

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2022

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No.21374 of 2021

and

WMP No.22621 and 22622 of 2021

1. R. Karunanithi

2. K.Karpagavalli

..... Petitioners

Versus

1. The Special Tahsildar,
Urban Land Tax Scheme,
Ambattur Taluk Office,
Ambattur, Chennai District.

2. S. Dhakshinamoorthy

3. Minor S. Kumaresan

Rep. By his father and Natural Guardian

S. Saravanamorthy

4. Minor K.Lokeswaran

Rep. By his Mother and Natural Guardian,

K.Sulochana

*Respondents 3 and 4 are impleaded

by this Court vide order

Dated 20.04.2022 in

WMP No. 9269 of 2022

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari calling for the records relating to the order of cancellation of patta issued in favour of the petitioner in Na.Ka.No.A1/014/2021, dated 28.05.2021 on the file of the 1st respondent quash the same.

For Petitioners

For Respondents

: Mr. V. Elango

: Mr.Yogesh Kannadasan

Spl. Govt. Pleader for R1

Mr.S. Saranraj for R2

ORDER

This writ petition has been filed to quash the order of cancellation of patta issued in favour of the petitioner in Na.Ka.No.A1/014/2021, dated 28.05.2021 on the file of the 1st respondent.

2. It is the case of the petitioner that one A.G.Sivanandham, who is the father of the 2nd petitioner owned a property to an extent of 5196 sq. ft. in S. No.603/2A4A, Ambattur Village. While so, the said A.G. Sivanandhan, the owner of the property has executed three settlement deeds one in favour of the 2nd petitioner and the other two in favour of Saravanamoorthy and Dhakshinamurthy, who are the brothers of the 2nd petitioner. Thereafter, the aforesaid settlement deeds were cancelled and subsequently he executed a Will dated 17.09.2012, wherein the said properties were bequeathed in and by which the 2nd petitioner is entitled to 1/4th share. By virtue of the said Will, the 2nd petitioner has got her share of 1299 sq. ft. and effected partition deed, which was registered on 30.09.2019 as Document No.27 of 2019 on the file of SRO, Ambattur village. On execution of partition deed, the 2nd petitioner executed settlement deed in favour of the 1st petitioner and thus, the 1st petitioner became the owner of the C-Schedule property to the extent of 1299, which was registered as Document No.16/2020, on the file of the SRO, Ambattur and thereby the petitioners were in possession of the said property and Patta No.2411 was assigned. Subsequently based on the representation submitted by the 2nd respondent, the 1st respondent has passed the impugned order, cancelling the patta issued in favour of the 2nd petitioner. Aggrieved over the same, this writ petition has been filed.

3. Heard the learned counsel for the petitioners; Mr.Yogesh Kannadasan, learned Special Government Pleader for the 1st respondent and Mr.S.Saranraj, learned counsel for the 2nd respondent. Though respondents 3 and 4, being private parties, are impleaded vide orders of this Court, however, as no adverse orders are passed as against the respondents 3 and 4, notice to them is dispensed with.

4. The learned counsel for the petitioners submits that the subject property is the ancestral property, which was divided by way of partition deed. He vehemently argued that based on the partition deed, the 2nd petitioner is entitled to ¼th share and in respect of her share, the patta stood in the name

of the 2nd petitioner. Subsequently, the 2nd respondent, who is co-owner of the property approached the 1st respondent and sought for cancellation of patta issued in the name of the 2nd petitioner and requested for issuance of patta as per parent document. Without application of mind, the 1st respondent has passed the impugned order, cancelling the patta issued in favour of the 2nd petitioner and the said act is arbitrary, illegal and without jurisdiction. Learned counsel further submitted that the competent authorities may be directed to issue patta based on the title possessed by the respective parties.

5. Per contra, Mr. Yogesh Kannadasan, learned Special Government Pleader submits that only after conducting proper enquiry, the 1st respondent has passed the order and he has no objection for issuance of direction to the 1st respondent.

6. Reiterating the counter affidavit, Mr.S.Saranraj, learned counsel for the 2nd respondent submits that there is no dispute over the title. He further submits that the 2nd respondent has filed a suit in O.S. No.260 of 2021 on the file of Munsif Court, Ambattur for permanent injunction not to demolish the undivided share of property belonging to the 2nd respondent. However, based on the patta standing in the name of the 2nd petitioner, the petitioners have obtained orders for demolition and obtained building permission, which is illegal and against the principles of natural justice. Hence, he prays for dismissal of this writ petition.

7. It is not in dispute that the subject property is the ancestral property of the petitioner's father. It is also not disputes that partition deed has been entered into between the parties. However, without measuring the boundaries properly, patta has been issued in the name of the 2nd petitioner. A perusal of the records reveal that the 1st respondent has no jurisdiction to issue the impugned order. Generally, when there is dispute over the property, the parties have to agitate their rights by filing suit before the competent Civil Court. But in the instant case, there is no dispute over the title and such being the position, this Court is of the considered view that on the parties filing a Memorandum of Understanding (MoU) before the 1st respondent, the 1st respondent may be permitted to pass orders based on the said MoU. Further, insofar as the issuance of patta is concerned, on the directions of this Court, the Tahsildar and RDO appeared before this Court and submitted that they will issue patta based on the title possessed by the respective parties.

8. In such view of the matter, without going into the merits of the case, this Court disposes of this writ petition by issuing direction to the 1st respondent to conduct proper enquiry between the parties after giving due opportunity to the petitioner as well as other interested parties and grant patta based on the title deed as well as partition deed and Memorandum of Understanding, if any, filed by the parties. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To

The Special Tahsildar,
Urban Land Tax Scheme,
Ambattur Taluk Office,
Ambattur, Chennai District.

+1cc to Mr.S.Doraisamy, Advocate SR.No.27130
+1cc to the Government Pleader SR.No.27557

W.P. No.21374 of 2021

GP(CO)
GN(10/06/2022)