IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2021

CORAM

THE HON'BLE Mr.JUSTICE C.V.KARTHIKEYAN

W.P.No.8849 of 2021
and
W.M.P.No.9388 of 2021

M. Murugan .. Petitioner

Vs.

1. The District Revenue Officer,
   Kallakurichi,
   Kallakurichi District.

2. The Sub Collector,
   Office of the Sub Collector,
   Kallakurichi,
   Kallakurichi District.

3. Lakshmi
4. Ilayaperumal
5. R.Govindan .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the Order of the 2nd respondent dated 21.12.2020 in Mu.Mu.A4/1017/2020 and quash the same and consequently direct the 2nd respondent to decide the appeal of the petitioner dated 14.01.2020 in accordance with law irrespective of the pendency of the suit in O.S.No.732 of 2020, filed by the respondents 3 and 4 within a stipulated period.

For Petitioner .. Mr. K. Selvaraj
For R1 and R2 .. Mr.K.M.D.Muhilan
Government Advocate
For R3 and R4 .. Mr.S.N.Subramani

ORDER

The writ petition has been filed in the nature of certiorarified mandamus seeking interference of the order of the second respondent/Sub Collector, Kallakurichi dated 21.12.2020 in Mu.Mu.A4/1017/2020 and directing the respondent to decide the Appeal of the petitioner dated 14.1.2020.

2. The petitioner had originally instituted a suit in O.S.No.212 of 2014 against his vendors on the file of the District Munsif, Kallakurichi. The said suit was for declaration of title and recovery of possession. The suit was decreed. Thereafter, the petitioner also had the benefit of grant of patta.

3. It is the contention of the petitioner that the said patta had been seriously questioned by respondents 3 to 5. An order was passed by the Tahsildar cancelling the patta of the petitioner. Thereafter, an Appeal was filed on 14.1.2020 before the second respondent/Sub Collector, Kallakurichi.

4. It is complained by Mr.K.Selvaraj learned counsel appearing for the petitioner that the said official had conducted hearing on 22.9.2020 again on 22.10.2020 and also on 8.12.2020 and had reserved the matters on 8.12.2020 and pending such enquiry, respondents 3 and 4 had instituted a suit in O.S.No.732 of 2020 before the Principal Sub Court, Kallakurichi in which they had sought the relief of declaration of title and the petitioner herein also figured as first defendant in the said suit. Therefore, an order was passed by the second respondent directing the parties to settle the issues before the civil court. That order is now questioned.

5. It is submitted by Mr.K.Selvaraj, learned counsel for the petitioner that institution of the suit in O.S.No732 of 2020 itself was mala fide and that the said suit had been instituted with the sole purpose of interfering with the proceedings of the second respondent herein. It has, therefore, been contended that the second respondent should be directed to proceed with the enquiry and pass orders with the submissions already made.

6. Per contra, learned counsel Mr.S.N.Subramani appearing for respondents 3 and 4 contended that the husband of the third respondent Sengamalai Konar had purchased the property and the decree which the petitioner relies viz., decree in O.S.No.212 of 2014 had been obtained without impleading the said Sengamala Konar or his legal representatives and it is claimed that they are in possession of the property in question. It is also contended by the learned counsel that since a suit has already been filed, the issue of title will have to be decided only by a Civil Court and the revenue authorities cannot decide the title with respect to the property in question.

7. Mr.K.M.D.Muhilan, learned Government Advocate appearing for respondents 1 and 2 also pointed out that the land and the order in question relates to UDR patta and therefore, the proceedings will have to be initiated only before the District Revenue Officer and the proceedings before the Sub Collector

will have no legality. It is further pointed out by him that once the suit has been lawfully instituted, it is only appropriate that the parties advert their attention to the proceedings before the competent forum primarily on declaration of title.

8. The issue whether the revenue officials can go deeply into the title of the party had been examined and re-examined in various judgments of this court. I would rely on the decision of a Division Bench in Vishwas Footwear Company Limited v. The District Collector and others 2011 (5) CTC 94, wherein the Division Bench had relied on an earlier judgment of a learned Single Judge (Justice D.Murugesan) in Chokkappan and two others v. The State of Tamil Nadu rep. by the Special Commissioner and Commissioner of Land Administration, Chennai and two others, 2004 (1) CTC 136 and it had been very categorically held therein that the revenue officials cannot examine the title of property. Examination of title would not only include examination of pleadings but also examination of oral and documentary evidence which evidence will have to be tested during cross-examination. This power has been given only to the civil court and the revenue officials cannot go into the title of the property. Therefore, it has been very clearly held that it would only be advisable that the revenue officials do not examine the title of any property and relegate the parties to the proper forum viz., competent court of civil jurisdiction.

9. In view of the said pronouncement and the dictum laid down, I would rather direct the parties to participate in O.S.No.732 of 2020.

10. My attention has been drawn to the order of a learned Single Judge in W.P.No.7844 of 2021 dated 26.3.2021 (V.P.Chinnasamy v. The Revenue Divisional Officer, Tiruppur District and another) That was a writ filed seeking a writ of prohibition prohibiting the first respondent from proceeding further with the enquiry on the ground that a suit had been filed and that there has been dispute of title and in that matter, the learned Single Judge had examined the jurisdiction as provided under Section 14 of the Tamil Nadu Patta Passbook Act and had held that limited jurisdiction to examine the revenue records still remains with the revenue authorities. Therefore, an order was passed dismissing the said writ petition and refusing to pass orders as sought in the writ petition. But, however, the Judgment in Vishwas Footwear case referred to above is directly on the point and applicable to the facts of the present case.

11. There is a title dispute with respect to the land and it is only appropriate that the Civil Court decides the issues,

renders a finding on the issues raised.

12. Mr.K.Selvaraj learned counsel also pointed out that a direction may be given to the Principal Sub Judge, Kallakurichi to dispose of O.S.No.732 of 2020.

13. However, it is brought to the notice of the court that written statement had not been filed in that suit. Therefore, it would not be proper to give any indication as to the time frame within which the suit must be disposed. I would only indicate that soon after the trial starts and when the plaintiff enters into the box, the learned Judge may conclude the trial within a period of three months from the date of the beginning of the trial.

14. With the said observation, which alone could be given, the writ petition has to be necessarily dismissed and it is, accordingly, dismissed. No order as to costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)
//True Copy//

Sub Assistant Registrar
ssk

To
1.The District Revenue Officer,
Kallakurichi,
Kallakurichi District.
2.The Sub Collector,
Office of the Sub Collector,
Kallakurichi,
Kallakurichi District.

+1CC to Mr.K.Selvaraj, Advocate, Sr.No.41332
+1CC to M/s.S.N.Subramani, Advocate, Sr.No.41396
+1CC to Government Pleader, Sr.No.42058

W.P.No.8849 of 2021
and
W.M.P.No.9388 of 2021

PL (CO)
K.RK. (15.09.2021)