IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.4954 of 2004

Sarto Irudayaraj ... Petitioner

Vs.

1.The Special Commissioner
and Commissioner of Land Administration,
Chepauk,
Chennai – 600 005.

2.S.Ramanathan (Deceased)
3.R.Muthulakshmi
4.R.Venkatesh
5.R.Muthukumar
6.S.Sankaralakshmi

(R3 to R6 substituted as the legal representatives of the deceased 2nd respondent as per Court order dt.9.8.11 by TRJ in WPMP.839/10 in WP.4954/04) ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari by calling for the records of the first respondent's impugned order dated 28.01.2004 made in Ref.No.D.Dis.R.P.7/2003 (K4/21004/02) and quash the same so far as the petitioner is concerned.

For Petitioner : Mr.A.R.Karunakaran

For Respondents: Mr.A.Anandan for R1
Government Advocate
Mr.N.V.N.Margandeyan for R3 to R6

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari by calling for the records of the first respondent's impugned order dated 28.01.2004 made in Ref.No.D.Dis.R.P.7/2003 (K4/21004/02) and to quash the same in so far as the petitioner is concerned.

2.The case of the petitioner is that the petitioner's father purchased the subject properties and after his death, the subject properties devolve around his legal heirs including the petitioner. During his lifetime, the petitioner's father filed O.S.Nos.988/85, 158/86 and 330/86 on the file of the District Munsif Court, Tirunelveli for declaration and for injunction and the said suits were dismissed on 18.11.1991 by way of a common order on the ground that the petitioner's father has to file a suit for partition.

3.The further case of the petitioner is that patta pass book was issued in favour of the petitioner's father during the year 1973. Whileso, the Tahsildhar, Palayamkottai without giving any notice to the petitioner's father included the name of the second respondent and another person in the patta on 11.06.1985 and also deleted some properties from the patta. Hence, the petitioner's father filed O.S.No.513/1986 on the file of the District Munsif Court, Tirunelveli, as against the Tahsildhar, Palayamkottai, District Collector, Tirunelveli for declaration that the order of the Tahsildhar is invalid and for consequential injunction. During the pendancy of the suit, the petitioner's father died and his legal heirs were impleaded in the suit. The said suit was dismissed on 20.09.1994. Further as against order dated 11.6.85, the petitioner along with his brothers and sisters filed appeal before the Revenue Divisional Officer, Tirunelveli and the said appeal was dismissed on 04.03.1997.

4.The further case of the petitioner is that thereafter, they preferred revision before the District Revenue Officer, Tirunelveli and the District Revenue Officer, Tirunelveli, vide order dated 15.07.1997 held that the second respondent has no right in the property. Pursuant to the said order, the Tahsildhar, Palayamkottai, removed the name of the second respondent from the patta. Aggrieved by the same, the second respondent filed appeal before the Revenue Divisional Officer, Tirunelveli. The said appeal was dismissed on 04.12.2001 and challenging the same, the second respondent filed revision before the District Revenue Officer, Tirunelveli and the said revision was dismissed on 22.05.2002. Aggrieved by the same, the second respondent filed revision before the first respondent and the first respondent vide impugned order dated 28.01.2004 allowed the revision filed by the second respondent. Hence, this petition.

5.The learned counsel appearing for the petitioner submitted that initially, the second respondent's name was included in the patta which was issued in favour of the petitioner's father. Thereafter, the matter was adjudicated before the appropriate Authorities and the District Revenue Officer, Tirunelveli, vide order dated 15.07.1997 held that the second respondent has no right in the property. Pursuant to the said order, the Tahsildhar, Palayamkottai, removed the name of the second respondent from the patta.

6.The learned counsel appearing for the petitioner further submitted that there is no provision available to the second respondent to prefer second revision before the first respondent. In the absence of any provision, the second respondent preferring revision before the first respondent and the first respondent allowing the same is non est in law.

7.The learned Government Advocate appearing for the first respondent did not dispute the legal position.

8.The learned counsel appearing for the private respondents submitted that during the pendancy of this writ petition, the second respondent died and his legal heirs are impleaded as respondents 3 to 6 in this writ petition. The learned counsel further submitted that patta is not a title. In the absence of title over the property, patta granted in favour of the petitioner's father is not sustainable one. The learned counsel further submitted that this Court may grant liberty to the legal heirs of the second respondent to approach the competent Civil Forum for their rights and title.

9.Heard the arguments advanced on either side and perused the materials available on record.

10.The facts in the present case is not disputed. This Court refrains itself from rendering any opinion on the merits of the case since rendering any opinion may adversely affect the interest of the parties.

11.For better appreciation, the relevant portions of Act No.4 of 1986 is extracted hereunder:

> "3.Issue of patta pass book.-(1) The Tahsildar shall issue a patta pass book to every owner in respect of land owned by him, on an application made by him in this behalf. Any application received under this section shall be acknowledged by the Tahsildar or any other officer authorized by him in this behalf.
>
> 12.Appeal.-Any person aggrieved by an order made by the Tahsildar under this Act may, within such period as may be prescribed appeal to such authority as may be prescribed and the decision of such authority on such appeal shall, subject to the provisions of section 13, be final.
>
> 13.Revision.-Any officer of the Revenue Department not below the rank of District Revenue Officer authorised by the Government, by notification, in this behalf for such area as may be specified in the notification, may of his own motion or on the application of a party call for and examine the records of any Tahsildar or appellate authority within his jurisdiction in respect of any proceeding under this Act and pass such orders as he may think fit:
>
> Provided that no such order prejudicial to any person shall be made unless he has been given a reasonable opportunity of making his representation."

12.As per the Patta Passbook Act, the title holder is entitled to make application before the Tahsildhar for issuance of patta pass book and if he is aggrieved by the order passed by the Tahsildhar, he may prefer appeal before the Revenue Divisional Officer under Section 12 of the Act. Further revision remedy is available before the District Revenue Officer in terms of Section 13 of the Act, however, there is no provision available for filing second revision before the Special Commissioner and Commissioner of Land Administration.

13.In the absence of any provision, the first respondent entertaining the revision filed by the second respondent is non est in law. Hence, the impugned order dated 28.01.2004 passed by the first respondent is set aside. However, liberty is granted to the petitioner and the legal heirs of the second respondent to work out their remedy in the manner known to law.

14.With the above observations, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition/s, if any, is/are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

The Special Commissioner,
and Commissioner of Land Administration,
Chepauk,
Chennai - 600 005.

+1cc to Mr.N.V.N.Margandeyan, Advocate Sr.11501
+1cc to the Government pleader Sr.12318

W.P.No.4954 of 2004

gmr[co]
srg 18/03/2022