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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

WRIT PETITION NO.26024 OF 2012

&

M.P.NO.2 OF 2012

1.Shree Chandraprabhu Maharaj,
Juna Jain Mandir Trust (Regd), Rep. by its
Secretary, 345, Mint Street,
Chennai-600 079.

2.Rikhabchandji Samdaria

3.Jethmalji Samdaria

4.Inderchandji Kataria

5.Gowthamchandji H. Nahar

6.Harish Betala

7.Manak Chandji Nahar

8.Nawratanmalji Nahar

9.Panalalji Singhvi

10.Sanjaykumar Bengali

11.Shantilalji Nahar

...Petitioner

Vs

1.The Dadabadi Sri Jin Kushalsuriji,
Jin-Chandrasuriji Trust, Rep.by its
Managing Trustree, No.370,
Konnur High Road, Chennai-600 023.

2.The Tahsildar,
Perambur-Purasawalkam Taluk,
Chennai-600 011.

...Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying for the issuance of a Writ of



Certiorari, calling for the records of the 2nd respondent in RC/A.4/TR/3424/2010-11 and to quash the order dated 09.03.2011 made therein.

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For Petitioner : Mr.Hariharan
for M/s.Aruna Ganesh

For R-1 : Mr.D.Ferdinand (BFS legal)

For R-2 : Mr.M.Rajendran
(Additional Government Pleader)

O R D E R

The writ petitioner is a trust for the purpose of administering and managing Shri Chandraprabhu Maharaj Juna Jain Mandir. A good number of Jain families came to Chennai and acquired lands measuring about 151 grounds and 1512 sq.ft. in RS.No.307/2004 of Perambur Village. The petitioner trust and the Jain Guru mandir managed by the first respondent trust was built up on the above said property from the liberal contributions received from the Swethamber Jain community. The temples were originally managed jointly and the property stood registered in the revenue records in the name of the manager for the time being. Since the temple which was built in the year 1925 have become old, they embarked on building a new temple and the old temple structure was pulled off. Since the 1st respondent issued a notification in the Rajasthan Patrika dated 11.04.2007, there were disputes. The petitioner filed a suit in C.S No. 440 of 2007 on the file of this Court and filed an application for interim injunction restraining the 1st respondent from interfering with the petitioner's administration of the temple. While the Civil Suit was pending, the 1st respondent filed an application dated 02.02.2011 before the 2nd respondent/ Tahsildar for issue of patta in the name of the 1st respondent suppressing the pendency of the Civil Suit before the Hon'ble Court. The patta was ordered to be transferred in impugned proceedings RC/A4/TR/3424/2010-11 dated 09.03.2012. The transfer was made without giving notice to the petitioner trust and in violation of principle of natural justice and therefore, the petitioners seek to set aside the order of transfer made by the 2nd respondent dated 09.03.2011.

2. Resisting the contention, the 1st respondent contend that the 1st respondent is the title holder of the entire 151 grounds and the 1st petitioner is permitted to maintain the temple built on the property. Prior to 1983, the 1st respondent was an unregistered body. After registration of the trust, they approached the 2nd respondent for issue of patta in the name of the trust. The patta was transferred in the name of the trust.



Against which, if the petitioner has any grievance has to file an appeal under Section 12 and Revision under Section 13 of Patta Passbook Act, 1983 (hereinafter referred to as the 'Act'). Without exhausting the remedies, the petitioner has approached this Court. Therefore, the writ petition is not maintainable.

3. The 2nd respondent also filed a counter setting out the facts that the patta was transferred on 09.03.2011 in respect of land in Survey No. 307/2. The parties have suppressed the pendency of the Civil Suit.

4. One Vikas Bhurat Jain member of the trust filed a suit in O.S. No. 2171 of 2017 before the II Assistant Judge, City Civil Court, Chennai, for cancellation of patta granted by order dated 09.03.2011 impleading the parties herein as well as the Commissioner, Hindu Religious and Charitable Endowment. Prior to filing of the suit, he also filed an appeal before the Sub Collector, Tondiarpet for cancellation of the patta. The same was rejected by order dated 06.03.2017, subsequent to the order he filed a suit.

5. In compliance with the direction issued by this Court in W.P.No. 9215 of 2013 dated 23.10.2017, the Commissioner of Land Administration had issued an instruction not to grant patta in respect of properties where there are unsolved title disputes and it is only the Civil Court which can decide the title and pursuant to Civil Court order, the mutations in the revenue department can take place. Since the Civil Suit in O.S.No. 2171 of 2017 is pending on the file of II Additional Judge, City Civil Court Chennai, the 2nd respondent is not in a position to lay his hand on the mutation as claimed by the petitioner.

6. Heard the parties.

7. At the outset, the petitioners claim that an order was passed in PR No. 3424/ 2010-2011 on 09.03.2011. But no such order was produced before this Court. What is produced is only an internal correspondence made in the note file. The learned counsel for the petitioners would submit that pursuant to the direction issued by the Information Commission in Appeal No. 6435 of 2012 dated 28.03.2012, the said file notes were given and that is the order passed by the 2nd respondent. At the outset, it is required to be noted that any revenue proceeding transfer the patta in the name of the pattadar shall be issued by a separate proceeding. Even assuming that this is the proceeding issued by the Tahsildar, it has to be seen whether the writ petition is maintainable .

8. It is well settled that against an order passed under Section 10 of the Act, with regard to entries made in the Patta,



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an appeal is available under Section 12 of the Act before the Revenue Divisional Officer. Against the order of the Revenue Divisional Officer, a revision is available under Section 13 before the District Revenue Officer. When the effective remedies of appeal and revision are available in the Act, the writ petition in is not maintainable.

9. The learned counsel for the petitioner relied on a judgment of Division Bench of this Court in Vishwas Footwear company Ltd Vs. The District Collector and others reported in 2011 5 CTC 94. The Division Bench has categorically held that when there is disputed question of title and possession of the property is raised, the Revenue Divisional Officer cannot decide the title dispute between the parties. The only course available to them is to direct the parties to approach the competent Civil Court of Law for adjudication of title dispute. In the instant case, cancelling the patta by deciding title dispute between the parties by the Revenue Divisional Officer is without jurisdiction. This judgment will not come to his aid as the issue involved in this case is covered by Section 10 of the Act.

10. It is well settled that the modification in the entries of Patta Passbook can be made only on 3 occasions :

1. On the death of any person,
2. By reason of transfer of interest in the land
3. By reason or any other subsequent change in the circumstances.

11. In the instant case, it is stated that the unregistered body was registered in the year 1983, on the basis of the subsequent change of name transfer was sought by the 1st respondent. From the proceedings dated 15.02.2011, it is evident that the Tahsildar had issued notice to one Sait Mangal Chandd Jee Jabag as manager of Jain Temple known as Sri Dadagir Garden. After service of notice, no objections were received from parties and therefore, he transferred property in the name of the 1st respondent trust. The information obtained by the petitioners under Right to Information Act also discloses the fact that the permanent land register prior to the mutation proceedings dated 09.03.2011 shows the name of Sait Mangal Chandd Jee Jabag as manager of the Jain Temple known as Sri Dadagir Gardens as patta holder. After mutation, it was registered in the name of the 1st respondent trust. Therefore, it is clear that the Tahsildar has issued notice as required under Section 10 of the Act, before mutation of the Revenue records. In that event, the avenue open to the petitioner is only to file an appeal under section 12 of the Act and it is not open to him to challenge the same, as it is without notice to him.



12. Secondly, even assuming that a suit was pending between the parties, it is noted that the suit was filed with regard to construction of the temple and a relief injunction was sought restraining the 1st respondent from proceeding with the construction of the temple. Para 8 of the affidavit filed in support of the writ petition, spells out that because of exchanges between the parties and that the attempt to persuade the 1st respondent to submit to reason proved futile, filed a suit and sought for interim injunction restraining the 1st respondent from interfering and involving in any manner what so ever at any point of time with the petitioner's administration, management construction and any other work relating to Shree Sumatinath Bhagwan Jain Swethamber temple but it does not pertain to the title to the entire extent of property. Therefore, it cannot be said that the order passed by the Tahsildar is without jurisdiction, due to the fact that the suit was pending with regard to he title.

13. In fact, the suit for cancellation of title came to be filed by one of the member of the petitioner trust. Only after filing an appeal, before the Sub Collector, Tondiarpet, the Sub Collector in his order dated 06.03.2017 has given a direction that both parties to go for the competent Civil Court for adjudication of dispute with regard to the ownership and renew their request together with a copy of the order of the competent Court of law. This order is absolutely in line with the observation made by Hon'ble Division Bench in the judgement of Vishwas Footwear company Ltd Vs. The District Collector and others. Thereafter , one of the member of the trust by name Vikas Bhurat Jain has filed a suit in 2171 of 2017 and the same is pending on the file of II Additional Judge, City Civil Court, Chennai.

14. During the pendency of the Civil Suit, it is not open to the writ petitioners to ask mutation of the review records. The course open to them is to agitate the issue before the pending litigation in O.S No.14334 of 2010 on the file of VII, Additional City Civil Court, Chennai between the very same parties, the 1st petitioner as well as the 1st respondent and also O.S No. 2171 of 2017 pending on the file of II, Additional City Civil Court, Chennai and thereafter, to approach the Revenue authority for suitable mutations.

Therefore, I do not find any substantial materials to challenge the order of transfer of patta dated 09.03.2011, that too without producing any proper proceedings and without setting out any legal right the writ petition is not maintainable, more so, when the matter is subjudiced before the Civil Court. Hence, the writ petition merits no consideration and accordingly



dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

sha/kpr

To

1.The Managing Trustee,
Dadabadi Sri Jin Kushalsuriji,
Jin-Chandrasuriji Trust,
No.370, Konnur High Road, Chennai-600 023.

2.The Tahsildar,
Perambur-Purasawalkam Taluk,
Chennai-600 011.

+1cc to M/s.Aruna Ganesh, Advocate, Sr.No.12731

+1cc to M/s.BFS Legal, Advocates, Sr.No.12616

+2ccs to M/s.Vedavalli Kumar, Advocate Sr.No.12985

W.P.No.26024 of 2012
&
M.P.No.2 of 2012

SS (CO)
RVM(23/06/2022)