IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

WP.No.33833 of 2015 and
MP.Nos.1 & 2 of 2015

Rajavel ... Petitioner

Vs

1.The District Revenue Officer,
Villupuram Revenue District,
Villupuram

2.The Revenue Divisional Officer,
Villupuram Revenue Division,
Villupuram District

3.The Tahsildar,
Villupuram Taluk,
Villupuram District

4.Thilagavathy ... 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 passed by the first respondent herein in Na.Ka.A2/D.R.R.P 07/2010 dated 26.03.2013 and order passed in appeal dated 12.01.2010 in A3/3213/09 passed by the second respondent in confirming the order of third respondent herein passed in RDR.670/09 dated 07.04.2009 in respect of survey No.632/19, 20, 21 and 22, situated at Arpisampalayam Village, Villupuram Taluk & District and quash the same, consequently directing the respondents to restore the original patta in the name of petitioner in survey No.632/19, 20, 21 and 22, Arpisampalayam Villupuram, Villupuram Taluk & District.

For Petitioner : Mr.M.R.Jothimanian
for Mr.K.Balu

For Respondents
For R1 to 3 : Mr.Richardson Wilson
Government Advocate

ORDER

This Writ Petition is filed to issue a writ of certiorarified mandamus calling for the records of the impugned order passed by the first respondent herein in Na.Ka.A2/D.R.R.P 07/2010 dated 26.03.2013 and order passed in appeal dated 12.01.2010 in A3/3213/09 passed by the second respondent in confirming the order of third respondent herein passed in RDR.670/09 dated 07.04.2009 in respect of survey No.632/19, 20, 21 and 22, situated at Arpisampalayam Village, Villupuram Taluk & District and quash the same, consequently directing the respondents to restore the original patta in the name of petitioner in survey No.632/19, 20, 21 and 22, Arpisampalayam Villupuram, Villupuram Taluk & District.

2. The case of the petitioner is that the property comprised in survey No.260/1A to an extent of 3.12.0 hectares is situated at Arpisampalayam, Villupuram Taluk & District. Thereafter, it was partitioned within the family members and the same was registered vide document No.2503 of 2007 dated 17.10.2008 on the file of the Sub Registrar, Valavanur, Villupuram District. It was originally owned by his father and sub-divided as survey No.362/19, 20, 21 and 22. After demise of his father, the patta was changed in his name through the proceedings of the third respondent dated 28.09.2007. Thereafter, sub-division was made as 260/1A. While being so, on 01.03.2009, the fourth respondent made application before the third respondent for cancellation of the said patta. The third respondent cancelled the patta by order dated 07.04.2009 and aggrieved by the same, the petitioner filed appeal before the second respondent and the same was rejected by order dated 12.01.2010 and the same was also confirmed by the first respondent by order dated 26.03.2013. Aggrieved by the same, the present writ petition has been filed.

3. The learned counsel for the petitioner would submit that the third respondent has no power to cancel the patta, that too issued by the third respondent. The third respondent can modify the patta, that too 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. Therefore, Section 10 of the Patta Passbook Act does not empower the Tahsildar to cancel the patta already granted as the power of the Tahsildar to modify the entries in the patta passbook is limited as stated supra. He further submitted that if at all any grievance over the patta in respect of title over the property, the revenue officials i.e. the first and second respondents have no power to decide the title in question of the subject property. The civil court only is the competent court to decide the issue with respect of the title over the property. In support of his contention, he relied upon the judgment in the case of Vishwas

Footwear Company Ltd., rep. by Director V.Ravi Vs. The District Collector, Kancheepuram and others reported in (2011) 5 CTC 94.

4. The learned Government Advocate appearing for the respondents 1 to 3 submitted that the third respondent has no power to cancel the patta issued by the same Office. As provided under Section 10 of the Patta Passbook Act, the third respondent can modify the issuance of patta, that too to modify the entries in the patta passook is limited only 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. He further submitted that the fourth respondent can very well approach the civil court if there is any title dispute over the property as per the proviso to Section 14 of the Patta Passbook Act. He further submitted that the petitioner failed to produce any document to show that he has title over the property. However, there is proviso to Section 14 of Patta Passbook Act to decide the title only by the civil court.

5. Heard, Mr.M.R.Jothimanian, the learned counsel for the petitioner, and Mr.Richardson Wilson, Government Advocate appearing for the respondents 1 to 3. Though notice was sent to the fourth respondent, the same was returned.

6. The petitioner is challenging the orders passed by the respondents 1 to 3 herein thereby cancelled the patta issued in favour of the petitioner in respect of the property comprised in survey No.632/19, 20, 21 and 22 situated at Arpisampalayam, Villupuram. The subject property was originally owned by the petitioner's grandfather. After his demise, his two sons i.e. Parasuraman and Natesan inherited and divided into two shares. From the date of partition, they were in possession and enjoyment of their respective shares. The petitioner is none other than the son of the said Parasuraman and after demise of the said Parasuraman, the petitioner inherited the property and patta has been changed in his name through the proceedings of the third respondent herein dated 28.09.2007 in Ref.No.Ni.mu.R.D.R.906/07 and sub-division was made as 260/1A. While being so, the fourth respondent who is none other the wife of Natesan, claimed the subject property. Therefore, she filed petition to cancel the patta issued in favour of the petitioner. On receipt of the petition, the third respondent cancelled the patta issued in favour of the petitioner and the same was confirmed by the respondents 1 and 2 herein. Therefore, the points for consideration in this writ petition are as follows:

1. Whether the third respondent has got jurisdiction to cancel the patta granted in favour of the petitioner?

2. Whether the respondents 1 and 2 has got jurisdiction to decide the title over the subject property?

7. The power is conferred on the revenue authorities under the Tamilnadu Patta Passbook Act, 1983 with regards to the issuance of patta, appeal and revision under Sections 10, 12 and 13 of the Patta Passbook Act. It is relevant to extract the provision of Section 10 of Patta Passbook Act as follows:

> 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.

8. 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. Therefore, the third respondent has no power to entertain the petition from the fourth respondent for cancellation of patta already issued in favour of the petitioner. Aggrieved by the order passed by the third respondent, the petitioner preferred appeal as contemplated under Section 12 before the second respondent. Section 12 contemplates that any person aggrieved by an order made by the Tahsildar under this Act may, within such period as may be prescribed, appeal to such authority as may be prescribed. 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.

9. In the case on hand, the third respondent passed order under Section 10 of the Patta Passbook Act. However, the fourth respondent raised specific issue with regards to the title of the subject 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. In this regard, the learned counsel for the petitioner relied upon the judgment in the case of Vishwas Footwear Company Ltd., rep. by Director V.Ravi Vs. The District Collector, Kancheepuram and others reported in (2011) 5 CTC 94, wherein it is held as follows:

> 14. Keeping the above in mind, the issue is to be considered. The writ appeal raises two important questions. Firstly, whether the Revenue Divisional Officer would be competent to go into the disputed question of title while considering the application for cancellation of patta. In fact, the law on this is not res integra. As early as in the year 1995, a Division Bench of this Court in Kuppuswami Nainar v. The District Revenue Officer, Thiruvannamalai and others, 1995 (1) MLJ 426 has observed 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.

15. Following the said judgment, one of us (DMJ) in Chockkappans case has held that the Revenue Divisional Officer has no jurisdiction to go into the disputed questions of title at the time when an

application for cancellation of patta is being considered. 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.

17. The question as to whether the revenue authorities be it the Tahsildar exercising power under section 3 or under section 5 or under section 10 or the Revenue Divisional Officer exercising power under section 12, can consider only a prima facie case as to the entitlement of a person or persons for issuance of patta. In the event such officers encounter a dispute which could be resolved only by a competent civil Court, they would not have jurisdiction to enter into such civil dispute for adjudication. To this extent, the judgments in Kuppuswami Nainar's case followed in Chockkappan'c case may be relied upon. The learned Judge in the order under appeal has also relied upon those judgments and we are in agreement with the same.

21. In the light of the judgments in Kuppuswami Nainars case and Chockkappans case, the person who has applied to the Revenue Divisional Officer for cancellation of patta should be directed to approach the civil Court to establish the title and for seeking the grant of patta after cancelling the patta granted in favour of the appellant company. On this ground, the appellant is entitled to succeed. Accordingly, the order of the learned single Judge is set aside. The order impugned in the writ petition is set aside and the patta granted in favour of the appellant company is restored. However, we make it clear that this order shall not stand in the way of the said Alamelu Ammal to approach the civil Court to establish the title and to consequently seek for cancellation of patta granted in favour of the appellant company and for further direction for grant of patta in favour of the said Alamelu Ammal. With these observations and directions, the writ appeal is allowed. No costs.

10. The Hon'ble Division Bench of this Court held that the revenue officials can consider only a prima facie case as to the

entitlement of a person or persons for issuance of patta. In the event such officers encounter a dispute which could be resolved only by a competent civil Court. If any person makes an application to the Revenue Divisional Officer for cancellation of that patta and in the event both the individuals claim title over the property, the Revenue Divisional Officer cannot adjudicate such disputed questions and accepting the case of the other person, he cannot cancel the patta. The right course to be adopted by the Revenue Divisional Officer in such case is only to refer the applicant who has come before him seeking for cancellation of patta to civil Court, especially when his claim is disputed by the individual who is holding the patta granted by the competent authority.

11. In the case on hand, based on the documents produced by the petitioner, he was granted patta by the third respondent. Thereafter, the fourth respondent also claimed title over the property and sought for cancellation of patta issued in favour of the petitioner herein. As stated supra, the third respondent has no jurisdiction to entertain the cancellation of patta issued in favour of the petitioner. He can modify the patta issued in favour of the petitioner as stated supra under Sections 3 and 5 of the Patta Passbook Act. Therefore, the above judgment is squarely applicable to the case on hand.

12. In view of the above, the impugned orders passed by the respondents 1 to 3 are unsustainable as the same were passed without jurisdiction. Accordingly, all the impugned orders dated 07.04.2009, 12.01.2010 and 26.03.2013 are set aside and the writ petition is allowed. Consequently, the patta in survey No.632/19, 20, 21 and 22, Arpisampalayam Village, Villupuram Taluk & District granted in favour of the petitioner is restored. However, the fourth respondent is at liberty to approach the civil court to establish the title in respect of the subject property and subject to the result of the civil court decree, she can seek for cancellation of patta granted in favour of the petitioner in the manner known to law. Consequently, connected miscellaneous petitions are closed. No order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The District Revenue Officer,
  Villupuram Revenue District,
  Villupuram

2.The Revenue Divisional Officer,
  Villupuram Revenue Division,
  Villupuram District

3.The Tahsildar,
  Villupuram Taluk,
  Villupuram District

+1cc to Mr.K.Balu, Advocate Sr No.39268
+1cc to Government Pleader Sr No.39458

WP.No.33833 of 2015

CP (CO)
PR (02/09/2021)