



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.25018 of 2017

And

W.M.P.No.26405 of 2017

- 1.Dhamayanthi (Deceased)
- 2.Thirugnanasambandam
- 3.Pragash Muthukumar
- 4.Geetha Manoharan
- 5.Brindharani

(P2 to P5, the LRs. of the deceased petitioner Dhamayanthi in WP are substituted vide order made in WMP.No.23722 of 2019 in WP.No.25018 of 2017 dated 14.08.2019 by MKKSJ)

... Petitioners

Vs.

- 1.The Sub Collector,
Office of the Revenue Divisional Officer,
Dharapuram,
Tirupur District.

- 2.P.Ramesh
- 3.A.Giridharatheeban
- 4.P.Palanisamy

(R4 impleaded as per order dated 25.01.2018 by KRCBJ in WMP.1902/2018 in WP.25018/2017)

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Prohibition prohibiting the first respondent from proceeding with the enquiry and passing orders pursuant to the notice dated 07.08.2017 in Na.Ka.No.4605/2015/A on the representation dated NIL of the 2 and 3 respondents.



WEB COPY

For Petitioners : Mr.R.Asokan

For Respondents : Mr.R.P.Murugan Raja for R1

Government Advocate

Mr.A.Palaniappan for R2 and R3

Mr.MA.Thangavel for R4

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Prohibition prohibiting the first respondent from proceeding with the enquiry and passing orders pursuant to the notice dated 07.08.2017 in Na.Ka.No.4605/2015/A on the representation dated NIL of the respondents 2 and 3.

2.The case of the petitioner is that the respondents 2 and 3 made representation to the first respondent stating that the properties mentioned in their representation originally belonged to P.K.Duraisamy Gounder, P.K.Govindasamy Gounder and P.K.Palanisamy Gounder and the Sub Court, Coimbatore declared them as insolvent in I.P.No.21/47. Thereafter, their properties were sold in public auction by the Official Receiver and the grandfather of the respondents 2 and 3, namely, K.R.Easwaramoorthy Gounder purchased the properties and thereafter delivered the same to his legal heirs. They have further stated that P.K.Duraisamy Gounder, P.K.Govindasamy Gounder and P.K.Palanisamy Gounder sold number of properties during their lifetime and on the basis of the sale deeds, the revenue Department effected mutation of records. On the basis of these allegations, respondents 2 and 3 sought for cancellation of patta. On receipt of the said representation, the first respondent issued notice to the petitioner to appear for enquiry. Hence, this writ petition.

3.Since the sole petitioner who filed this writ petition passed away during the pendency of this writ petition, his legal heirs are substituted in this writ petition as petitioners 2 to 5.

4.The learned counsel appearing for the petitioner submitted that the auction purchaser namely, K.R.Easwaramoorthy Gounder filed O.S.Nos.2 and 3 of 1960 on the file of the Sub Court, Erode, alleging that the insolvents and their legal heirs disturbed the possession of the auction purchaser and the said suits were dismissed on 07.04.1962. Challenging the same, the



auction purchaser preferred A.S.Nos.268 of 1962 and 129 of 1964 before this Court and this Court vide order dated 25.11.1969 allowed the said appeals. Challenging the same, the legal heirs of the insolvents filed Civil Appeal Nos.1823-1824 of 1970 before the Hon'ble Apex Court and the civil appeals were dismissed on 21.09.1983. Thereafter, vide orders made in E.P.No.25 of 1986 and E.P.R.No.6 of 1988, possession was handed over to the legal heirs of the auction purchaser.

5.The learned counsel appearing for the petitioner further submitted that during the re-survey which was undertaken as per the Tamil Nadu Survey and Boundaries Act, 1923, in the year 1987, patta was granted in favour of the legal heirs of the insolvents, however, neither the auction purchaser nor his legal heirs agitated the same before the competent Authority. The learned counsel further submitted that the first respondent has no power to entertain the application filed by the respondents 2 and 3 and without any jurisdiction, issuing notice to the petitioner to appear for enquiry is not sustainable one.

6.The learned counsel appearing for the respondents 2 and 3 submitted that admittedly, the patta shown by the petitioner is bogus one and they claim title through bogus title which has to be tested through any of the Authority appointed by this Court in the manner known to law.

7.The learned counsel appearing for the fourth respondent submitted that during the re-survey proceedings in year 1987, patta was granted in favour of the legal heirs of the insolvents based on their possession and that patta is sought to be cancelled by the respondents 2 and 3 which is not sustainable one.

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

9.Admittedly, petitioner is the legal heir of one of the insolvents who lost their property and respondents 2 and 3 are the legal heirs of the auction purchaser who purchased the property. Possession was handed over to the legal heirs of the auction purchaser through orders made in E.P.No.25 of 1986 and E.P.R.No.6 of 1988.

10.Petitioner claims that she was granted patta during the re-survey proceedings which was carried out during the year 1987 based on her possession. This Court is unable to understand as to how petitioner obtained patta during the re-survey



proceedings that too when the insolvents and their legal heirs lost their case before this Court as well as before the Hon'ble Apex Court.

11. On the other hand respondents 2 and 3 claim that petitioner and fourth respondent claim title based on the bogus patta which has to be tested by the competent Authority appointed by this Court in the manner known to law.

12. As per Section 10 of The Tamil Nadu Survey and Boundaries Act, 1923, where a boundary is disputed, the Survey Officer, after making such inquiry as he considers necessary, shall determine the boundary and record it in accordance with his decision. The Survey Officer shall record in writing the reasons for his decision.

13. However, The Tamil Nadu Survey and Boundaries Act, 1923 is enacted only for the purpose of surveying the boundaries and not enacted for granting patta. Patta can be granted either under the Patta Pass Book Act or under the Revenue Standing Orders.

14. Since the respondents 2 and 3 claim that the petitioner and the fourth respondent claim title based on the bogus patta, this Court directs the respondents 2 and 3 to make application for cancellation of patta before the jurisdictional District Revenue Officer, within a period of two weeks from the date of receipt of a copy of this order. If any such application is made by the respondents 2 and 3, the concerned District Revenue Officer shall consider the same and pass appropriate orders, after providing opportunity to the petitioner and the fourth respondent and other aggrieved persons, if any, within a period of twelve weeks from the date of receipt of such application.

15. The writ petition is accordingly disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Deputy Registrar (CS)

// True Copy //

Sub Assistant Registrar

pri



To

1. The Sub Collector,
Office of the Revenue Divisional Officer,
Dharapuram,
Tirupur District.

Copy to:

The Revenue Divisional Officer,
Dharapuram.

+lcc to Mr.A.Palaniappan, Advocate SR.No.26576

+lcc to the Government Pleader, SR.No.26346

W.P.No.25018 of 2017

And

W.M.P.No.26405 of 2017

BR(CO)

CB(29/04/2022)