



Order dated 19.10.2023
in W.P.No.22064 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.10.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.22064 of 2023
and
W.M.P.No.21447 of 2023
--

P.Anandakumar

.. Petitioner

Vs.

1. The District Collector,
O/o District Collector,
Tiruppur District.

2. The Sub-Collector,
O/o Sub-Collector,
Tiruppur District.

3. The Village Administrative Officer,
Vettuvapalayam Village,
Palladam Taluk,
Tiruppur District.

4. A.Palanisamy

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to forbear the second respondent from passing order in view of the notice dated 10.03.2023 in Na.Ka.No.5160/2022/A2 till the disposal in O.S.No.167 of 2022 on the file of the Principal District Judge, Tiruppur.

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For petitioner : Mr.P.Tamilavel

For respondents: Mr.V.Veluchamy, Addl.G.P. for RR-1 to 3

No appearance for R-4

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to forbear the second respondent from passing order in view of the notice dated 10.03.2023 in Na.Ka.No.5160/2022/A2 till the disposal in O.S.No.167 of 2022 on the file of the Principal District Judge, Tiruppur.

2. The case of the petitioner, shorn of unnecessary averments from the affidavit filed in support of the Writ Petition, is as follows:

(i) The petitioner is residing in No.3/391, Karaikuttai Thottam, Velayuthampalayam Village, Avinashi Taluk, Tiruppur District and his father is having joint family properties in Survey No.77/1, an extent of 1.12 acres out of 4.76 and 0.12 cents, in Old Survey No.77/2 and new Survey Nos.77/2A and 77/2C, an extent of 1.25 out of 6.71.0.21 and 0.61 cents and in Survey No.75/1C an extent of 0.28 out of 1.26 acres, situated at Velayuthampalayam Village, Avinashi Taluk and Tiruppur District and these properties were acquired by way of partition, dated 13.07.1989 and compromised decree, dated 11.08.2018 in

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O.S.No.577 of 2016 on the file of Sub-Court, Tiruppur.

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(ii) The petitioner's father is having a son and daughter, i.e. the petitioner being the son and the petitioner's sister is P.Geetha. The petitioner's father executed a settlement deed in favour of the petitioner under settlement deed, dated 29.12.2007, registered as Document No.12925/2017, SRO, Avinashi by settling 1/3 share of the above said properties and the petitioner has purchased 1/3 share from his father under sale deed, dated 23.01.2019, registered as Document No.755/2019 SRO, Avinashi and hence, according to the petitioner, he is entitled to 2/3 shares of the above said properties.

(iii) The petitioner filed a partition suit in O.S.No.167 of 2022 on the file of the Principal District Court, Tiruppur, seeking 2/3 share in the aforesaid properties. Pending the above said suit, the petitioner's father has given petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007, to cancel the settlement deed, dated 29.12.2017, registered as Document No.12925/2017, SRO, Avinashi, stating that the petitioner is not maintaining the fourth respondent (father of the petitioner). The said petition was dismissed by the Revenue Divisional Officer (for short, 'the RDO'), Tiruppur on 28.10.2021 holding that the allegations are frivolous and false.

(iv) Aggrieved by the said order dated 28.10.2021 passed by the RDO, the petitioner's father filed appeal before the first respondent-District Collector,

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and the said appeal was dismissed the first respondent/District Collector, on 29.01.2022 observing that the allegation(s) made by the father of the petitioner are false.

(v) While the matter stood thus, the fourth respondent (father of the petitioner) gave an application on 04.05.2022 before the second respondent to include his name in the Patta, where the petitioner had purchased 1/3 share and obtained settlement deed in respect of 1/3 share from his father and that the petitioner's father has no locus-standi or right to seek or include his name in the Patta, since the aforesaid properties are absolute properties of the petitioner. The fourth respondent does not have any right over the properties under dispute.

(vi) If the second respondent-Sub-Collector passed any order in favour of the petitioner's father, he will immediately sell the properties to third party, whose interest also will come into force. In order to avoid such a situation, intervention of this Court had become necessary.

(vii) When the said partition suit is pending and sale deed and settlement deed are in favour of the petitioner, the second respondent/Sub-Collector has no locus-standi to issue the impugned notice. Hence, the petitioner has filed the present Writ Petition for the relief stated supra.



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3. Learned counsel for the petitioner, while reiterating the facts, contended that the fourth respondent is none else than his father, who has executed sale deed and settlement deed of his share in favour of the petitioner, and therefore, the petitioner's father has no right, title and interest over the properties under dispute. After selling and settling his shares, the petitioner's father is trying to sell and settle the other properties also. The learned counsel further contended that the Patta in respect of the properties in question, is in the name of the petitioner. Now, the fourth respondent is attempting to include his name in the Patta as joint pattadar.

4. The learned counsel for the petitioner further contended that the second respondent has issued notice to the petitioner and the petitioner also appeared before the second respondent and made his objections and also produced the summons issued by the District Consumer Redressal Commission, Tiruppur, against the third respondent/Village Administrative Officer, for the complaint filed by the fourth respondent.

5. Pending the civil suit noted above, the second respondent has no authority to pass any order and when the said suit for partition between the brothers and sisters is pending, and if the private respondent's name is included



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in the patta, he will alienate the property or create any encumbrance. Therefore, the second respondent has to be restrained from passing any order by including the name of the private respondent in the Patta standing in the name of the petitioner.

6. Heard both sides and perused the materials available on record.

7. Admittedly, the second respondent has issued notice to the petitioner based on the representation made by the private respondent. The petitioner has also appeared and made objections. Then, it is for the second respondent to proceed and pass order in accordance with law. Though the petitioner has produced the proceedings of the District Revenue Officer, Thirupur, dated 30.03.2023 regarding the subject matter, there is no title dispute and only that the suit for partition is pending and whether the private respondent is entitled to share in the suit property or not, can be decided only in the civil suit and it is not known as to what order would be passed by the second respondent. The said proceedings mentioned by the petitioner is not a law by itself. No doubt, the second respondent has to follow the guidelines issued from time to time on the subject, by the superiors or the Government, but however, the private respondent has filed the application before the second respondent,



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who has to conduct enquiry and pass orders on merits and in accordance with law. Since the petitioner has already appeared before the second respondent based on the notice dated 12.06.2023, the petitioner is not entitled to get the relief sought for in this Writ Petition. However, the petitioner is at liberty to approach the Civil Court and get appropriate orders against the private respondent herein, if he is so advised.

8. With the above observations, the Writ Petition is disposed of. There shall be no order as to costs. Consequently, W.M.P. is closed.

19.10.2023

CS

To

1. The District Collector,
O/o District Collector,
Tiruppur District.
2. The Sub-Collector,
O/o Sub-Collector,
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