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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2021

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

W.P.No.17033 of 2021

and

W.M.P.Nos.18055 and 18056 of 2021

R.Ranjith

.. Petitioner

Vs.

1. The Additional Chief Secretary,
O/o. The Additional Chief Secretary,
Commissioner of Land Administration,
Ezhilagam, Chepauk,
Chennai - 600005.

2. The Revenue Divisional Officer,
O/o. Revenue Division,
Kallakuruchi,
Kallakuruchi District.

3. Maragatham

.. 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 of the 2nd respondent herein in his proceedings in Na.Ka.A4/2200/2021 dated 23.07.2021 and quash the same and consequentially direct the 2nd respondent not to conduct any further enquiry in the representation of the 3rd respondent, in violation to the Circular dated 13.03.2018 in Ref.No.K3/27160/2008 of the 1st respondent and without waiting for the outcome of the O.S.No.115 of 2021, pending before the Learned Additional District Munsif-I, Kallakurchi.

For Petitioner .. Ms.Kanimozhi Mathi

For R1 and R2 .. Mr. Yogesh Kannadasen

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus questioning the notice issued to the petitioner on two successive occasions namely, on 02.07.2021 and again on 23.07.2021.



2. Normally in the writ petition, when there is a 3rd respondent, private party involved, notice would be expected to be issued, but I would defer from taking up that particular avenue particularly, because the 3rd respondent is also a defendant in the suit in O.S.No.115 of 2021 now pending before the Additional District Munsif Court, Kallakuruchi. The said suit had been filed by the petitioner. No doubt the suit had been filed for permanent injunction restraining the 3rd respondent / defendant from interfering with the peaceful possession of the property. But it is common knowledge that the scope of the suit can be enlarged during the pendency of any civil litigation and therefore, it would only be appropriate that the revenue authorities await a decision rendered by the civil court before entering into an enquiry either based on applications made by the petitioner / plaintiff or by the 3rd respondent / defendant in the said suit.

3. It appears that the 3rd respondent had given an application seeking patta claiming that she has a valid title deed in their hands. The petitioner appears to have given an objection informing the 2nd respondent, the Revenue Divisional Officer about the pendency of the suit. But however, it is seen that the 2nd respondent appears to have continued with his enquiry.

4. In Kuppuswami Nainar Vs. The District Revenue Officer and another reported in (1995) 1 MLJ 426, the Division Bench of this Court headed by then Chief Justice had held 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



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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."

5. The above judgment had been subsequently followed by the learned Single Judge of this Court in Chockkappan and 2 others Vs. The State of Tamil Nadu rep. by the Special Commissioner and Commissioner Land Administration, Chepauk, Chennai - 5 and 2 others reported in 2004 (1) CTC 136, wherein in paragraph 5, the learned Single Judge had held as follows:

"5. Though the Revenue Officials are empowered to consider the prima facie consideration of the right of the parties for the grant of patta, when the patta stands in the name of a particular person, inclusion of others in the patta is impermissible, that too, on consideration of title by the Revenue Officials. In all fairness, the Zonal Tahsildar, Aruppukottai ought to have directed the 3rd respondent to first



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establish her title before the Civil Court before any inclusion is made in the patta, as it is not the case of fresh patta but inclusion of 3rd respondent in the patta which already stand in the name of the petitioners. In this context, the impugned order cannot be sustained as the 3rd respondent's name has been included only after the decision rendered by the Revenue Officials regarding the title of the 3rd respondent. Hence, the impugned order is set aside. However, liberty is given to the 3rd respondent to work out her remedy in Civil Court as to her title over the land in question and in the event, the 3rd respondent has obtained a decree in her favour she can make her application for inclusion of her name in the patta."

6. Where the civil suit is pending, it would only be appropriate that the revenue authorities await decisions of the civil court before embarking on any enquiry by themselves either based on application or otherwise.

7. In view of the same the impugned notices are set aside and it is also advisable that the 3rd respondent participate in the civil suit, ensures that the decree or otherwise is passed in the suit comes to a finality and thereafter approach the revenue authorities for any relief. If pending the suit, the 3rd respondent seek to get any relief, it is only appropriate that the 3rd respondent files necessary application before the civil court where the suit is pending and that court can examine the application and pass appropriate orders.

8. In view of the same, the Writ Petition is disposed of with the observations as stated above without issuing notice to the 3rd respondent, particularly because she is a defendant in the pending suit. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

smv

To

1. The I Additional District Munsif Court,
Kallakuruchi.



2. The Additional Chief Secretary,
O/o. The Additional Chief Secretary,
Commissioner of Land Administration,
Ezhilagam, Chempauk,
Chennai - 600005.

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3. The Revenue Divisional Officer,
O/o. Revenue Division,
Kallakuruchi,
Kallakuruchi District.

+1cc to Ms.Kanimozhi Mathi, Advocate, S.R.No.40702

+1cc to the Government Pleader, S.R.No.41525

W.P.No.17033 of 2021

PL(CO)
CT(13/09/2021)