



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.07.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.37538 of 2015 and
M.P.No.1 of 2015

Selvaraj

... Petitioner

Vs.

1. The State of Tamil Nadu rep. by
Revenue Divisional Officer,
Tambaram.

2. Soundararajan

... Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus to forbear the first respondent, his men, agents, servants, subordinates or any body acting on their behalf from in any way cancelling teh patta which stands in petitioner's name in respect of the land situated in S.No.232/2B1 and 232/2B2, patta No.1070 an extent of 2.32 acres of land at Sholinganallur Village, Sholinganallur Taluk, Kancheepuram District, till such time the civil suit in O.S.No.51 of 2007 and O.S.No.448 of 2011 is decided once and for all.

For Petitioner : Ms.Selvi George

For 1st Respondent : Ms.Akila Rajendran
Counsel for Government

For 2nd Respondent : No appearance

ORDER

The prayer sought for herein is for a writ of mandamus to forbear the first respondent, his men, agents, servants, subordinates or anybody acting on their behalf from in any way cancelling the patta which stands in petitioner's name in respect of the land situated in S.No.232/2B1 and 232/2B2, Patta No.1070 to an extent of 2.32 acres of land at Sholinganallur Village, Sholinganallur Taluk, Kancheepuram District, till such time the Civil Suit in O.S.No.51 of 2007 and O.S.No.448 of 2011 are decided.

2. In respect of property in S.No.232/B to the extent of 2 acres 32 cents at Sholinganallur Village, there has been a



dispute between the petitioner and the second respondent.

3. In this context, patta had already been given in the name of the petitioner and his brother.

4. However, it is the case of the second respondent that, the second respondent inherited the property from his father, who inherited the property from his father i.e., the grandfather of the petitioner and therefore, there has been, according to the second respondent, a gift deed executed on 28.07.2006, thereby remaining 4/5th of the total property among the legal heirs of the father of the petitioner had been divided and had been given by way of gift to the second respondent that is how the second respondent claimed that he is owner of 2 acres 32 cents.

5. It is the further claim of the second respondent that, while that being so, patta had been issued in the name of one Masilamani and Selvaraj, who are the brothers and Selvaraj is the present petitioner. Therefore, in order to cancel the said patta issued or stands in the name of said Masilamani and the petitioner Selvaraj, the second respondent had given a representation or appeal to the first respondent Revenue Divisional Officer on 25.07.2014.

6. On receipt of the said appeal filed by the second respondent, the first respondent Revenue Divisional Officer on 11.11.2015 issued a summon to the petitioner as well as his brother's son i.e., one Sivakumar S/o.Masilamani. Only at this juncture, the petitioner had filed this writ petition with the aforesaid prayer seeking a prohibitory order to restrain the first respondent and his men, agents, servants from cancelling the patta already issued.

7. Heard Ms.Selvi George, learned counsel appearing for the petitioner, who would submit that, insofar as the dispute which arose between the petitioner and the private respondent in respect of the subject land is concerned, already the mother of the second respondent had approached the Civil Court and filed a suit in O.S.No.51 of 2007 on the file of the District Munsif at Alandur, where, the petitioner and his brother Masilamani has arrayed as party defendants and the said suit is still pending. That apart, yet another suit in this regard had also been filed in O.S.No.448 of 2011 at the same Court and that is also pending.

8. The learned counsel appearing for the petitioner would further submit that, when an attempt in fact had been made by the second respondent's mother i.e., Selvanayaki by making a request to the Tahsildar, Tambaram, who is the jurisdiction



Tahsildar concerned to cancel the patta stands in the name of the petitioner, the Tahsildar, by proceedings dated 27.11.2009, has stated that, in view of the suit having been filed by the said Selvanayaki, mother of the second respondent, in O.S.No.51 of 2007 before the concerned Civil Court which is pending, till a decision is taken thereon, the plea of the second respondent mother to cancel the patta stands in the name of the petitioner does not arise and therefore, on that ground, that plea had been rejected.

9. When the Tahsildar has taken such a stand, which is, of course according to the petitioner, now has triggered the appeal of the second respondent dated 25.07.2014, as the first respondent has issued the impugned summon dated 11.11.2015 without jurisdiction as he cannot proceed to conduct any enquiry on the appeal filed by the second respondent in order to decide the entitlement of the second respondent to get cancellation of the patta stands in the name of the petitioner, unless and until, a conclusive decision is made by the Civil Court, where, two suits had already been filed and are pending. Therefore, the learned counsel appearing for the petitioner would submit that, the present attempt made by the first respondent in issuing the summons dated 11.11.2015 is unwanted interference on the possession and enjoyment of the property concerned of the petitioner. Therefore, such a prohibitory order as sought for in this writ petition can be considered and granted, she submitted.

10. I have heard Ms.Akila Rajendran, learned Government Counsel appearing for the first respondent, who would submit that, whether the patta granted in favour of the petitioner and his brother Masilamani in respect of the disputed land at S.No.232/B is concerned, it is a proper issuance of patta or not, can very well be agitated by the affected party. Therefore, here the second respondent being an affected party has made an appeal to the first respondent on 25.07.2014 and on receipt of the same, the first respondent being the Appellate Authority under the provisions of the Tamil Nadu Patta Pass Book Act, 1983 (in short 'the Act') has to necessarily enquire the matter and to decide the same as the entitlement of the patta to the parties concerned and only for that limited purpose, in order to conduct an enquiry, summons dated 11.11.2015 was issued by the first respondent. Since it is the statutory duty cast upon the first respondent to conduct an enquiry which requires summon to be issued on the parties, the same cannot be injuncted or prohibited by orders of this Court. Therefore, the prayer sought for in this writ petition seeking a prohibitory order against the first respondent from acting upon as per the statutory duty cast upon him under the provisions of the said Act is unlawful and unjustifiable, therefore, the said prayer cannot be granted, she contended.



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

12. It is the reason, according to the learned counsel for the petitioner, that, two suits had been filed, especially, Suit No.51 of 2007 which has been quoted by the Tahsildar for not interfering with the request of the second respondent's mother to cancel the patta stands in the name of the petitioner.

13. On perusal of the prayer sought for in suit O.S.No.51 of 2007, this Court finds that, it was the suit filed by the mother of the second respondent against the petitioner and his brother only seeking for a permanent injunction restraining the defendants and their men in the suit from interfering with the possession and enjoyment of the suit property.

14. Assuming that, another suit also had been filed as claimed by the petitioner counsel and in that case, if any relief of declaration of title is sought for, insofar as the present issue is concerned, the only question to be decided by the first respondent is whether the patta granted and stands in the name of the petitioner and his brother are correct or not. In this context, whatever the order passed by the Tahsildar, who is the authority under Sections 3 and 5 of the Tamil Nadu Patta Pass Book Act to issue patta as against which, aggrieved party can file an appeal under Section 12 of the Act and if any such appeal is filed before the authority, who is none other than the first respondent Revenue Divisional Officer, it is the duty cast upon the first respondent to consider the appeal, after conducting a limited enquiry to that extent by inviting both the parties.

15. This Court in many number of cases issued mandamus almost every day to various Revenue Authorities i.e., Appellate Authorities/ Revenue Divisional Officer concerned to decide such kind of appeals filed by the affected parties as against the order of grant of patta or non-granting of patta passed by the Tahsildar concerned.

16. When that being so, in the case in hand, since the second respondent has filed an appeal to cancel patta stands in the name of the petitioner and his brother, that appeal having been received by the first respondent, he started acting upon by issuing notice to the petitioner and his brother or his son, who may be currently claiming the ownership of the property by virtue of the patta, such kind of action cannot be construed as an unlawful action on the part of the first respondent.

17. In fact, that kind of action is strictly in consonance



with the Tamil Nadu Patta Pass Book Act and such kind of duty/action of the first respondent to enquire into the matter and to pass orders is only a statutory duty. Therefore, the summons issued in this regard by the first respondent dated 11.11.2015 at no stretch of imagination can be construed as an unlawful activity or action without jurisdiction on the part of the first respondent. Therefore, in the guise of the pendency of the Civil Suit, the statutory duty cast upon the authorities, like the first respondent under the Patta Pass Book Act cannot be curtailed even by the orders of this Court. Therefore, the present plea raised by the petitioner and the prayer sought for herein prohibiting the first respondent to proceed further in pursuance of the summons issued dated 11.11.2015 is absolutely without any plausible reason and therefore, this Court is not inclined to accept the said prayer as sought for in this writ petition.

18. In the result, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the writ petition is liable to be dismissed, accordingly, it is dismissed. Consequently, the first respondent shall proceed with an enquiry pursuant to the summon dated 11.11.2015 and complete the enquiry on the application or appeal filed by the second respondent dated 25.07.2014 by giving an opportunity of being heard to both sides and pass orders with regard to the plea raised by the second respondent to cancel the patta stands in the name of the petitioner and his brother or otherwise.

(ii) It is made clear that, while deciding the issue, the first respondent shall not transgress the jurisdiction vest with him and in such consideration, no finding or decision can be given by the first respondent deciding the title over the property either in favour of the petitioner or in favour of the second respondent, as that job has already been left to the Civil Court for which parties have already approached the Civil Court, as stated supra.

19. With these observations and directions, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

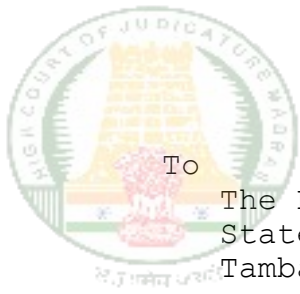
Sd/-

Assistant Registrar(CO-IX)

//True Copy//

Sub Assistant Registrar

Sgl



To
The Revenue Divisional Officer,
State of Tamil Nadu
Tambaram.

WEB COPY

+1cc to Ms.Selvi George, Advocate, S.R.No.32101
+1cc to the Government Pleader, S.R.No.32587

W.P.No.37538 of 2015

CP(CO)
CT(19/08/2021)