

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2021

CORAM

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

W.P. No. 25105 of 2016
and W.M.P. Nos.21497 & 22055 of 2016

P.Ramesh

... Petitioner

Vs

1.The Tahsildar,
Omalur Taluk,
Salem District.

2.The Sub-Collector,
Mettur, Salem District.

3.The Collector,
Salem District.

4.Palanisamy.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus or any other writ or order in the nature of Writ of Mandamus directing directing the 2nd respondent to drop all further proceedings in respect of cancellation of patta granted in favour of the petitioner in proceedings bearing Na.Ka.No. 2824/2015/ P which is posted for enquiry on 20/07/2016 pertaining to the property being the land together with the superstructure thereon constituting house, comprised in 1.Survey No. 150/9C, land of an extent of hectare 0.02.5, acre 0.06 cents 2.Survey No. 150/10A, land of an extent of hectare 0.01.5, acre 0.03 cents 3.Survey No. 150/10B, land of an extent of hectare 0.11.0, acre 0.27 cents 4.Survey No. 150/11A, land of an extent of hectare 0.02.0, acre 0.05 cents 5.Survey No. 150/11C, land of an extent of hectare 0.16.0, acre 0.40, the entirety of the lands of an extent of hectare 0.33.0, acre bearing Patta No.573, situated in Desavilakku (North) Village Hamlet, Tharamangalam Village, Thuttampatty Post, Omalur Taluk, Salem District and consequently refrain the second respondent from passing any such order in respect of the aforesaid property.

For Petitioner : Mr. A.Palaniappan

For Respondents 1-3: Mr. A.Madhumathi
Special Government Pleader

O R D E R

This petition is filed with a prayer to direct the second respondent to drop all further proceedings in respect of cancellation of patta granted in favour of the petitioner in proceedings bearing Na.Ka.No. 2824/2015/ P which is posted for enquiry on 20/07/2016 pertaining to the property being the land together with the superstructure thereon constituting house, comprised in 1.Survey No. 150/9C, land of an extent of hectare 0.02.5, acre 0.06 cents 2.Survey No. 150/10A, land of an extent of hectare 0.01.5, acre 0.03 cents 3.Survey No. 150/10B, land of an extent of hectare 0.11.0, acre 0.27 cents 4.Survey No. 150/11A, land of an extent of hectare 0.02.0, acre 0.05 cents 5.Survey No. 150/11C, land of an extent of hectare 0.16.0, acre 0.40, in all the lands of an extent of hectare 0.33.0, bearing Patta No.573, situated in Desavilakku (North) Village Hamlet, Tharamangalam Village, Thuttampatty Post, Omalur Taluk, Salem District and consequently refrain the second respondent from passing any such order in respect of the aforesaid property.

2. In the affidavit filed in support of this Writ Petition it is stated by the petitioner that he is the absolute owner of the properties comprised in five different sub divisions of the same survey number and other properties mentioned in the prayer. It is his further case that the property was originally belonged to one Chinnathai Ammal wife of Chinnathanur Gounder. It is further stated that the Chinnathai Ammal died intestate leaving behind one Sithan and three others. It is also stated that the legal heirs of Chinnathai Ammal effected an oral partition in respect of the properties and that the properties which is the subject matter of the Writ Petition were allotted to the father of the petitioner by name Perumal. It is admitted that the fourth respondent is the son of one Sithan who is also one of the legal heir of Chinnathai Ammal. The petitioner claimed titled over the property on the basis of subsequent partition deed dated 05.01.2011, which is among the Legal heirs of Perumal namely the father of the petitioner. It is admitted before this Court that the daughter of Chinnathai Ammal filed a suit in O.S. No.233 of 2013, on the file of Sub Court, Mettur, seeking partition on the ground that the oral partition pleaded by the petitioner is not valid and binding on her. It is the specific case of the petitioner that based on the partition deed, patta for the property was changed in the name of the petitioner and that the partition of the year 2011 was also acted upon by execution of a settlement deed.

3. It is the further case of the petitioner that the fourth respondent filed an appeal before the second respondent challenging transfer of patta in favour of the petitioner on the ground that the patta had been obtained in the name of the petitioner suppressing the material facts and the existence of other legal heirs of Chinnathai Ammal. It is stated that the

second respondent has no jurisdiction to cancel the patta once granted in favour of the petitioner. It is also stated that during the pendency of the civil suit, the second respondent ought not to have entertained the petition filed by the fourth respondent challenging the order of Tahsildar granting patta in favour of the petitioner. It is admitted before this Court that the second respondent has conducted an enquiry based on the representation of the fourth respondent regarding cancellation of patta granted in favour of the petitioner. It is further admitted that the final order was also passed on 31.10.2016, by the second respondent canceling the order of Tahsildar transferring the patta in favour of the petitioner. It is further stated in the said order that the name of the petitioner should be removed and the patta should be restored to its original position. By virtue of the order passed by the second respondent, the patta was restored in the name of Chinnathai Ammal, the original owner of the property.

4. It is seen that the dispute is among two groups representing two different legal heirs of the original owner of the property. It is stated that the civil dispute is also pending. The learned counsel for the petitioner circulated the judgment of this Court rendered by a Division Bench to the effect that the Revenue Divisional Officer has no jurisdiction to deal with mutation of records. In the present case, the petitioner obtained patta in his name on the basis of self serving document namely a partition deed which was subsequent to a oral partition alleged by the petitioner. In such circumstances, this Court is unable to agree with the contention that the Revenue Divisional Officer has no jurisdiction to test the validity of the order passed by the Tahsildar. In the factual scenario where the oral partition is not yet confirmed or admitted by other legal heirs of Chinnathai Ammal, the dispute has to be finally settled by the Civil Court. In such circumstances, the order transferring patta in favour of the petitioner without hearing the other legal heirs of Chinnathai Ammal is invalid and hence the second respondent, as an Appellate Authority, has passed appropriate orders. After the second respondent passed an order on 31.10.2016, the petitioner filed a petition in W.P. No.22055 of 2016 to amend the prayer. By amendment, the petitioner now seeks to quash the order of second respondent dated 31.10.2016 and the notice pursuant to which the order was passed by the second respondent.

5. Having regard to the nature of dispute and the representation of the fourth respondent as well as the case pleaded by the petitioner in the Writ Petition, this Court is of the view that the order of Tahsildar transferring patta in favour of the petitioner is an order passed under Tamil Nadu Patta Pass Book Act. Every order passed by Tahsildar under the Tamil Nadu Patta Pass Book Act is appealable and the second respondent is the Appellate Authority to test the validity of the order of Tahsildar passed under Tamil Nadu Patta Pass Book

Act. In such circumstances, the contention of the petitioner that the second respondent has no jurisdiction to deal with the matter has no substance and merits.

6. It is also brought to the notice of this Court by the learned counsel for the petitioner that another suit in O.S. No.117 of 2014 on the file of District Munsif Court, Omalur, was filed by the petitioner's wife by name Dhanalakshmi and that the said suit is based on the oral partition and subsequent partition in the year 2011 and the settlement deed executed in her favour. Since there are two suits pending and the Civil Court is seized of the matter, it may not be appropriate for this Court or the Revenue Officials to decide the dispute in the proceedings in relation to transfer of patta. Hence, this Court is of the view that the petitioner can approach the Revenue Officials after getting a decision in his favour before the Civil Court regarding title.

7. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed. However, liberty is granted to the petitioner or his wife to workout their remedy in the pending suits. Since Section 14 of the Tamil Nadu Patta Pass Book Act, clearly protects the right of the petitioner, it is always open to the petitioner to approach the Revenue Officials in case the petitioner or the petitioner's wife succeed before the Civil Court establishing their title.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

bkn

To

1.The Tahsildar,
Omalar Taluk,
Salem District.

2.The Sub-Collector,
Mettur, Salem District.

3.The Collector,
Salem District.

+1cc to Mr.A.Palaniappan, Advocate SR.310
+1cc to the Government Pleader SR.180

W.P. No. 25105 of 2016

AK II(CO)
CB(25/02/2021)

<https://hcservices.ecourts.gov.in/hcservices/>