BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.12.2022**

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P(MD)No.4009 of 2016
and
W.M.P(MD) Nos.3602 of 2016 and 21709 of 2019

S.Periyasamy (died)
1. Rupasundari
2. Ravichandran
3. M.Amudha
4. M.Jeyamaran
5. M.Keziah
6. M.Johanan (Minor) ... Petitioners

(Minor 6th Petitioner represented through his Mother and natural Guardian the third petitioner)

(P-1 to P-6 are substituted vide order of this Court dated 01.12.2022 in W.M.P(MD) No.20439 of 2022 in W.P(MD) No.4009 of 2016)

Vs.

1.The District Revenue Officer,
Sivagangai District.

2. The Revenue Divisional Officer,
Devakottai,
Sivagangai District.

3. The Tahsildar,
   Devakottai,
   Sivagangai District.

4. P.L.Sugumaran
5. S.Susila ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned orders passed by the first respondent in Na.Ka.P. 1/19872/13, dated 19.12.2015 and quash the same.

For Petitioners	: Mr.C.Jeyaprakash
For Respondents	: Mr.V.Om Prakash Government Advocate (For R1 to R3)
	: Mr.SP.Vijay Nivas (For R4 and R5)

ORDER

The present Writ Petition has been filed challenging the order passed by the first respondent/District Revenue Officer, dated 19.12.2015, wherein, he had set aside the order passed by the Tahsildar, on 19.02.1989.

2. The claim of the petitioner is that the petitioners' grandfather had sold a portion of the land even as earlier as the year 1934. The fourth

respondent is a subsequent purchaser from the purchasers of the petitioner's grandfather. By the proceedings of the Tahsildar, Devakottai, Sivagangai District, dated 19.02.1989 in Mu.Mu.No.1119 /87 patta has been issued in the name of the petitioner. Further the land was subject matter of settlement under the Natham re-settlement proceedings. Based on the said proceedings, the patta was issued in the name of petitioner in Patta No.597.

3. According to the learned Counsel for the petitioner, the fourth respondent claiming that he had purchased the entire property and being aggrieved against the patta standing in the name of the petitioner, had approached the Revenue Divisional Officer namely, the second respondent herein. The second respondent, by his order, dated 07.08.2013, refused to interfere with the grant of patta and had directed the fourth respondent to seek redressal by approaching appropriate civil Court. Being aggrieved, had preferred a revision to the first respondent. The first respondent, by his order, dated 19.12.2015 had set aside the order of the Tahsildar, dated 19.02.1989 and cancelled the patta issued in favour of the petitioner and directed restoration of the “A” Register prior to UDR. The learned Counsel for the petitioner would further submit that the UDR proceedings had taken

place only in the year 1994 and the patta was not issued pursuant to the order in the UDR proceedings and therefore, the reasoning given by the first respondent that the Tahsildar had no authority to correct the UDR, is without any application of mind and therefore, he would state that the power exercised by the first respondent is a colourable exercise. He would further submit that, if the fourth respondent is aggrieved, he can only file a suit before the appropriate Court.

4. The learned Counsel for the fourth respondent vehemently contended that the grandfather of the petitioner was the original owner of the property, from whom all the predecessors had purchased the property. According to him, the name of the petitioner's predecessor has been entered in the settlement Register even as early as in the year 1970 and that the predecessor entitled to be in possession and enjoyment of the property. The patta had been issued to the petitioner without any notice whatsoever to him. He would further submit that the procedure for sub division has also not been followed, which has vitiated proceedings of the Tahsildar which has been set aside by the first respondent. He would further submit that even though the proceedings of the Tahsildar dated 19.02.1989 is prior to UDR,

the same has been issued without any notice to the fourth respondent. Therefore, he would submit that there is no infirmity in the order passed by the first respondent.

5. I have considered the submissions made on the learned Counsel appearing on either side.

6. At the outset, there is a clear dispute as to who is the owner of the property. The petitioner claims that a portion of the land only sold by his grandfather and therefore the fourth respondent cannot claim any right for the entire extent of property. Whereas, the fourth respondent claims to be the owner of the entire property.

7. The Rules 4 (4) of the Tamil Nadu Patta Pass Book Act, 1983, read as follows:

> 4 (4). *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 before changing the entries as already recorded and existing in the various revenue records.

8. A reading of the said Rule would envisage that if the Tahsildar is satisfied that the dispute concerning ownership of patta is already pending in a Court or that the issues are raised before him which impringe on to personal laws or laws of succession and that if all the parties interested do not agree on the ownership in writing, then it is incumbent upon the authority to direct the concerned parties to approach the competent civil Court before changing the entries already recorded and existing in the various revenue records.

9. The Honourable Apex Court had an occasion to deal with the aforesaid Rule in the judgment reported ***in 2021 (11) SCC 98 (Edelweiss Asset Constructions Company Limited Vs- R.Perumalswamy and others)*** *and* held that the Revenue officials have exceeded the jurisdiction for investigation of title of the disputed lands and the relevant portions of the

aforesaid judgment, are extracted hereunder:

> *"18. The Tamil Nadu Patta Pass Book Rules, 1987 provide for the procedure to be adopted to deal with enquiries with respect to the entries made in the Patta Pass Book. Rule 4 provides for the procedure on recipient of an application or information with respect to an entry in the Patta Pass Book. The relevant portion of Rule Provides thus:*
>
> > *"4. Procedure on receipt of application or information -*
> >
> > *(1) On receipt of the application or information, the Tahsildar shall make an entry in the "Register of Applications Received"in the order of receipt in Form III. The Register shall be maintained village – wise.*
> >
> > *(2) On the basis of the information furnished in the application and as available in the existing land records or obtained otherwise, the Tahsildar shall cause to be served or despatched, under certificate of posting, to the persons having interest on the land a notice in Form IV calling upon them to make representation either orally, or in writing at a specified place on a specified date which shall be not less than fifteen days and forty days later*

than the date of receipt of the application or information.

(3) On the prescribed date, the Tahsildar shall conduct a summary enquiry. At the enquiry, on consideration of age, literacy and occupation, the Tahsildar may permit an authorised agent of the owner to appear on his behalf to supplement whatever the owner has to state orally or in writing. No legal practitioner in his professional capacity shall be allowed to represent any party at such an enquiry. There shall not be adjournment of the enquiry not more than twice and that adjournment shall be granted only on application made by the parties requesting for adjournment. Reasons for granting or refusing the adjournment shall be recorded by the Tahsildar in writing.

(4) 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 order on the ownership from a competent Civil Court having jurisdiction before changing the entries as already recorded and existing in the various revenue records. (emphasis supplied)

In terms of Rule 4(4), the Tahsildar upon being satisfied that a dispute concerning the ownership of patta is already pending in a Court or any issue that is raised before him impinges on personal or laws of succession shall direct the parties concerned to obtain and "order of ownership" from a competent civil Court having jurisdiction and accordingly change the entries recorded in various revenue records.

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.*

20. In the present case, Government Order dated 17.08.2004 revoked the powers of rectification of defects in updating of registry cases conferred upon the Tahsildar by Government Order No.921 dated 15.08.2001. Instead, Government Order dated 17.08.2004 empowered the DRO to cure any defects occurring in the land registry after enquiry. In the present case, the first respondent by an application dated 07.09.2015 approached the DRO for change of patta in respect of the disputed lands. The DRO issued summons to the appellant to prove its legal ownership and possession. By an order dated 28.12.2015, the DRO solely relied on the report of the Revenue Divisional Officer and ordered deletion of the appellant's name from the land records and replaced it with the first respondent's name. The Revenue Officer had no jurisdiction to adjudicate upon title. A dispute with respect to the title of land is a mixed question of fact and law, which needs to be raised before a competent civil Court.

21. The narration of facts in the earlier part of the judgment makes it clear that on 26.02.1964, the State of Tamil Nadu executed a deed of assignment in favour of WSIL. The deed of assignment specifically records that the lands vested in the State of Tamil Nadu free of all *encumbrances and were allotted to WSIL. The entire case of the first respondent, was founded on an alleged sale deed of 09.10.1929, under which his father acquired the land and an alleged oral lease, by which the land was leased in favour of WSIL in 1963. Neither the sale deed nor the terms of the alleged oral lease have been produced in the course of the proceedings. Once the lands were acquired by the State of Tamil Nadu, any pre-existing claim of the first respondent would stand extinguished. The purpose of the Government Order dated 17.08.2004, is to enable the DRO to rectify the defects in the land registry. The DRO exceeded his jurisdiction by engaging in an exercise of investigating the title to the disputed land and substituting the first respondent with the appellant in the land records. The learned Single Judge was correct in holding that the DRO in the guise of acting in accordance with the said Government order, wrongly adjudicated upon the question of title which was beyond jurisdiction".*

10. In the light of the aforesaid pronouncement, this Court is of the view that it is a dispute of ownership of the property, for which patta has been granted. The Revenue Authorities ought to have delegated the parties to the civil suits. The first respondent had passed an order on the pretext that

the Tahsildar had no authority to correct the records after updating of revenue records, as it is only the power vested with the first respondent to correct such an order. In the instant case, according to the parties, the updation of revenue records had taken place in the year 1994 and in the impugned order that has been set aside, is of the year 1989. On that ground itself the impugned order is liable to be interfered. The order that is set aside by the first respondent is much before the UDR Scheme. In the light of the above, the impugned order of the first respondent, dated 19.12.2015 is liable to be set aside.

11. In the result, the impugned order passed by the first respondent, dated 19.12.2015 is set aside and the Writ Petition is allowed. The parties are directed to approach the appropriate civil Court seeking redressal of their grievances. No costs. Consequently, connected Miscellaneous Petitions are closed.

20.12.2022

Index : Yes / No
Internet : Yes / No
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K.KUMARESH BABU, J.

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Order made in
W.P(MD)No.4009 of 2016

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