BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD)No.9372 of 2021
and
W.M.P(MD)Nos.7081 of 2021 and 22462 of 2022

R.V.Shylavijayaraja
S/o.C.Ramasamy
through his father
and Power Agent
C.Ramasamy ... Petitioner

Vs.

1.The District Collector,
Collectorate,
Tirunelveli.

2.The Sub Collector,
Cheranmahadevi,
Tirunelveli District.

3.The Special Officer,
Sivanthipuram Village Panchayat/
Block Development Officer (Village Panchayat)
Panchayat Union Office,
Ambasamudram,
Tirunelveli District.

4.Muthulakshmi

5.M.Shanmuganathan

6.M.Selvanayagam

7.M.Maharajan

(R5 to R7 are impleaded vide Court order dated 23.11.2021
in W.M.P(MD) No.11774 of 2021)

8.Thiruvavaduthurai Aadheenam Mutt,
Sivanthipuram Village,
Ambasamudram Taluk.
(R8 is suo motu impleaded vide Court order
dated 11.10.2022) ... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the first respondent in Na.Ka.A8/1485/2020 dated 22.09.2020 and in consequential order of the third respondent in C.U.Ka.5/2020 dated 23.09.2020 and quash the same and directing the first and third respondents to restore the name of the petitioner in the tax demand register and all other connected documents relating to Door No.216A in Survey No.162/4of Sivanthipuram Village, Ambasamudram Panchayat Union, Tirunelveli District.

(Prayer amended vide Court order dated 17.12.2021
in W.M.P(MD) No.18738 of 2021)

For Petitioner	:	Mr.S.Meenakshi Sundaram Senior Counsel for Mr.M.Snegu Vijay
For R1 & R2	:	Mr.T.Amjadkhan Government Advocate
For R3	:	Mr.D.Ghandiraj
For R4	:	Mr.A.Saravanan
For R5 to R7	:	Mr.N.Ananda Padmanabhan for M/S.APN Law Associates
For R8	:	Mr.B.Brijesh Kishore

ORDER

The petitioner has originally filed the above writ petition seeking for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent in C.U.Ka. 5/20202 dated 23.09.2020 and quash the same and directing the third respondent to restore the name of the petitioner in the tax demand register and all other connected documents relating to Door No.216A in Survey No.162/4 of Sivanthipuram Village, Ambasamudram Panchayat Union, Tirunelveli District within a time fixed by this Court.

2. Thereafter the prayer was amended praying to call for the records relating to the impugned order passed by the first respondent in Na.Ka.A8/1485/2020 dated 22.09.2020 and in consequential order of the third respondent in C.U.Ka.5/2020 dated 23.09.2020 and quash the same and directing the first and third respondents to restore the name of the petitioner in the tax demand register and all other connected documents relating to Door No.216A in Survey No.162/4of Sivanthipuram Village, Ambasamudram Panchayat Union, Tirunelveli District.

3. The brief facts, which have been culminated in filing of this writ petition are set out herein:-

(i) The property measuring an extent of 1 acre 2 cents in Survey No.162/4 in Nochikulam Hamlet of Sivanthipuram Village in Ambasamudram Taluk, which is classified as poramboke originally belonged to Thiruvavaduthurai Aadheenam Mutt. One Ramani had taken the said land on lease from the said Mutt on 31.08.1989 and executed a lease deed in favour of the Mutt. In the said land, a portion of the land measuring 50 cents with superstructure was assigned in the name of the fourth respondent namely, Muthlakshmi on 15.03.2002, after receiving the sale consideration. The superstructure was assessed in the property tax demand register as Door No.4/1 by the third respondent local body. The name of the Ramani was deleted and name of the fourth respondent was included, after the fourth respondent got assignment of the said 50 cents along with the building bearing Door No.4/1. The tax was assessed in the name of the fourth respondent.

(ii) Thereafter on 06.04.2008, the petitioner had entered into an agreement with the fourth respondent for assigning the land measuring 50 cents together with the superstructure bearing Door No.4/1 for sale consideration of Rs.3,95,000/-. On the date of the agreement, the petitioner paid a sum of Rs.10,000/- to the fourth respondent. Thereafter, the lease deed was also executed and possession was also delivered to the petitioner. On 14.05.2008, the assignment deed of the leasehold right and also consent for mutation of the petitioner's name in the third respondent tax register extract was executed by the fourth respondent after receiving the balance sale consideration of Rs.3,65,000/-.

(iii) The petitioner would further submit that the lease deed was executed by the fourth respondent in the presence of the notary public at Ambasamudhram. The fourth respondent's husband had also attested as witness along with an another witness, namely, Abulkalam Aasath. The fourth respondent had also executed a requisition letter to Thiruvavaduthurai Mutt for changing the name of the lessee and also giving consent for mutation of name in the record of the lessees maintained by the Mutt. The petitioner would further submit that the fourth respondent had signed all the relevant documents in pursuance of the agreement and had also handed over the original assignment deed executed by Ramani in favour of the fourth respondent dated 15.03.2002 and other documents. After the assignment, which was also accepted and recognized by the Mutt, the fourth respondent had denied the transaction and had made a complaint to the third respondent on 16.06.2020 stating that she was only the sub lessee of the property and had never assigned the same to the petitioner. The third respondent directed the petitioner to submit all documents relating to her for the mutation of the petitioner's name in the tax demand register.

(iv) The petitioner had immediately approached his advocate, who sent a communication dated 06.07.2020. Two months later i.e., on 15.09.2020, an enquiry notice was received from the second respondent stating that an enquiry was proposed to be conducted in his Office on 18.09.2020 at about 11.00 am and the petitioner, fourth respondent and all other concerned officials were directed to bring their respective documents. Thereafter, there was no further communication from the second respondent and on 23.09.2020, the third respondent sent a communication stating that the second respondent had passed orders on 22.09.2000 itself, deleting the name of the petitioner in the tax demand register and including the name of the fourth respondent with retrospective effect from 01.04.2020 to 31.03.2021. In fact, the petitioner in response to the enquiry notice dated 15.09.2020, had requested the respondents to grant him 15 days time for making his response and a reply had also been addressed by the petitioner's father, since the petitioner was aboard living away he was not in a position to come, owing to the COVID-19 protocol. Despite this letter, the impugned order has come to be passed. Therefore, the petitioner has come forward with the writ petition in question.

3.The respondents had entered appearance, but not filed any counter and they have only relied upon the documents filed on the side of the petitioner.

4. The learned counsel for the petitioner would submit that the impugned order has come to be passed in great haste and without affording an opportunity to the petitioner to put across their case. The assignment in favour of the petitioner herein had been made even as early as in the year 2008 itself. The petitioner is in possession of the same and has put up pacca compound wall surrounding the entire property in the year 2010 itself, after getting permission from the third respondent. He would further submit that all these years, there has been no objection on the part of the fourth respondent and all of a sudden, it was only in the year 2020 that the fourth respondent had come forward with the case that she had only inducted the petitioner as a lessee and not granted any assignment in favour of the petitioner. He would further submit that

though a fortnight adjournment was sought for enquiry, since the petitioner was abroad, the second respondent proceeded to pass orders on 18.09.2020 itself. In fact, the enquiry notice dated 15.09.2020 had been received from the Sub Collector only on 17.09.2020. He would further submit that the entire litigation before the authorities had taken place post-haste without giving an opportunity to the petitioner to submit his case.

5. The learned counsel for the fourth respondent would submit that the proceedings have not been hurried. He would further submit that the initial notice had been issued as early as on 23.06.2020 and the sequence would show that the petitioner had given a detailed explanation on 06.07.2020 to the said notice. Thereafter, there was no action on the side of the third respondent for nearly two months. The second respondent issued an enquiry notice on 15.09.2020 stating that enquiry was proposed to be conducted on 18.09.2020 and the said notice was received by the petitioner on 17.09.2020 and immediately, he has sought time, as he was abroad, due to COVID Protocol, it was difficult for him to come for the

enquiry. It is also seen that in the impugned order, the first reference is the proceedings of the very same date i.e., 22.09.2020 and it was clarified by the learned Government Advocate that this communication of the first respondent to his subordinate is regarding the above lands in question and on the very same date, the impugned order has been passed.

6.It is an admitted fact from a perusal of this impugned order that notice has not been properly served on the petitioner and he has not been able to present his case before the authority concerned. The order impugned has been passed without waiting for the reports etc,. That apart, there is a serious dispute with regard to the very assignment and the fourth respondent, who executed the assignment deed in the year 2008 has kept quiet all these years and has now waken up to state that LTI has been forged. This fact is denied by the learned counsel appearing for the petitioner. There is serious dispute with regard to the title of the subject property. Be that as it may, considering the fact that the impugned order has been passed without following the basic tenets of law that no parties should be condemned unheard and also the fact that the impugned order has been passed without affording an opportunity to the petitioner to put across his case, the impugned order passed by the first respondent in Na.Ka.A8/1485/2020, dated 22.09.2020 and its consequential order passed by the third respondent in C.U.Ka.5/2020, dated 23.09.2020 are quashed. The writ petition is allowed accordingly. Since there is a serious dispute with regard to the very title of the subject property under which both the petitioner and the respondents claim right and possession and since the same has to be dealt with only by the Competent Civil Court, both the parties are directed to approach the Competent Civil Court for redressal of their grievance. No costs. Consequently, connected miscellaneous petitions are closed.

10.04.2023

NCC : Yes/No.
Index : Yes/No
Internet : Yes
cp

P.T.ASHA, J.

cp

W.P.(MD) No.9372 of 2021

Dated: 10.04.2023