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W.A.Nos. 2210 & 2211 of 2

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.A.Nos. 2210 & 2211 of 2022

T.Periyasami

...Appellant

Vs.

1.The District Collector,
Namakkal.

2.The Revenue Divisional Officer,
Namakkal.

3.The Tahsildar,
Namakkal.

...Respondents

Common Prayer:- Writ Appeals filed under Clause 15 of the Letters Patent,
against the common order dated 21.03.2022 made in W.P.Nos. 3339 & 3338
of 2015.

For Appellant : Mr.T.M.Hariharan in both appeals

For Respondents : Mr.A.Selvendran

Spl. Government Pleader in both appeals



COMMON JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The appellant is aggrieved by the order of the Writ Court, directing

him to invoke the alternative remedy available in under the Patta Passbook Act by way of an appeal before the Revenue Divisional Officer has come up with these appeals.

2. Challenge in the Writ Petitions was to the order of the Tahsildar namely, 3rd respondent rejecting the request of the appellant to grant patta for the land in two bits in Survey Nos. 370/A1B1 measuring 12,580 Sq.ft., and 15,180 Sq.ft., and with specific linear measurements and specific boundaries and an extent of 6 cents in Survey No.370/A1B2, 38 cents in Survey Nos. 370/A1B7 on the basis of a decree granted in O.S.No. 1131 of 1988. The said suit in O.S.No.1131 of 1988 was filed by the mother of the appellant seeking a declaration of title and injunction against the State of Tamil Nadu represented by the District Collector and the Revenue Divisional Officer, Namakkal. The suit came to be dismissed on 24.09.1992. The mother of the appellant filed an appeal in A.S.No. 97 of 1992 and the same was dismissed by the Appellate Court. Aggrieved, the mother of the appellant preferred a second appeal in S.A.No.1487 of 1994 in this Court.



3. Pending appeal, the mother of the appellant had died and the appellant was impleaded as the 2nd appellant in Second Appeal. The said Second Appeal was allowed and the suit was decreed. Thus, it could be seen that a competent Civil Court has declared the title of the appellant to the land subject matter of the Writ Petition. Thereafter, the appellant applied for mutation of the revenue records. Since no action was taken, the Writ Petition in W.P.No. 757 of 2007 was filed by the appellant seeking a mandamus directing the respondent to dispose of his representation for mutation of revenue records.

4. The said Writ Petition was allowed on 08.01.2007, directing the respondents to pass orders on the representation of the petition. By a communication dated 28.02.2007, the Tahsildar, Namakkal informed the appellant that action is being taken to challenge the judgment in Second Appeal of the High Court before the Hon'ble Supreme Court. However, thereafter an order was passed on 28.03.2007 by the Revenue Divisional Officer, Namakkal, rejecting the request of the appellant for grant of Patta. This order was challenged in W.P.Nos. 1136 & 1137 of 2010. The Writ Petitions came to be allowed by order dated 02.01.2012, directing the



authorities to issue Patta. The learned Judge while allowing the WRit

Petition observed as follows:-

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"6.Though, learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that there is a possibility of the S.L.P. being entertained, but, as rightly pointed out by the learned counsel for the petitioner, no notice has been served on the petitioner in the S.L.P. Further, it is very clear that insofar as the very land is concerned, the Tahsildar has given a certificate dated 17.06.2007 that the lands have been re-classified, subdivided and in the occupation of the petitioner. Therefore, suffice to state that the authorities will fulfill all the formalities before granting the patta, including the inspection of the site and grant patta in tune with the judgment of this Court in S.A.No.1487 of 1994. The petitioner is directed to tender necessary co-operation with the authorities in inspection and producing the documents for allotting the patta. The patta will be granted in accordance with the judgment of this Court in S.A.No.1487 of 1994, as per the eligibility. the authorities are directed to complete all the formalities within a period of six months from the date of receipt of a copy of this order. Both the Writ Petitions are disposed of accordingly. No costs."

5. We have heard Mr.T.M.Hariharan, learned counsel for the appellant and Mr.A.Selvedran, learned Special Government Pleader for the



respondents.

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WEB COPY

6. Availability of alternative remedy is not an absolute bar for invoking the constitutional remedy. The Writ Petition was filed in the year 2015. It was pending for almost 7 years. On 21.03.2022, the single Judge has dismissed it on the ground that alternative remedy is available. This Court and the Hon'ble Supreme Court have repeatedly held that once a Writ Petition has been admitted and it is kept pending for several years, it cannot be dismissed on the ground of availability of alternative remedy. We are, therefore, unable to sustain the order of the learned single Judge, dismissing the Writ Petitions granting liberty to the appellant to approach the Appellate Authority. We also find that no purpose will be served by referring the appellant to Appellate Authority, since this Court has declared the title of the appellant to the lands in Second Appeal No.1487 of 1994. It is not shown that the said judgment of this Court has been challenged by the State. The judgment of the Civil Court having become final is binding on the State which was a party to the proceeding. Therefore, the Authorities cannot now reject the claim of the appellant for grant of Patta, sending back the appellant to the Authorities again, claiming that it is Tharisu land.



7. Once a decree declaring title has been granted by the Civil Court, that too, in a suit filed against the Government, the judgment will be binding on the Government and it is for them to implement the judgment. We find, an attempt of the Tahsildar only to harass the appellant because he has filed the contempt petition against the authorities.

8. In view of the above conclusion of ours, the order of the learned single Judge is set aside. Both the Writ Appeals will stand **allowed**, the orders of the Revenue Divisional Officer impugned in W.P.No.3338 of 2015 and the order of the Tahsildar impugned in W.P.No. 3339 of 2015 will stand set aside. There will be a direction to the respondents to issue Pata within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions, if any, are closed.

(R.S.M., J.) (R.S.V., J.)

01.08.2024

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Internet: Yes

Index: No

Speaking

Neutral Citation : No

6/8



To:-

1. The District Collector,
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WEB COPY



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