IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

W.A.No.2612 of 2024
and
C.M.P.Nos.19203 of 2024

1.G.R.Sekar
2.Ramani ... Appellants

Vs.

1.Kalakshetra Foundation,
Represented by its Director,
Kalakshetra Road, Thiruvanmiyur,
Chennai – 600 041.

2.The Revenue Divisional Officer,
Chennai-South, Guindy,
Chennai – 600 032.

3.Tahsildar, Velachery Taluk,
No.113, V.V.Koil Street,
Institute of Road Transport Training Centre Complex,
Tharamani 100 Feet Road,
Chennai – 600 113.

4.District Collector,
No.62, Rajaji Salai,
Chennai – 600 001.

5.Eby Thomas ... Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 11.07.2024 in W.P.No.30246 of 2023 on the file of this Court.

For Appellants : Mr.T.Mohan
Senior Counsel
for Mr.G.Gokul

JUDGMENT

(Judgment was delivered by **S.S. SUNDAR, J.**)

This Writ Appeal is directed against the order of the learned Single Judge, dated 11.07.2024, made in W.P.No.30246 of 2023, allowing the writ petition filed by the 1st respondent by quashing the proceedings of the 2nd respondent dated 26.09.2023.

2.Brief facts that are necessary for the disposal of this Writ Appeal are as follows :

2.1.The case of the appellants is that the appellants' father by name Ramachandra Mudaliar originally purchased the property comprised in Paimash No.967C and 968D, measuring an extent of 0.1.2 kani and 1.15.6 kani, respectively, (total extent of 2.0.8 kani which is equivalent to 2.70 Acres). The property is situated in Thiruvanmiyur Village. The appellants' father died intestate on 07.04.1992 and their mother also died on 23.07.2003.

2.2.The appellant appears to be a person living in Rajasthan and realised that the property which was purchased by his father is now in enjoyment of Kalakshetra Foundation, the 1st respondent herein. Therefore, the appellants sent a representation to the Tahsildar, Mylapore, on 14.11.2011 and to other Revenue officials for mutation of patta in their name. On the basis of the representation, an enquiry was conducted in 2012 and ultimately, the Tahsildar, though found that the name of predecessor-in-interest of the appellants was found in Revenue records, refused to effect mutation. It is not in dispute that the appellants approached different officials at different times claiming title to the property.

2.3.Earlier, the appellants filed a writ petition in W.P.No.15946 of 2021 for issuance of a Writ of Mandamus directing the respondents 3 and 4 in this appeal, to complete the enquiry proceedings for issuance of patta. This Court passed an order dated 02.08.2021 directing the respondents 3 and 4 in this appeal to complete the enquiry proceedings and pass orders within a period of 12 weeks from the date of receipt of a copy of the order.

2.4.It was thereafter, the 4th respondent issued notice to the appellants and the 1st respondent M/s.Kalakshetra Foundation. Ultimately, the 3rd respondent sent a communication to the 2nd respondent on 21.08.2023 recommending the 2nd respondent to cancel the wrong patta issued in favour of the 1st respondent and issue patta in favour of the appellants. Thereafter, the 2nd respondent passed an order dated 26.09.2023 accepting the case of appellants by directing the Tahsildar to issue joint patta in favour of the appellants along with the 1st respondent in respect of the property in Paimash No.968/D pertaining to S.No.165/3.

2.5.Challenging the order passed by the 2nd respondent directing mutation by including the name of the appellants in Revenue records, the 1st respondent filed the writ petition in W.P.No.30246 of 2023. A learned Single Judge of this Court, by detailed order, allowed the writ petition setting aside the order of the 2nd respondent. As against the order of the learned Single Judge allowing the writ petition and setting aside the order passed by the Revenue Divisional Officer, the above Writ Appeal is filed.

3.Learned Senior Counsel appearing for the appellants produced before this Court almost all the documents that were relied upon by the appellants before the Revenue officials to claim title to the property measuring an extent of 2.70 Acres in S.No.165/3 in Thiruvanmiyur Village. The learned Senior Counsel submitted that the Revenue records relating to the property, if traced prior to settlement, proves the case of the appellants that the property was only in the holding of the appellants' predecessor-in-interest. He pointed out that the 1st respondent claimed title to the property only by virtue of acquisition proceedings initiated by the Government to acquire the land, as the 1st respondent had no document of title. The learned

Senior Counsel then submitted that the learned Judge has allowed the writ petition holding that the Revenue Divisional Officer has no jurisdiction to decide. The learned Judge has held that the Revenue Divisional Officer, being the Appellate Authority, cannot pass an order on the application for mutation of records. The learned Senior Counsel tried to demonstrate before this Court that all the documents would only show that the property in Paimash No.986/D, which is relating to disputed property in S.No.165/3, was never recognized as the property of the 1st respondent, as no document relied upon by the 1st respondent would show any title in favour of the 1st respondent in respect of Paimash No.968/D.

4.This Court, having regard to the admitted facts, is not inclined to issue notice to the respondents.

5.Learned Senior Counsel, of course, relied upon a few documents to convince us that the appellants' father had purchased the property in Paimash No.968/D. However, the learned Single Judge has given proper reasons why the order of the Revenue Divisional Officer is wrong on the basis of Revenue records. It is admitted before this Court that the appellants are not in possession, and possession of the property is with the 1st respondent. The 1st respondent appears to be the owner as per Revenue records but for the order passed by the Revenue Divisional Officer which is impugned in the writ petition. In such circumstances, it is futile even if we hold that order of 2nd respondent is justified, as the petitioner has to approach the Civil Court for appropriate orders. A person who is not in possession has to approach the Civil Court for declaration of his title and recovery of possession by process known to law. In this case, the appellants have not proved their title through a ryotwari settlement to get patta. From the records, the lands had been acquired for the 1st respondent. It is admitted that the entire property lies within the campus of 1st respondent.

6.A Division Bench of this Court in ***Kuppuswami Nainar v. The District Revenue Officer and others*** reported in ***1995 1 MLJ 426***, has held as follows :

*"**4.**Now the question for consideration is, having*

regard to the fact that the District Revenue Officer has expressed his opinion on the question of title whether the order under question should be interfered with. It may be pointed out here that in a petition under Article 226 of the Constitution the question of title regarding immovable property cannot properly be gone into, because a mass of evidence may be required for adjudicating the question of title. Even if we are to interfere with the order under appeal, it is the other party, who has to go to a civil court and establish title. As far as the exercise of jurisdiction under Article 226 of the Constitution is concerned, it does not matter to it whether 'A' party goes to civil court or 'B' party. Therefore, we are of the view that the question of title has to be decided by the civil court, without reference to the order under question. Hence, we decline to interfere with the order challenged in the writ petition. However, we make it clear that in the event a suit for declaration of title and for appropriate consequential relief is filed, the civil court shall decide such a suit, without reference to the findings recorded by respondents 1 and 2 in the impugned orders, but only on the basis of the pleadings of the parties and evidence adduced by them before it. We also make it clear that any opinion expressed by the learned single Judge, contrary to what we *have stated above, shall also stand modified accordingly. With these observations, the writ appeal is dismissed. Consequently, C.M.P. No. 15872 of 1994 filed along with the appeal is also dismissed."*

7.The learned Single Judge has reserved the right of the appellants to establish their right in the manner known to law. Therefore, this Court finds no merit in this appeal. Accordingly, this Writ Appeal is dismissed, however, giving liberty to the appellants to raise all their contentions before the Civil Court. When the Civil Court decides the question of title, it can be decided uninfluenced by the order of the Revenue officials or any of the observations made by this Court in this Writ Appeal or by the learned Single Judge in the order impugned in this Writ Appeal. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (K.R.S., J.)
25.09.2024

mkn

Internet : Yes
Index : Yes / No
Neutral Citation : Yes / No

S.S. SUNDAR, J.
and
K. RAJASEKAR, J.

mkn

To

1.The Revenue Divisional Officer,
Chennai-South, Guindy,
Chennai – 600 032.

2.The Tahsildar,
Velachery Taluk,
No.113, V.V.Koil Street,
Institute of Road Transport Training Centre Complex,
Tharamani 100 Feet Road,
Chennai – 600 113.

3.The District Collector,
No.62, Rajaji Salai,
Chennai – 600 001.

W.A.No.2612 of 2024

25.09.2024