IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 09.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.196 of 2017
and W.M.P.No.188 of 2017

1.K.Baalasundaram
2.B.Magendiran
3.B.Udayakumar ... Petitioners

-Vs-

1.The District Revenue Officer
Ponneri Taluk, Tiruvallur District.

2.The Revenue Divisional Officer
Ponneri Taluk, Tiruvallur District.

3.The Tahsildar, Ponneri Taluk
Tiruvallur District.

4.T.Dayalan

5.T.Dhanasekaran

6.K.Kuppan (Deceased)

7.K.Ramachandran

8.K.Renugadevi

9.K.Thiyagarajan

10.R.Sudha
(R8 to R10 substituted as Lrs
of R6 vide order dated 23.04.2021
in WMP No.9848 of 2021) ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus forbearing the 3rd respondent from proceeding further with an enquiry in connection with the Notice No.Na.Ka.3281/2016-B1 dated 25.10.2016, Notice No.Na.Ka.3281/2016 B-2 dated 04.11.2016, Na.Ka.No.3281/2016 B-2 dated 01.12.2016 issued by the 3rd respondent.

For Petitioners : Mr.B.Sathish Babu
for M/s.J.Jagadev

For Respondents : Mr.Richardson Wilson
Government Counsel – for RR 1 to 3
Mr.M.S.Subramanian – for RR 4 to 6 & 8 to 10

O R D E R

The prayer sought for herein is for a Writ of Mandamus forbearing the 3rd respondent from proceeding further with an enquiry in connection with the Notice No.Na.Ka.3281/2016-B1 dated 25.10.2016, Notice No.Na.Ka.3281/2016 B-2 dated 04.11.2016, Na.Ka.No.3281/2016 B-2 dated 01.12.2016 issued by the 3rd respondent.

2. In respect of the property at S.No.242/2 to an extent of 0.88 hectares situated at Vinjur-II Village, Ponneri Taluk, Tiruvallur District, there has been a dispute between the petitioner and the private respondents with regard to the issuance of patta.

3. In this context, the private respondents seems to have given a representation or complaint on 11.08.2016 to the third respondent Tahsildar to enquire the matter towards cancelling the patta issued in favour of the petitioners for the said land referred to above.

4. The third respondent Tahsildar, having received the said representation made by the private respondents, had decided to conduct an enquiry. Accordingly, as per the procedure established under the Patta Passbook Act, he has issued a notice on 25.10.2016 to the petitioners as well as the private respondents, directing them to appear for an enquiry, which was fixed to be held on 14.11.2016 at 3.00 P.M., at the office of the third respondent. A second such notice also has been issued by the third respondent on 04.11.2016, where the date of enquiry was fixed as 10.11.2016 at 11.00 A.M., at his office.

5. On receipt of those notices issued by the third respondent for enquiry, the petitioners have filed the present writ petition seeking for a writ of Mandamus forbearing the third respondent Tahsildar from proceeding further with the enquiry in connection with the notices dated 21.10.2016 and 04.11.2016.

6. At the admission stage, the writ Court has granted an interim order of stay. Subsequently, the said order has been extended from time to time.

7. In this context, though such an interim order has been passed by this Court, it seems that, the patta had been changed in the name of the private respondents. Therefore, according to the petitioners, the said change of patta, of course pursuant to the enquiry conducted or based on the representation given by the private respondents taken place after the interim orders orders passed by this Court would amount to Contempt of the orders of this Court and therefore on that ground, Contempt Petition No.922 of 2020 has been filed and that is also pending before this Court.

8. When the said Contempt Petition came up for hearing before this Court during the month of April 2021, it was the case of the petitioner that, despite the interim order passed by this Court, patta has been changed in the name of the private respondents. Therefore, it is a violation of the orders of this Court. Hence, contempt proceedings shall be initiated against the respondents in the Contempt Petition.

9. At that juncture, when the Contempt Petition came up for hearing on 29.04.2021, the learned Government Counsel appearing for the official respondents in the Contempt Petition had filed a proceedings dated 22.04.2021 issued by the Revenue Divisional Officer, Ponneri ie., the second respondent herein, whereby it has been ordered that, the patta changed in the name of the private respondents had been cancelled and the original position ie., before issuance of the interim order got restored. The said development had been recorded on that date.

10. However, the learned counsel appearing for the private respondents had submitted that, the petitioners were not entitled to get patta and in this regard the private respondents would be able to substantiate their case that, they are entitled to get patta and therefore because of the pendency of the writ petition, where the interim order of stay granted exparte and the same since having been extended from time to time, in that guise, the petitioners wanted to cancel the changed patta granted in favour of the private respondents.

11. Be that as it may. Now since the original position before passing the interim order has been restored, the petitioners have to substantiate their contention in support of their prayer sought for in the main writ petition. Therefore, the main writ petition ie., W.P.No.196 of 2017 ie., the present writ petition has to be heard on merits.

12. Considering the said submission made by the learned counsel for the private respondents as well as the learned Government Counsel appearing for the official respondents, this Court by the said order dated 29.04.2021 had directed the present writ petition ie., W.P.No.196 of 2017 to be tagged along with the Contempt Petition for hearing and that is how this writ petition along with the Contempt Petition are posted today for hearing.

13. In support of the prayer sought for in this writ petition, the learned counsel appearing for the petitioners has simply submitted that, the third respondent Tahsildar does not have any jurisdiction or right to proceed with the enquiry as proceeded through the impugned notices and therefore, on that ground the impugned notices are liable to be set aside or by way of a mandamus, the third respondent Tahsildar shall be restrained from proceeding further by conducting the enquiry pursuant to the impugned notices.

14. Per contra, Mr.Richardson Wilson, learned Government Counsel appearing for the official respondents as well as Mr.M.S.Subramanian learned counsel appearing for the private respondents 4 to 6 would make submissions that, insofar as the prayer sought for in the writ petition is concerned, it is a Writ of Mandamus seeking prohibitory order against the statutory authority ie., the third respondent Tahsildar, who is otherwise empowered to perform the statutory duty cast upon him, and he cannot be prohibited to enquire the application submitted by the private respondents to verify whether the patta is issued in the name of the private respondents or not and that kind of power is always vested with the Revenue Authorities in the hierarchy from the Tahsildar to the District Revenue Officer under the provisions of the Patta Passbook Act. Therefore, such prohibitory order cannot be sought for restraining the statutory authorities from doing any statutory duty cast upon them.

15. I have heard the learned counsel appearing for both sides and have perused the materials placed on record.

16. As has been rightly pointed out by the learned counsel for the private respondents, the third respondent Tahsildar, through the impugned notices dated 25.10.2016 and 04.11.2016 has only issued summons to both parties ie., the petitioners as well as the private respondents to appear for an enquiry for which a date has been fixed in order to conduct the enquiry pursuant to the application or representation made by the private respondents for cancellation or issuance of patta in respect of the property in question.

17. If at all any complaint or representation is given to cancel the patta or issuance of patta to the Tahsildar concerned, the said authority is empowered under three separate sections of the Patta Pass Book Act viz., Sections 3, 5 and 10. Therefore, it is for the Tahsildar concerned to decide the merits of the claim made by the parties and accordingly decide whether the patta already issued is to be sustained or to be cancelled or whether the patta has to be re-issued in the name of the applicants ie., the private respondents or not.

18. If at all any order is passed by the Tahsildar, further appeal can be filed by the aggrieved party to the Revenue Divisional Officer concerned under Section 12 of the Act and further revision also is available under Section 13 of the Act before the District Revenue Officer concerned.

19. That is how the hierarchy of authorities have been fixed under the Patta Passbook Act. Therefore, under the said provisions, each of the Revenue Authority is empowered or cast upon the duty to enquire the matter and decide the same with regard to grant or cancellation of patta.

20. When that being so, the present prayer seeking prohibitory order against the Tahsildar concerned from conducting an enquiry is nothing but a prohibition against the statutory authority from doing his statutory duty. That kind of Prohibitory Order by way of a Writ of Mandamus cannot be given by this Court as, no statutory authority can be prevented from doing their duty cast upon them under the provisions of the Statute. Therefore, in view of the settled legal position, no prayer like the one sought for in this writ petition can be asked for and granted by this Court and therefore, this Court has no hesitation to hold that the writ petitioner cannot successfully seek the present prayer.

21. Accordingly, this Court is inclined to pass the following order.

- The writ petition fails and hence it is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

- However, it is made clear that, if any enquiry has already commenced, the same shall be completed by the third respondent Tahsildar by making fresh notices to the petitioners as well as the private respondents and after giving an opportunity of being heard to both the petitioner as well as the private respondents, final orders shall be passed on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.

- It is further made clear that, in view of the dismissal of the writ petition and the aforesaid direction issued to enquire the matter by the third respondent Tahsildar and to decide the same on merits, the proceedings issued by the second respondent Revenue Divisional Officer dated 22.04.2021 shall not stand in the way to decide the issue on merits and in accordance with law by the third respondent Tahsildar.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KST
To

1.The District Revenue Officer
Ponneri Taluk, Tiruvallur District.

2.The Revenue Divisional Officer
Ponneri Taluk, Tiruvallur District.

3.The Tahsildar, Ponneri Taluk
Tiruvallur District.

+2cc to Mr.M.S.Subramanian, Advocate Sr.32434
+1cc to Mr.S.J.Jagadev, Advocate Sr.32237

W.P.No.196 of 2017

gsm[co]
srg 11/08/2021