 of 2008 on 10.06.2008 based on the sale executed on 23.02.2008. By thus, Shakila became the owner of the property. Therefore, verifying the said sale deed, patta was issued.

18. Subsequently, it was brought to the notice of the revenue authorities that, Court has executed a sale in respect of the same property in favour of Tamilarasan on 29.11.2011. Therefore, on that basis, when an application was filed by Tamilarasan, that was considered by the revenue authorities and accordingly patta already issued in the name of Shakila was cancelled and the patta was issued in the name of Tamilarasan. Therefore, that action taken on the part of the revenue authorities is fully based either on the sale deed or the subsequent Sub Court decree followed by the sale executed by the Civil Court.

19. Subsequently, now that the said Shakila has submitted an application to cancel the patta issued in the year 2012 in favour of Tamilarasan, if at all any such plea is made to cancel the patta already issued by the Tahsildar concerned, that can only be treated as an appeal and accordingly, the Revenue Divisional Officer concerned, being the appellate authority, has to decide the matter based on the report sent by the Tahsildar on the basis of the available records and also on hearing both sides, the Revenue Divisional Officer will pass final orders.

20. In the effort of passing final order in the appeal filed by Shakila, notice has been issued to both parties to appear. Therefore, the said notice cannot be questioned, as that is the duty cast upon the revenue authorities under the Patta Passbook Act. Therefore, in order to execute the duty cast upon him, he has to necessarily hear the parties and hence summons have to be issued. Therefore, such kind of summons need not be questioned by way of a writ petition. Therefore, all these writ petitions can be disposed of giving liberty to the revenue authorities to decide the issue independently on the basis of the available records especially by the Revenue Divisional Officer, she contended.

21. I have considered the submissions made by the learned counsel for all the parties and have perused the materials placed on record.

22. With regard to the aforesaid facts, there is not much dispute among the parties. No doubt, the said Shakila purchased the property on 23.02.2008, pursuant to which Patta No.9123 of 2008 was issued in her name on 10.06.2008. However, the fact remains that, well prior to the sale executed to and in favour of Shakila, Tamilarasan filed a suit in O.S.No.31 of 2007 for

specific performance in respect of the same property and in that suit, decree was passed on 18.03.2008. Therefore, if at all any sale was effected on 23.02.2008, that can only be treated as lis pendens.

23. Pursuant to the decree passed on 18.03.2008, the Court also executed the sale in respect of the same property to and in favour of Tamilarasan on 29.11.2011. Pursuant to the said sale, Tamilarasan approached the revenue authorities for change of patta in his name, which was also considered and granted in favour of Tamilarasan by November 2012.

24. In this context, the only submission made by the learned counsel appearing for Shakila is that, if at all the revenue authorities wanted to cancel the patta issued in the name of Shakila in 2008 and re-issue the patta in the name of Tamilarasan in 2012, notice should have been given and without hearing the person in whose name the patta stood, if any orders are passed, on that ground itself the order is vitiated.

25. No doubt, the said argument can be accepted in normal circumstances because, every such order to be passed by the revenue authorities to cancel the patta already issued in the name of a person without giving notice to the said person is bad in law. However, in the present case, the earlier patta issued in the name of Shakila in 2008 was purely based on the 23.02.2008 sale deed.

26. But, admittedly the sale had been effected during the pendency of the specific performance suit in O.S.No.31 of 2007. Subsequently, the Court, after having taken note of the decree, has executed the sale in favour of Tamilarasan on 29.11.2011. Therefore, if a question arises as to which sale would prevail if it is taken up for consideration, the revenue authorities cannot decide the title over the property and they have to give credence only to the sale executed in favour of Tamilarasan by the Civil Court on 29.11.2011. Therefore, based on the representation given by Tamilarasan, the patta already issued in the name of Shakila was cancelled and it was reissued in the name of Tamilarasan.

27. In this context, assuming if notice had been given to Shakila, she could not have improved her case. It is an admitted fact that, she purchased the property on 23.02.2008 during the pendency of the specific performance suit. Therefore, on that basis the case could not be improved by Shakila and this Court feels that, in the given facts and circumstances, giving notice to Shakila would have been an empty formality. Therefore, if the revenue authorities had acted upon in order to avoid such empty formality, it can very well be condoned.

Therefore, the ground raised by the learned counsel appearing for Shakila that notice was not given and that vitiates the order is untenable and therefore that argument is rejected.

28. Now, even though a suit has been filed by Shakila in O.S.No.174 of 2014, so far no orders have been passed, except the interim order of injunction with regard to alienation. The title over the property as on today is still in the hands of Tamilarasan in view of the Civil Court decree followed by the execution of the sale deed by the Civil Court on 29.11.2011.

29. Unless and until that position is changed by giving any decree and judgment in this regard in the suit filed by the said Shakila in O.S.No.174 of 2014, the present position ie., issuance of patta in November 2012 in the name of Tamilarasan can very well be continued.

30. In that view of the matter, the present attempt made by Shakila by giving an appeal to the Revenue Divisional Officer for conducting an enquiry to cancel the patta issued in the name of Tamilarasan is a vain attempt. Therefore, based on such attempt the revenue authorities especially the Revenue Divisional Officer concerned need not take up such appeal for decision and if at all any decision is taken in either way, they will create another superfluous right that will have some bearing on the suit already filed which is pending before the Sub Court. Therefore, by giving a direction to the Civil Court to take up the suit at the earliest and decide it on merits, the revenue authorities can be restrained from proceeding further on the appeal filed by Shakila, which is in fact the prayer sought for by Tamilarasan in W.P.Nos.30979 of 2015 and 2316 of 2016.

32. It is made clear that, in normal circumstances the summons issued by the revenue authorities under the provisions of the Patta Passbook Act would never be accepted as a successful challenge. However, in view of the peculiar facts and circumstances of this case, this Court is inclined to interfere with the said prayer sought for in one of the writ petitions to issue such prohibitory order.

33. In view of the aforesaid discussions, this Court is inclined to dispose of all the three writ petitions by passing the following orders.

- That the Revenue Authorities viz., the Revenue Divisional Officer, Ponneri Division and Tahsildar, Ponneri Taluk respectively are hereby directed not to proceed further on the appeal or revision dated 22.08.2015 submitted by Shakila / petitioner in W.P.No.1945 of 2016.

- Consequently, the summons issued by the Revenue Divisional Officer, Ponneri dated 12.11.2015 need not be acted upon.

- Consequently, the Revenue Authorities viz., the Tahsildar, Ponneri Taluk or Revenue Divisional Officer, Ponneri Division shall not proceed further in this matter until a conclusive decision by way of a judgment and decree is made by the Civil Court ie., Sub Court, Ponneri in O.S.No.174 of 2014.

- In view of these facts and circumstances, a direction can be given to the Civil Court ie., Sub Court, Ponneri to decide the said suit at the earliest. Hence, there shall be a direction to the Sub Judge, Ponneri to decide O.S.No.174 of 2014 within a period of six months from the date of receipt of a copy of this order and both the parties ie., the plaintiff and the defendants shall give their fullest cooperation to the learned Judge to complete the trial and pass judgment and decree in O.S.No.174 of 2014.

- It is further made clear that, in view of these orders, Tamilarasan, who is the petitioner in W.P.Nos.30979 of 2015 and 2316 of 2016 shall not alienate or encumber the property in question till the disposal of the civil suit in O.S.No.174 of 2014.

34. With the above directions, all the above writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

// True Copy//

Sub Assistant Registrar

KST

To

1.The Subcourt,
Ponneri.

2.The District Collector,
Thiruvallur District,
Thiruvallur.

3.The Revenue Divisional Officer,
Ponneri Taluk Office,
Ponneri - 601 204
Thiruvallur District.

4.The Tahsildar,
Ponneri Taluk Office,
Ponneri - 601 204

5.The Revenue Divisional Officer,
Ponneri Revenue Division,
Ponneri, Thiruvallur District.

+3ccs to Mr.Shenbaga babu, Advocate, S.R.No.33851
+1cc to the Government Pleader, S.R.No.34349

W.P.No.W.P.Nos.30979 of 2015,
1945 of 2016 and 2316 of 2016

GPL(CO)
SU(24/08/2021)