IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.08.2021

PRONOUNCED ON : 27.08.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.7211 of 2021
and
W.M.P.Nos.7710 & 7711 of 2021

M/s.RMC Travellers Inn Private Limited
Represented by its Managing Director
M.Health Titio ..Petitioner

..Vs..

1. The District Revenue Officer,
   Chennai District,
   Chennai Collector's Office,
   Chennai - 600 001.

2. The Revenue Divisional Officer,
   South Chennai Division,
   Guindy, Chennai - 600 032.

3. The Tahsildar,
   Velacherry Taluk,
   Chennai - 600 042.

4. The Director of Survey and Settlement,
   Chepauk,
   Chennai - 600 005.

5. The Inspector of Survey,
   Survey and Land Records,
   Chennai District.

6. The Deputy Inspector of Survey & LR
   Velacherry Taluk, Chennai - 600 0042.

7. Ramasamy

8. Mohammed Saleem ..Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records from the 5th and 6th respondent Survey Report dated 19.08.2019 and in Procs.No.A1/1821/2019 dated 11.11.2020 passed by the 2nd respondent to quash the same as illegal, incompetent and without jurisdiction and further confirm the grant of patta in favour of the petitioner in C.A.No.1463/2012 dated 19.12.2012.

For Petitioner	:	Mr.Infant Dinesh
For RR1 to R6	:	Mr.K.M.D.Muhilan Government Advocate.
For R7	:	Mr.P.Saravanan
For R8	:	Mr.N.L.Rajah, Senior counsel for B.Harikrishnan

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus seeking re-visitation of an order dated 11.11.2020 in Procs.No.A1/1821/2019 passed by the 2nd respondent/the Revenue Divisional Officer, South Chennai Division, Guindy, Chennai and the Survey Report dated 19.08.2019 of the 5th and 6th respondents / the Inspector of Survey and Deputy Inspector of Survey and LR, Chennai and to set aside the same and to confirm the order granting patta in favour of the petitioner in C.A.No.1463/2012 dated 19.12.2012.

2.The Writ Petition though focused on the order of the 2nd respondent, during the course of arguments has primarily turned into a conflict between the writ petitioner on the one hand and 7th and 8th respondents on the other hand.

3.The writ petitioner herein claims title to property / land measuring 2400 sq.ft in S.No.66 Part, T.S.No.2/157, Block No.22, Urur Village, Old Door No.40, New Door No.97, L.B.Road, (Dr.Muthulakshmi Salai) Adyar, Chennai - 600 020, which was previously in Mylapore - Triplicane Taluk and now in Velacherry Taluk, Chennai Corporation.

4.The petitioner claims that they had purchased the said property by seven registered sale deeds all executed during the year 2011 and 2012 from S.Sivaraj @ S.Sivaji, K.Delli Achari, R.K.Devendran, Mohana, Suseela, Chitra, Siron Mani, Malleswari @ Mallika, K.Gopal @ K.Nandagopal. The vendors aforementioned were claimed by the petitioner to be the absolute owners of the property. They are all relatives of K.Delli Achari one of the vendor. They had executed a Partition Deed on 12.03.2004 and thereafter, the petitioner appears to have purchased the property from them. The petitioner also claims that they had built compound wall around the property and they were in possession and enjoyment. They have also been granted patta by the Tahsildar, Mylapore – Triplicane Taluk in C.A.No.1463 of 2012. They have also obtained electricity connection. They wanted to demolish the existing structure and also obtained permission from the Assistant Commissioner, Chennai Corporation.

5.It was stated that on 22.02.2017 the compound wall was damaged and a First Information Report in that regard was lodged by the petitioner before the jurisdictional police station. They also filed a suit in O.S.No.1409 of 2017 before the V Assistant City Civil Court, Chennai, and obtained an order of interim injunction protecting possession against the 8th respondent herein / Mohammed Saleem.

6.There were further issues which arose with respect to possession leading to initiation of proceedings under Section 145 Cr.P.C and further proceedings before this Court in Crl.O.P.No.13316 of 2017. There were also applications filed before the IX Metropolitan Magistrate Saidapet. The 8th respondent appears to have given a representation on 01.11.2018 to the Commissioner of Police Chennai, Inspector of Police, Central Crime Branch and Inspector of Police, J-5 Shastri Nagar Police Station, which is the jurisdictional police station, alleging that his lands were attempted to be grabbed by some persons including one M.Health Tito. Complaining that no action had been taken on the said representation, W.P.No.33526 of 2018 came to be filed before this Court and a learned Single Judge of this Court had directed enquiry into the said representation after issuing notice to the 8th respondent herein / writ petitioner and the said M.Health Tito / 4th respondent in the writ petition.

7.In the meanwhile, the 8th respondent, S.Ramasamy through his Power Agent also filed an application in the petition pending before the IX Metropolitan Magistrate Saidapet.

8.It also transpires that the 7th respondent in his capacity as Power Agent of M/s.Sakthivel Investments had filed an appeal before the 2nd respondent / the Revenue Divisional Officer, South Chennai Division, Guindy Chennai dated 03.09.2019 seeking cancellation of the patta granted in favour in favour of the petitioner. The 2nd respondent had issued summons to the petitioner to appear with all relevant documents for hearing on 30.12.2019. In the said notice, however, the date of appeal by the 7th respondent was wrongly mentioned as 30.12.2019.

9.Be that as it may, the petitioner participated in the appeal proceedings. There were two appellants namely, M/s.Sakthivel Investments represented by the 7th respondent herein and the 8th respondent herein. They both sought cancellation of the patta granted in favour of the petitioner. The 7th respondent claimed rights over the land in T.S.No.2/157, Block No.22, Urur Village. It must be mentioned that the land of 2400 sq.ft claimed by the petitioner was also a part of larger extent of land lying in T.S.No.2/157, Block No.22, Urur Village, Velacherry Taluk. The 8th respondent claimed to be the owner of land measuring 275 sq.mts in T.S.No.2/164, Block No.22, Urur Village and another extent of 327/5 sq.ft in T.S.No.2/165 again in Block No.22, Urur Village and further claimed that a portion of the aforesaid lands measuring 2400 sq.ft had been encroached by the petitioner herein.

10.It had been further stated in the affidavit filed in support of the writ petition that a large extent of land measuring 27.08 grounds was owned by M/s.Sakthivel Investments. The partners were N.Umayal Achi, Ar.Meenakshi Achi and C.T.Sarawathi Achi. There was a suit for partition in C.S.No.140 of 2009. The said suit is pending.

11.During the course of enquiry by the 2nd respondent, a survey report had been called for by the 2nd respondent from the 5th and 6th respondents and they had given a report on 19.08.2019. The 2nd respondent, thereafter passed orders on 11.11.2020 in the appeal filed by M/s.Sakthivel Investments on 03.09.2019. In the appeal proceedings, the petitioner herein also participated. Finally, the appeal was allowed and the patta granted in favour of the petitioner herein for the 2400 sq.ft of land which he claimed was cancelled and the original entries were restored.

12.Questioning that order, the petitioner herein had filed an appeal before the District Revenue Officer, Chennai which was the competent forum to hear the appeal. They also simultaneously filed the present writ petition. They had taken a conscious decision to withdraw the appeal filed before the District Revenue Officer.

13.Heard arguments advance by Mr.Infant Dinesh, learned counsel for the petitioner, Mr.K.M.D.Muhilan, learned counsel for the 1st to 6th respondents, Mr.P.Saravanan, learned counsel for the 7th respondent and Mr.N.L.Rajah, learned Senior Counsel for the 8th respondent.

14.The 7th respondent had a totally different tale to recite with respect to the flow of title. It was claimed that a partnership firm M/s.Sakthivel Investments had been constituted on 13.01.1963 and the firm acquired vast extent of lands measuring 49 grounds and 2124 sq.ft in S.Nos.63 and 64 Part in Urur Village under a Sale Deed dated 07.05.1963. They also obtained adjacent land measuring 4 grounds and 964 sq.ft in T.S.No.2, Block No.22 in Urur Village by a Sale Deed dated 18.06.1973.

15.The Tahsildar, Mylapore – Triplicane Taluk issued patta in C.A.No.498/87-88 with respect to the lands in T.S.No.2/5, Block No.22, Urur Village for lands measuring 1.13.09.0 hectares in the joint names of the partners of M/s.Sakthivel Investments. Subsequently in the year 2000, the Tahsildar, Mylapore – Triplicane Taluk issued patta in C.A.No.1179/2000 with respect to the said lands in the names of the partnership firm and also the partners. The firm was dissolved by a deed of dissolution dated 25.08.1986. One of the partners, N.Umayal Achi filed a suit in C.S.No.140 of 2009 before the Original Side of this Court for partition and separate possession of the lands. It is stated that the suit is still pending.

16.During the course of the pendency of the suit, there had been transactions with respect to the said lands and the 8th respondent claims to have purchased a portion of the lands.

17.It is claimed that the vendors of the writ petitioner herein had originally filed a suit claiming protection under the Tamil Nadu City Tenants Protection Act, in O.S.No.857 of 1965 against M/s.Sakthivel Investments. It progressed to A.S.No.546 of 1968 where a settlement was reached and the vendors of the petitioner, primarily K.Delli Achari and others were directed to pay consideration for the land measuring 2410 sq.ft to M/s.Sakthivel Investments. It was held that if they do not pay the said consideration, they would loose their rights over the land. It is stated that they did not pay the said sale consideration. Therefore they had lost rights and did not get title over the lands and therefore, the sale deed executed by them in favour of the petitioner is nonest as the petitioner had purchased the property from persons who had no title to the lands.

18.Faced with two rival contentions with respect to the title of the property, the 2nd respondent had though it fit to cancel the patta in favour of the petitioner and to restore the original patta. This order is now questioned in this Writ Petition.

19.A perusal of the facts stated above reveal that title to the land will have to be determined. The writ petitioner had filed a suit in O.S.No.1409 of 2017 seeking protection from dispossession. The writ petitioner had not filed any suit for declaration of title. It is trite in law to mention that the civil court alone can decide title.

20.The grievance of the learned counsel for the petitioner is that the 2nd respondent had while cancelling patta in favour of the petitioner had entered into a discussion on title and it is therefore claimed that the 2nd respondent had actually decided title and therefore, had exceeded jurisdiction.

21.I do not agree.

22.The 2nd respondent / the Revenue Divisional Officer, is the competent authority to examine any appeal filed seeking to cancel the patta granted by the Tahsildar. While granting patta, a Tahsildar is required to prima facie satisfy himself / herself with respect to the title of the applicant seeking patta. The official does not decide title. If there are rival claimants, the proper course which the Tahsildar will necessarily have to take is to refer the parties before the civil court to decide the title. If there is no rival claim, then on subjective satisfaction, the Tahsildar can grant patta. This order granting patta can be taken up in appeal even subsequently by any person aggrieved by such grant of patta. This appeal is to be filed before the Revenue Divisional Officer.

23.In this case, an appeal had been filed by M/s.Sakthivel Investments in effect by the 7th respondent and also by the 8th respondent. They also claimed title over the property for which patta was granted in favour of the petitioner herein. During the course of appeal once again the official should examine whether on a prima facie reading of the documents submitted by the patta holder, whether the patta already granted should continue to stand or should be interfered with.

24.In an appeal, the official is only satisfying himself/herself whether the flow of title is clear and without any impediment or suspicion or cloud over the title. The official is certainly not deciding title. The official has a duty to examine the documents presented and read them in conjunction with the documents presented by the appellant who questions the grant of patta. The proper and correct approach is to cancel the patta restore status ante and direct the parties to approach the civil court.

25.Here the 2nd respondent had done just that. He had not decided the title of either parties. He had only stated that in the suit filed by the vendors of the writ petitioner herein, seeking protection under the Tamil Nadu City Tenants Protection Act, a compromise had been effected in the First Appeal and in the compromise the vendors of the writ petitioner were directed to pay sale consideration to the defendant therein namely, M/s.Sakthivel Investments. The 2nd respondent found as a fact that the said sale consideration had not been paid. The onus was on the writ petitioner herein to establish that payment was made by producing necessary documents, since the title of the vendors of the petitioner was under question.

26.Therefore, the 2nd respondent held that there was a small gap in the flow of title as claimed by the petitioner herein. When the 2nd respondent had come to such a conclusion, naturally, the 2nd respondent cannot permit patta to continue to stand in the name of the writ petitioner. The 2nd respondent had therefore cancelled the patta. The parties will necessarily have to approach the civil court seeking declaration of title to clear the clouds in the title.

27.As against the order of the 2nd respondent the proper course is to file an appeal before the District Revenue Officer. An appeal before the District Revenue Officer, had actually been filed by the petitioner herein. The petitioner claims that they had filed a revision and later for reasons best known, had withdrawn the same.

28.Still the fact remains that as between documents presented by the writ petitioner and the documents presented by the 7th/8th respondents there is a clear dispute on title. Entries in the revenue records will not grant title. Either grant of patta or cancellation of patta will not be a factor to decide the title to any person. The writ petitioner must realize that unless the title is determined by a civil court of competent jurisdiction, they cannot insist on grant of patta or seek to interfere with cancellation of patta in their name.

29.In Kuppuswami Nainar Vs. The District Revenue Officer and another reported in (1995) 1 MLJ 426, a Division Bench of this Court headed by then Chief Justice had held as follows:-

> "3. No provision is brought to our notice in the Standing Orders of the Board of Revenue taking away the jurisdiction of the Civil Court to adjudicate upon the question of title relating to immovable property. Revenue Officers in a Patta proceeding may express their views on the question of title, but such expression of opinion or decision is not conclusive and it is only intended to support their decision for granting Patta. Ultimately, it is the Civil Court which has to adjudicate the question as to whether the person claiming Patta is the title holder of the land. Even if the Revenue Authorities decide the question of title, that will not in any way affect the

jurisdiction of the Civil Court, which has to decide the question without reference to the decision of the Revenue Authorities.

4. Now the question for consideration is, having regard to the fact that the District Revenue Officer has expressed his opinion on the question of title, whether the order under question should be interfered with. It may be pointed out here that in a Petition under Article 226 of the Constitution, the question of title regarding immovable property cannot properly be gone into, because a mass of evidence may be required for adjudicating the question of title. Even if we are to interfere with the order under Appeal, it is the other party, who has to go to a Civil Court and establish title. As far as the exercise of jurisdiction under Article 226 of the Constitution is concerned, it does not matter to it whether "A" party goes to Civil Court or "B" party. Therefore, we are of the view that the question of title has to be decided by the Civil Court without reference to the order under question. Hence, we decline to interfere with the order challenged in the Writ Petition. However, we make it clear that in the event a Suit for declaration of title and for appropriate consequential relief is filed, the Civil Court shall decide such a Suit, without reference to the findings recorded by Respondents 1 and 2 in the impugned orders, but only on the basis of the pleadings of the parties and evidence adduced by them before it. We also make it clear that any opinion expressed by the learned Single Judge, contrary to what we have stated above, shall also stand modified accordingly. With these observations, the Writ Appeal is dismissed. Consequently, C.M.P. No. 15872 of 1994 filed along with the Appeal is also dismissed."

30.A perusal of the dictum laid down shows that it is only the Civil Court which can adjudicate upon the question of title relating to immovable properties. It had been further held that revenue officers may express their views on the question of title but such expressions of opinion is neither binding on the civil court nor even remotely conclusive. Ultimately, it the civil court which has to adjudicate the question as to whether the person claiming patta is the title holder of the land. Even if the revenue officials were to express opinion about the title, that opinion will not in anyway effect the jurisdiction of the civil court which has to decide the question without reference to the opinion of the revenue authorities.

31.The ratio in this judgment had been subsequently followed by a learned Single Judge of this Court in Chockkappan and 2 others Vs. The State of Tamil Nadu rep.by the Special Commissioner and Commissioner Land Administration, Chepauk, Chennai – 5 and 2 others reported in 2004 (1) CTC 136.

32.Again the said dictum had been upheld and followed by a Division Bench of this Court in Vishwas Footwear Company Ltd., A-2 Third Phase, Guindy Industrial Estate, Chennai – 600 032, rep. by Director, V.Ravi Vs. The District Collector and others reported in 2011 (5) CTC 94. The Division Bench again extracted paragraphs 3 and 4 referred supra in Kuppuswami Nainar Vs. The District Revenue Officer and another reported in (1995) 1 MLJ 426 and also the statement of law as affirmed in Chockkappan (referred supra) and held as follows:

> "15. ....As far as this law is concerned, there cannot be a second opinion as to the limited jurisdiction of the Revenue Divisional Officer only to find out prima facie as to the title and when the title is in dispute and there are rival claimants, he should refer the parties to Civil Court for adjudication and depending upon the decree that may be passed by the Civil Court, relevant entries in the Patta could be effected by the Revenue Divisional Officer."

33.Further arguments were put forth whether the 2nd respondent acted as an original authority or as an appellate authority. It is claimed that in the order dated 11.11.2020 impugned in the writ petition, the 2nd respondent acted as an appellate authority and therefore, this Court should interfere with the said order restoring the patta originally granted, since the authority had examined and gone into the question of title but should have directed the parties to approach the civil court for determination of title and should not have cancelled the patta already granted.

34.In this connection, the learned counsel for the petitioner placed reliance on the judgment of a learned Single Judge of this Court reported in 2016 SCC Online Mad 27878, Pee and Dee Lands Holdings Private Limited, represented by its Chairman cum Managing Director, N.Palaniswamy, 82, Cathedral Road, Gopalapuram, Madras – 86 Vs. The District Revenue Officer, Chennai and others. The learned Single Judge of this Court had, agreeing with the contention of the petitioner in that case, had observed as follows:

"41. This Court is of the view that the question also involves adjudication of title and the petitioner as well as the private respondents had placed reliance upon very many documents, some of which are also of the vintage year. It is also not clear from the impugned order as to whether all the parties have produced the originals of the documents and the first respondent has also indicated in the order that the Taluk Back File is also not available and merely went on by the documents produced by the parties.

42. A careful scrutiny of the impugned order would also disclose that the order runs to twelve pages and the discussion part of the order runs to two pages. The petitioner as well as the private respondents accused each other as to the fabrication of the documents and records.

43. In the considered opinion of this Court, the matter in issue mainly pertains to the title and in the considered opinion of this Court, it requires necessary pleadings, oral and documentary evidence and the first respondent is not having enough expertise and jurisdiction to adjudicate the question of title.

44. Since the genuineness of the documents produced by the parties were also put in issue, it may require expert opinion also. The above cited decisions laid down the proposition that in the event of any dispute relating to the title of the property, the party who feels aggrieved over the entry regarding patta, is to file a civil suit before the competent civil forum and based on the said decree only, the jurisdictional revenue authority can act accordingly. Thus, the law is well settled.

45. This Court, in the light of the facts and circumstances of the case and the ratio laid down in the above cited decisions, is of the opinion that the first respondent ought to have directed the private respondents to approach the competent civil forum to work out their remedy, especially, with regard to their right, title and possession and instead, had

adjudicated the disputed questions of fact, especially, with regard to the title and the same is impermissible in law.

46. In the result, this writ petition is allowed and the impugned order of the first respondent passed in K. Dis. No. J2/22026/12, dated 07.01.2013, is set aside and the patta granted in favour of the petiitioner vide proceedings of the second respondent dated 13.01.2012, stands restored. However, the private respondents are at liberty to approach the competent civil forum to work out their remedy in accordance with law. It is also made clear that the findings/observations made herein are only for the purpose of disposal of this writ petition and this Court has not touched upon the merits of the claim projected by the respective parties and it is for the competent civil forum to adjudicate the same based on the pleadings and quality of evidence tendered before it. No costs. Consequently, the connected miscellaneous petition is closed."

35.The learned counsel therefore stated that the order cancelling patta should be interfered with and the original patta restored and thereafter, the parties should have been directed to approach the civil court.

36.It is the contention of the learned counsel for the petitioner that the 2nd respondent had exceeded jurisdiction in canceling patta. In the instant case there has been no discussion relating to determination of title. The 2nd respondent herein had found that there is a small jump in the trace of title as stated by the writ petitioner herein. Having found that out, it was only proper that the 2nd respondent exercised jurisdiction to cancel the patta, restore status quo ante, and thereafter direct the parties to determine title. There is an obligation to examine whether the flow of title as presented by the parties, presuming that all the documents are genuine is proper and unhindered. In the case relied on, there were allegations of forgery which, thankfully, has not been raised in the instant case.

37.If there is a gap in the flow of title the 2nd respondent cannot state that either one of the parties have a better claim for title. But the official certainly cannot permit the revenue records to stand in the name of the party whose title is found to be clouded with a gap in the flow of title. Having found out that fact, in this case, namely that the vendors of the petitioner herein had not paid the sale consideration or rather the writ petitioner had not produced any documents to show that such consideration had paid by their vendors, naturally, the 2nd respondent had a duty to correct the revenue records. That is a duty which has to be discharged by the 2nd respondent. Having found out that there is gap in the title, it would be highly inappropriate if the 2nd respondent were to permit continuation of grant of patta in favour of a person whose title he had found to be having a gap in the flow. Relevant documents to show that the vendors of the petitioner herein had actually abided by the terms of the compromise in A.S.No.546 of 1968 had not been produced. This has compelled the 2nd respondent to discharge his official duty namely, to record that fact and cancel the patta and direct the parties to go before the civil court.

38.I therefore hold that the facts of this case do not warrant interference with the order of the 2nd respondent. The facts of this case are distinguishable from the facts of Pee and Dee Lands Holdings Private Limited, referred supra.

39.I would therefore, dismiss the Writ Petition and direct the parties to the civil court to establish title. I decline to interfere with the order of the 2nd respondent. The Writ Petition stands dismissed. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

smv

To

1. The District Revenue Officer,
   Chennai District,
   Chennai Collector's Office,
   Chennai - 600 001.

2. The Revenue Divisional Officer,
   South Chennai Division,
   Guindy,
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6. The Deputy Inspector of Survey & LR
   Velacherry Taluk,
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+1cc to Mr.B.Harikrishnan, Advocate, S.R.No.43366/21

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and
W.M.P.Nos.7710 & 7711 of 2021

SMI(CO)
RGA(17/09/2021)