IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 3962 of 2018

K.Uma Maheswari ... Petitioner

-vs-

1.The Revenue Divisional Officer,
Fort-Thondayarpet Taluk,
Chennai District, Chennai.

2.The Tahsildar,
Ayanavaram, Chennai.

3.Sri Kakumani Adikeshavalu Chetty Trust,
Represented by its Secretary,
No.105, Narayana Mudali Street,
Sowcarpet, Chennai – 79. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the respondents 1 & 2 to consider the representation dated 31.01.2018 under the provisions of the Tamil Nadu Patta Passbook Act 1983 to cancel the patta granted in favour of 3rd respondent vide Proceeding TR/1098/2004-2005 dated 12.07.2004, within the stipulated period of time.

For Petitioner : Mr.V.Vijayakumar

For Respondents : Mr.Richardson Wilson
Counsel for Govt. for R1 and R2
Mr.G.Vijaya Kumar for R3

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the first and second respondents to consider the representation of the petitioner dated 31.01.2018 under the provisions of the Tamil Nadu Patta Passbook Act 1983, to cancel the patta granted in favour of the third respondent vide Proceedings TR/1098/2004-2005 dated 12.07.2004, within a stipulated period of time.

2. In respect of the property at S.No.348/1 in Gramanatham, Konnur Village, Villivakkam, it is the claim of the petitioner that, it was the ancestral property of the petitioner and others. The maternal grandfather of the petitioner one Venkata Narasiah Chetty was the owner of the property, who died on 04.01.1984, intestate, for whom, several legal heirs are there. The petitioner is one of the legal heirs of the said Venkata Narasiah Chetty. Therefore, insofar as the present legal heirs are concerned including the petitioner, the property in question shall be given patta jointly only in the name of the legal heirs of the said Venkata Narasiah Chetty and in this regard, the petitioner has already made an application to the revenue authorities especially the Tahsildar, who is the second respondent herein and when that request made by the petitioner dated 28.08.2017 to issue joint patta in the name of the petitioner and others was not considered by the Tahsildar, the petitioner was constrained to file the Writ Petition in W.P. No. 26040 of 2017. However, when the said Writ Petition was pending consideration before this Court, it is the further case of the petitioner that, the petitioner came to know recently that, the patta had been issued in respect of the said property on 12.07.2004, to and in favour of the third respondent.

3. In this context, it is the case of the petitioner that, the third respondent has no connection insofar with the property in question and therefore, the said patta issued in the name of the third respondent on 12.07.2004 can be cancelled. Hence, in order to cancel the same, as per the provisions of the Tamil Nadu Patta Passbook Act 1983, the petitioner had filed an appeal on 31.01.2018 to the first respondent. Since the said appeal has not been considered by the first respondent and it has been kept pending all along, the petitioner is constrained to file this Writ Petition with the aforesaid prayer.

4. Heard Mr.V.Vijayakumar, learned counsel appearing for the petitioner, who, having reiterated the aforesaid, would seek the indulgence of this Court to issue a suitable direction to the first respondent to decide and dispose of the appeal dated 31.01.2018 filed by the petitioner on merits and in accordance with law, after hearing the petitioner, within a time frame that may be stipulated by this Court.

5. Per contra, Mr.G.Vijaya Kumar, learned counsel appearing for the third respondent would submit that, the third respondent is a Charity Trust and it is having the property next to the property claimed to be the petitioner's property and without even properly verifying what is the actual property, for which, patta has been given to the third respondent, the petitioner having assumed something, has filed Writ Petition after Writ Petition as if the property belongs to the petitioner and the

patta had been wrongly issued to and in favour of the third respondent.

6. In this context, the learned counsel for the third respondent would further submit that, the petitioner had already filed the Writ Petition seeking for a mandamus to consider her request for issuance of patta in W.P. No. 26040 of 2017 and when that Writ Petition was pending consideration, she cannot file the present Writ Petition seeking the present prayer to cancel the patta issued in favour of the third respondent with regard to the property which belongs to the third respondent. Therefore, he seeks dismissal of this Writ Petition.

7. I have heard Mr.Richardson Wilson, learned counsel for the Government appearing for the official respondents, who would submit that, if at all, the petitioner has got any grievance over the patta issued in favour of the third respondent, as early as on 12.07.2004, as against which, if she has filed an appeal on 31.01.2018 and the same is still pending with the first respondent, certainly, that would be considered and decided on merits within a time frame that may be stipulated by this Court, of course after hearing both the petitioner as well as the third respondent by giving an opportunity of being heard.

8. The learned counsel appearing for the petitioner by way of clarification has submitted that, the said Writ Petition in W.P. No. 26040 of 2017 filed by the petitioner for the earlier relief of mandamus since has been closed by this Court, in view of the pendency of this Writ Petition, on 28.06.2021.

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

10. Whether the property in question as claimed by the petitioner is the property belongs to the petitioner and others or the third respondent, can only be decided by the revenue authorities. That means, not the title, but based on the available records, who is entitled to get the patta can be decided by the revenue authorities.

11. It is the case of the third respondent that, the third respondent is stated to be a neighbour to the petitioner and therefore, the petitioner under wrong impression or misconception might have approached the first respondent by filing the present appeal dated 31.01.2018, challenging the patta issued on 12.07.2004 to and in favour of the third respondent.

12. Be that as it may, whether the patta issued on 12.07.2004 is pertaining to the land or property belongs to the petitioner as claimed by them or the property belongs to the third respondent can very well be verified easily by the revenue authorities especially the first respondent by verifying the revenue records in this regard and therefore, if at all, the petitioner's grievance is that, the patta issued on 12.07.2004 in favour of the third respondent is a wrong issuance of patta and for which, if she filed an appeal on 31.01.2018 under the provisions of the Tamil Nadu Patta Passbook Act, such kind of appeal / representation shall be considered as an appeal and shall be decided by the appellate authority, i.e., first respondent.

13. In that view of the matter, this Court is of the view that, a direction can be given to the first respondent to decide the representation of the petitioner dated 31.01.2018 treating it as an appeal within the meaning of the provisions of the Tamil Nadu Patta Passbook Act, by giving an opportunity of being heard to both sides within a time frame on merits.

14. Accordingly, this Court is inclined to dispose of this Writ Petition with the following orders:

> "That there shall be a direction to the first respondent to consider the representation of the petitioner dated 31.01.2018 by treating it as an appeal under the provisions of the Tamil Nadu Patta Passbook Act as against the patta issued on 12.07.2004 by the second respondent to and in favour of the third respondent and in this regard, after giving a reasonable opportunity of being heard to both the petitioner as well as the third respondent, the issue raised in the said appeal / representation of the petitioner shall be decided and final order shall be passed within a period of three months from the date of receipt of a copy of this order."

15. With these directions, this Writ petition is disposed of. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vji

To

1.The Revenue Divisional Officer,
  Fort-Thondayarpet Taluk,
  Chennai District, Chennai.

2.The Tahsildar,
  Ayanavaram, Chennai.

+1cc to Mr.V.Vijayakumar, Advocate SR No.31150
+1cc to Government Pleader SR No.30854

W.P. No. 3962 of 2018

GJ (CO)
PR (19/08/2021)