



W.A(MD)No.700 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 06.03.2023

CORAM :

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

**W.A(MD)No.700 of 2012
and
M.P(MD)No.1 of 2012**

A.Thirumalai Saminathan

.. Appellant/Writ Petitioner

Vs.

1.The District Collector,
Tiruchirappalli District.

2.The Divisional Revenue Officer,
Tiruchirappalli District.

3.The Revenue Divisional Officer,
Tiruchirappalli District.

4.The Tahsildar,
Trichy District.

5.The Executive Officer,
Ponnampatti Town Panchayat,
Thuvarankurichi Taluk,
Trichy District.



W.A(MD)No.700 of 2012

6.Thulasimani

.. Respondents/ Respondents

WEB COPY

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order, dated 27.08.2012, made in W.P(MD)No.339 of 2012.

For Appellant : Ms.J.Maria Roseline

For Respondents : Mr.A.K.Manikkam
Special Government Pleader
for R1 to R4

JUDGMENT

R.SURESH KUMAR, J.

This appeal has been preferred against the order passed by the learned Judge, who exercise the jurisdiction under Article 226 of the Constitution of India in W.P(MD)No.339 of 2012 dated 27.08.2012. Before the writ Court, the appellant was a writ petitioner who filed the said writ petition seeking a simple mandamus for a direction to the third respondent Revenue Divisional Officer to consider the appeal filed by the appellant dated 15.07.2010, which in fact was filed against the patta granted in respect of the property in Survey No.672/2 and in favour of the private respondent herein. Therefore, seeking such a direction to



W.A(MD)No.700 of 2012

decide the said appeal filed by the appellant before the third respondent, the said writ petition was filed.

2. However, the learned Judge, who dealt with the said matter, has gone by saying that a proceedings has been initiated and an order has been passed by the Revenue Divisional Officer, who is under the capacity of the Executive Magistrate, stating that the private respondent had been in possession and enjoyment of the property which is a natham poromboke land for 30 years and more, therefore, she is entitled to get the patta, hence, the patta granted in favour of the private respondent is to be sustained.

3. But that findings was not directly given by the Executive Magistrate, only in the Section 133 of Cr.P.C proceedings, such orders seems to have been passed.

4. The said order passed by the Executive Magistrate influenced the mind of the learned Judge, who passed the order impugned stating that by passing the said order under Section 133 of Cr.P.C., the representation



W.A(MD)No.700 of 2012

given by the petitioner by way of appeal before the third respondent dated 15.07.2010 having been considered was decided. Therefore, nothing to be further pursued seeking any direction by way of mandamus as has been sought for in the said writ petition, that is how the writ petition has been dismissed by the learned Judge through the impugned order dated 27.08.2012.

5. Assailing the said order impugned, the learned counsel for the appellant would submit that, the appellant, who was the writ petitioner, had sought for only a simple mandamus and the order passed if anything under Section 133 of Cr.P.C., by the Executive Magistrate is no way fulfil the disposal of the appeal dated 15.07.2010. Therefore, the reasoning given for rejecting the writ prayer by the learned Judge is erroneous, he contended.

6. Heard Mr.A.K.Manikkam, learned Special Government Pleader appearing for the official respondents and Mr.T.Sekar, learned counsel appearing for the sixth respondent.



WEB COPY

7. The learned counsel appearing for the sixth respondent would submit that the land in question had been in possession and enjoyment of the sixth respondent and she became the owner by virtue of the patta issued in this regard as the long years possession in the natham land having been recognised by the Revenue Authority, such a patta was given to him and after enjoying the property for some years, according to the learned counsel for the sixth respondent, the said property has been sold to some third party in whose favour also patta was subsequently issued.

8. The learned Special Government Pleader would submit that if at all the appellant has got a grievance still that his appeal dated 15.07.2010 has to be independently considered and decided, the third respondent Revenue Divisional Officer would undertake that exercise but that means the order already been passed by the Executive Magistrate under Section 133 of Cr.P.C. will take care of the plea raised by the appellant before the Revenue Divisional Officer and that has been taken note of by the learned Judge, who rightly dismissed the said writ petition. Hence, the learned Special Government Pleader wants to sustain the order impugned



W.A(MD)No.700 of 2012

passed by the learned Judge.

WEB COPY

9. We have heard the learned counsel appearing for both sides and have perused the material placed before this Court. Whether the land in question is a private land capable of being issued patta or natham poramboke land, is the matter to be decided by the Revenue Authorities or whether the land in question is a private land or a public street as claimed by the appellant also is a question which normally cannot be decided by the Revenue Authorities. However, insofar as the patta granted in favour of the sixth respondent, initially, in respect of the land in question is concerned, whether the patta issued by the concerned authority, namely, the Tahsildar, is to be sustained or not, can very well be decided by the third respondent Revenue Divisional Officer to whom the appeal by way of representation dated 15.07.2010 since has been filed by the appellant, the same should have been directed to be disposed of by the third respondent on merits.

10. Subsequently, there might have been some order passed by the Executive Magistrate invoking Section 133 of Cr.P.C., however that



W.A(MD)No.700 of 2012

cannot be treated as a reason for disposal of the appeal of the petitioner by way of representation dated 15.07.2010. Moreover insofar as the order passed by the Executive Magistrate under Section 133 of Cr.P.C, parallely, a criminal revision petition has been filed in CrI.R.C.(MD)No. 342 of 2012. When that being so, the order passed by the Executive Magistrate under Section 133 of Cr.P.C, can be dealt with in the said criminal revision petition, which is pending before this Court. However that cannot be equated as an order passed by the third respondent Revenue Divisional Officer on the appeal-cum-representation submitted by the appellant dated 15.07.2010. Therefore, we are of the considered view that the reason given by the learned Judge in rejecting the prayer sought in the writ petition, through the impugned order, may not be sustained and hence we feel that this writ appeal can be disposed with the following order:

“That the order impugned passed by the learned Judge is set aside. As a sequel, there shall be a direction to the third respondent to decide the appeal-cum-representation given by the appellant dated 15.07.2010, challenging the patta issued in



WEB COPY



W.A(MD)No.700 of 2012

favour of the sixth respondent and in this regard, it is open to the appellant as well as the sixth respondent to appear before the third respondent Revenue Divisional Officer, who enabling this parties to appear, shall give separate summon.

In this regard, since it has been brought to the notice of this Court by the learned counsel appearing for the sixth respondent that the property has been subsequently encumbered in favour of the third party, that particulars also shall be furnished by the sixth respondent to the Revenue Divisional Officer, who, on receipt of the same, shall issue notice to the present owner of the property or the present purchaser of the property and after hearing them also, a decision can be taken by disposing the said representation-cum-appeal dated 15.07.2010 within a period of 12 weeks from the date of receipt of a copy of this order.”



W.A(MD)No.700 of 2012

11. With this order, this writ appeal is disposed of accordingly. No

Costs. Consequently, connected miscellaneous petition is closed.

[R.S.K.,J.] & [K.K.R.K.,J.]

06.03.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes/No
PJJ

To

1.The District Collector,
Tiruchirappalli District.

2.The Divisional Revenue Officer,
Tiruchirappalli District.

3.The Revenue Divisional Officer,
Tiruchirappalli District.

4.The Tahsildar,
Trichy District.



WEB COPY



W.A(MD)No.700 of 2012

R.SURESH KUMAR, J.
and
K.K.RAMAKRISHNAN, J.

PJL

W.A(MD)No.700 of 2012
and
M.P(MD)No.1 of 2012

06.03.2023