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W.P. No.4393 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P. No.4393 of 2018 and
W.M.P. No.5402 of 2018

S.Sheik Mohideen

. . Petitioner

Vs

1.The District Collector
Kancheepuram District
Kancheepuram

2.The District Revenue Officer
Kancheepuram District
Kancheepuram

3.The Revenue Divisional Officer
Tambaram, Kancheepuram District

4.R.Kirubaraj

5.Mrs.Revathy Kirubaraj
Both are residing at
No.106, Rushden Gardens, II Ford
Essex, UK IGS 0BW

Represented by its Power of Attorney Holder
Rajesh kanna

. . Respondents



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PRAYER: Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari by calling for the records on the file of the 2nd respondent herein pertaining to the order in Na. Ka. No.2161/2016/No.3 dated 12.02.2018 and quash the same.

For Petitioner : Mr.J.Ravikumar

For Respondents : Mr.P.Sathish, AGP for R1 to R3
Mr.G.K.R.Pandiyan for R4 and R5

ORDER

Challenge has been made to the order dated 12.02.2018 passed by the District Revenue Officer cancelling the order passed by the Revenue Divisional Officer, granting patta in favour of the writ petitioner.

2. The main challenge is made on the ground that though summons were issued for different dates, the order reflects as if the writ petitioner has not appeared for the hearing fixed on three different dates and thereby the ex-parte order has been passed setting aside the order of the Revenue Divisional Officer and further, the documents and counter have also not been considered by the District Revenue Officer.



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3. The respondents 4 and 5 have filed their counter that patta has been obtained suppressing the civil suits and according to them, the writ petitioner, in order to grab the property of the respondents 4 and 5, obtained patta. Though other factual aspects as pleaded in the suit are also pleaded in the counter, they are not germane for the disposal of the writ petition at this stage.

4. The impugned order assailed mainly on the ground that no opportunity has been granted to the petitioner and the patta has been cancelled in the ex-parte order.

5. I have perused the entire materials placed before this court, particularly typed set Page Nos.160 to 166, where a notice was issued by the District Revenue Officer on 30.10.2017 for the appearance of the petitioner on 16.11.2017, on 23.11.2017 a notice was issued for the appearance of the petitioner on 01.12.2017 and again a notice was issued 05.12.2017 for the appearance of the petitioner on 15.12.2017. However, the order passed in the ex-parte proceedings indicate as if enquiry was conducted on 08.09.2017, 05.10.2017 and 27.10.2017, thereby an ex-parte order has been passed cancelling the patta.



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6. The main issue revolves around the parties is with regard to identity of the property. According to the writ petitioner, at the time of laying a lay out, there are only 217 approved plots, whereas, later, when the vendor and his brother have annexed unapproved lay outs on the OSR lands and sold to respondents 4 and 5. Hence, according to him, the lay outs will be in seriatum, whereas the respondents 4 and 5 are said to have purchased Plot No.239 now making claim over the writ petitioner's property. It is the contention of the respondents 4 and 5 that their properties are adjacent to Plot No.182.

7. Be that as it may, both sides are not disputing about the pendency of the suit in O.S. No.185 of 2012 filed by the writ petitioner to declare the sale deed in favour of the respondents as null and void and also for consequential injunction. Similarly, the respondents 4 and 5 have also filed a suit in O.S. No.95 of 2012 for bare injunction. It appears that challenging an order in Interlocutory Application, a Civil Revision Petition has been filed before this court in C.R.P. No.2481 of 2016. In the above revision, this court has appointed an Advocate Commissioner to make inspection and give a report. Now, it appears that the Advocate Commissioner has also filed his Report, which is not in favour of the respondents 4 and 5 herein. Thereafter, it appears that the suit



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filed by the respondents 4 and 5 was allowed to be dismissed for default.

However, now the counsel appearing for the respondents 4 and 5 would submit that the respondents 4 and 5 have already filed an application to restore the said suit.

8. Be that as it may, when the very issue is with regard to the identity of the property of both sides, as the suits are pending now, this court is of the view that issuance of any patta will be subject to the results of the suits only. The impugned order passed as if an enquiry was conducted on three different dates other than the dates mentioned in the hearing notices where the writ petitioner was summoned, is liable to be set aside. Accordingly, the ex-parte impugned order dated 12.02.2018 made in Na. Ka. No.2161/2016/No.3 on the file of the second respondent, is set aside and the parties can agitate their rights in the civil suits already pending and the Revenue authorities are directed to issue patta subject to the results of the civil suits.

9. The writ petition is disposed of with the above observations. No costs. Consequently, the connected writ miscellaneous petition is closed.

01.04.2024



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Index : Yes / No

Speaking/non speaking order

Neutral Citation : Yes/No

Asr

To

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Kancheepuram
- 2.The District Revenue Officer
Kancheepuram District
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- 3.The Revenue Divisional Officer
Tambaram, Kancheepuram District
- 4.The Government Pleader
High Court, Madras

N. SATHISH KUMAR, J.

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