BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.12127 of 2009
and M.P.(MD)No.1 of 2015

Ramasubban @ Ramji
Rep. by Power of Attorney
K.S.Madhavan ... Petitioner

versus

1. District Revenue Officer,
   Tirunelveli District,
   Tirunelveli.

2. The Sub Collector,
   Cheranmadevi.

3. Nataraja Solagar ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to call for the records in See.Maa.No.2/2006, dated 31.05.2009 on the file of the District Revenue Officer, Tirunelveli/first respondent herein and quash the same.

For Petitioner : Mr.M.P.Senthil

For R1 and R2 : Mr.N.Ramesh Arumugam
Government Advocate

For R3 : No appearance

ORDER

This writ petition is filed as against the order of the first respondent/the District Revenue Officer, Tirunelveli, dated 31.05.2009, cancelling the patta, which was granted under Natham Nilavari Thittam (நத்தம் நிலவரித் திட்டம்) and ordering for including the name of the third respondent.

2. The case of the petitioner is that the property in new Survey No.588/4 covering an extent of 4 cents originally belonged to the petitioner's father. Now, the property is in possession and enjoyment of the petitioner. While so, the name of the third respondent was wrongly included in the patta. On knowing the same, the petitioner brought to the notice of the Sub Collector, Cheranmadevi. After

verification of the revenue records, the Sub Collector, Cheranmadevi, by order dated 14.09.2022, directed the Village Administrative Officer and the Revenue Inspector to correct the mistake by incorporating the name of the petitioner by deleting the name of the third respondent.

3. The third respondent, filed a suit in O.S.No.336 of 2002 before the District Munsif Court, Ambasamudram, for permanent injunction, alleging that the property is a natham poramboke land and the Government permitted him to enjoy the property and on that basis, he had put up construction and patta was granted in the year 1996 and he is in possession and enjoyment of the property. The suit was dismissed by the Additional District Munsif, Ambasamudram, by Judgment and Decree dated 31.07.2006. The third respondent also preferred an appeal before the Sub Court, Ambasamudram in A.S.No.1 of 2007 and same was also dismissed by Judgment and Decree dated 10.12.2008. However, in the mean time, the third respondent has also preferred a revision petition before the first respondent/the District Revenue

Officer, as against the order of the Sub Collector, Cheranmadevi dated 14.09.2002.

4. As per revenue records, the lands in Survey Nos.257 to 264/1 originally belong to one K.R.Krishna Iyer. One Subbiah Pillai, who was an employee of K.R.Krishna Iyer, was residing in that place and constructing a hut and he left to Kerala in the year 1992. During the Natham survey, by taking advantage of the hut, he got patta in his name. However, the District Revenue Officer allowed the revision petition that under Natham Scheme, patta was issued only to those persons, who are in occupation and therefore, ordered for cancelling the patta granted in favour of the writ petitioner and restored the patta in the name of the third respondent. Challenging the same, the present writ petition has been filed.

5. The Patta Pass Book Scheme was introduced in order to ensure that all the pattadars that of the land owners get a patta pass

book with the details of their holdings of land. For providing legal status to the Patta Pass Book, the Tamil Nadu Patta Pass Book Act, 1983, was enacted, authorizing the patta pass book for grant of loan from the financial institutions and credit agencies.

6. Under Section 5(1) of the Patta Pass Book Act, no document relating to transfer of any land by sale, gift, mortgage, exchange, settlement or otherwise shall be registered by the registering authority, unless the patta pass book relating to such land is produced before such registering authority.

7. The Tahsildar, having jurisdiction over the area in which the land is situated, is the authority to issue a patta pass book to every land owner in respect of his land. Every owner of the agricultural land shall apply for a patta pass book under the Act in a prescribed format under Sub Section (1) of Section 3 of the Tamil Nadu Patta Pass Book Act. The Tahsildar, on the information obtained by him, by following the

procedures as contemplated in the Act and after providing reasonable opportunity to the persons having interest in the land to make their representations either orally or in writing, shall determine as to whom the patta pass book is to be issued.

8. In the event of the Tahsildar being satisfied that a dispute concerning ownership of patta is already pending in a Court or issues are raised before him which impinge on personal laws or laws of succession and all the parties interested do not agree on the ownership in writing, he shall direct the concerned parties to obtain a ruling on ownership from a competent Civil Court having jurisdiction as per Rule 4 (4) of the Tamil Nadu Patta Pass Book Rules 1987.

9. The proviso to Section 14 reads as follows:

> "14. Bar of suits – No suit shall lie against the Government or any officer of the Government in respect of a claim to have an entry made in any patta pass book that is maintained under this Act or to have any such entry

omitted or amended:

Provided that if any person is aggrieved as to any right of which he is in possession, by an entry made in the patta pass book under this Act, he may institute a suit against any person denying or interested to deny his title to such right, for a declaration of his rights under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963); and the entry in the patta pass book shall be amended in accordance with any such declaration".

10. Considering the provision under Section 14 of the Patta Pass Book Act 1983 and the Tamil Nadu Patta Pass Book Rule 1987, the Hon'ble Apex Court in **M/s.*Edelweiss Asset Construction Company Limited vs. R.Perumalsamy and others***, reported in ***AIR 2020 SC 3688***, set aside an order passed by a District Revenue Officer under the Patta Pass Book Act and held as follows:

"19. Under the Tamil Nadu Patta Pass Book Act 1983 and the Tamil Nadu Patta Pass Book Rules 1987, the Tahsildar is not empowered to adjudicate upon a 'title dispute'. A combined reading of Section 14 and Rule 4(4)

> indicates that where there exists a dispute with respect to ownership of a land between parties with respect to a patta entry, the correct procedure to be adopted is to approach a civil Court having competent jurisdiction. The entry records will be updated on the basis of the decree of the civil court upon adjudication.

11. As per Section 10(1) of the Patta Pass Book Act, a person can claim for a modification of patta only under three circumstances,

1. by reason of the death of any person; or
2. by reason of the transfer of interest in the land; or
3. by reason of any other subsequent change in circumstances.

12. As per Section 10(3)(a) of the Act, the Tahsildar shall provide a reasonable opportunity to the parties concerned to make their representation either orally or in writing.

13. For obtaining such patta, an Applicant has to prima facie satisfy with the documents for any other information relating to the land to the Tahsildar for his determination and on such determination, the Tahsildar not only makes necessary entries in respect of the land concerned in the Register of Patta Pass Book maintained in the office of the Tahsildar, but also for the purpose of issuing Patta Pass Book to the owner or the person concerned. The entries in the Patta Pass Book shall be presumed to be true and correct until the contrary is proved or a new entry is lawfully substituted.

14. A Division Bench of this Court, in ***T.R.Dinakaran vs. the Revenue Divisional Officer, Aruppukottai and others*** reported in ***2001 (3) CTC 823*** held as follows:

> "19. In view of the proviso to Section 14, if any person is aggrieved over the entry made in the patta pass book in respect of any property over which he claims title and also possession, he can only file a suit for declaration of his right and thereafter, the

entry in the patta pass book can be amended in accordance with any such declaration made by the competent civil court......

....

By Section 5, in the event any modification is required on an application by any person, it can be made either by reason of the death of any person or by reason of transfer of interest in the land or by reason of any subsequent change in the circumstances. This section also does not empower the Tahsildar to cancel the patta already granted, as the power of the Tahsildar to modify the entries in the patta pass book is limited only in case of death of the person who was holding the patta pass book or by reason of the transfer of interest in the land or by reason of any other subsequent change in the circumstances. In the event an application is made that the patta pass book has been wrongly issued in favour of any person and consequently, claiming title over the land entitling such person to grant of patta, that person can only file a suit for declaration that the entries made in the patta pass book should be cancelled and consequently for a mandatory injunction for grant of patta."

15. Another Division Bench of this Court in ***Kuppuswami Nainar vs. the District Revenue Officer and others***, reported in ***1995 (1) MLJ 426*** held as follows:

> "3. No provision is brought to our notice in the Standing Orders of the Board of Revenue taking away the jurisdiction of the civil court to adjudicate upon the question of title relating to immovable property. Revenue Officers in a patta proceedings may express their views on the question of title, but such expression of opinion or decision is not conclusive and it is only intended to support their decision for granting patta. Ultimately, it is the civil court which has to adjudicate the question as to whether the person claiming patta is the title-holder of the land. Even if the revenue authorities decide the question of title, that will not in any way affect the jurisdiction of the civil court, which has to decide the question without reference to the decision of the

revenue authorities.

4. Now the question for consideration is, having regard to the fact that the District Revenue Officer has expressed his opinion on the question of title whether the order under question should be interfered with. It may be pointed out here that in a petition under Article 226 of the Constitution the question of title regarding immovable property cannot properly be gone into, because a mass of evidence may be required for adjudicating the question of title. Even if we are to interfere with the order under appeal, it is the other party, who has to go to a civil court and establish title. As far as the exercise of jurisdiction under Article 226 of the Constitution is concerned, it does not matter to it whether 'A' party goes to civil court or 'B' party. Therefore, we are of the view that the question of title has to be decided by the civil court, without reference to the order under question. Hence, we decline to interfere with the order challenged in the writ petition. However, we make it clear that in the event a suit for declaration of title and for appropriate

> consequential relief is filed, the civil court shall decide such a suit, without reference to the findings recorded by respondents 1 and 2 in the impugned orders, but only on the basis of the pleadings of the parties and evidence adduced by them before it. We also make it clear that any opinion expressed by the learned single Judge, contrary to what we have stated above, shall also stand modified accordingly. With these observations, the writ appeal is dismissed."

16. The Patta Pass Book Act provides a right of appeal under Section 12 of the Act before the Revenue Divisional Officer and a revision under Section 13 of the Act before the District Revenue Officer.

17. This Court under Article 226 of the Constitution of India, cannot go into the title of the parties and the same can be decided only by adducing evidence before the appropriate Civil Court and any opinion by this Court on the documents relied on by the parties would

prejudice the interest of the parties before the Civil Court.

18. As stated above, the Revenue authorities are not competent to issue a patta in favour of the parties, where there is a dispute among two persons on the title of the property. In this case, the third respondent has filed a suit for permanent injunction claiming that he is in possession of the property. Since the third respondent failed to establish his case before the competent Civil Court that he was in possession of the property, the suit filed by him in O.S.No.36 of 2002 was dismissed by the Additional District Munsif, Ambasamudram, by Judgment and Decree dated 31.07.2006. The appeal preferred by the third respondent in A.S.No.1 of 2007 was also dismissed by the Sub Court, Ambasamudram, on 10.12.2008. The order of the District Revenue Officer came to be passed on 31.05.2009, i.e. after the orders of the Civil Court.

19. Therefore, the writ petition is allowed and the order of the first respondent/the District Revenue Officer, Tirunelveli, dated 31.05.2009 is set aside. The Judgments of the Civil Courts in O.S.No. 36 of 2002 and A.S.No.1 of 2007 are binding on the third respondent. However, it is open to the third respondent to file a suit for declaration to establish his right over the property in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

21.04.2022

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Index : Yes / No.
Internet : Yes / No.

To

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B.PUGALENDHI, J.

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