IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.27141 and 27390 of 2024
and W.M.P.Nos.29655 and 29892 of 2024

In W.P.No.27141 of 2024:-

Karpagam .. Petitioner

Versus

1. The Revenue Divisional Officer,
   Revenue Office,
   Krishnagiri.

2. Ganesan
3. Suresh Kumar .. Respondents

In W.P.No.27390 of 2024:-

Karpagam .. Petitioner

Versus

1. The Deputy Inspector General of Registration,
   Salem.

2. The District Registrar (Admin),
   Krishnagiri - 635 001.

3. Ganesan
4. Suresh Kumar .. Respondents

Prayer in W.P.No.27141 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent herein bearing Pa.Mu.1294/2023/E, dated 24.06.2024 and quash the same and direct the 1st respondent herein to restore the name of the petitioner in the patta bearing No.742.

Prayer in W.P.No.27390 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the records of the 2nd respondent herein bearing Na.Ka.No.4891/U/2022, dated 02.12.2022 and quash the same.

<u>In W.P.No.27141 of 2024:-</u>

For Petitioner : Mr.M.S.Swathish Kumar,
for M/s.Sarvabhauman Associates

For Respondents : Mr.G.Velu,
Additional Public Prosecutor,
for R1

: Mr.S.Tamil Selvan,
for RR-2 and 3

<u>In W.P.No.27390 of 2024:-</u>

For Petitioner : Mr.M.S.Swathish Kumar,
for M/s.Sarvabhauman Associates

For Respondents : Mr.C.Sathish,
Government Advcate,
for RR-1 and 2

: Mr.S.Tamil Selvan,
for RR-3 and 4

COMMON ORDER

These Writ Petitions are connected to each other and as such, are taken up and disposed of by this common order.

2. It is the contention of the petitioner that originally, the property, to an extent of 50 cents in S.F.No.529/1, belonged to one *Suresh Kumar*, son of *Ramachandran*. He sold 25 cents of the said property to one *Rani* vide sale deed, dated 30.01.2002 registered as document No.77/2002. Subsequently, by a sale deed, dated 27.02.2003, registered as document No.266/2003, the petitioner purchased the property. In respect of the 25 cents purchased by the petitioner, the said *Suresh Kumar* was granted patta No.742, the same also stood mutated in the name of the petitioner herein after her purchase.

3. While so, one *Ganesan* (the third respondent in W.P.No.27390 of 2024) submitted a petition before the District Registrar that the property has

been fraudulently sold. Both the sale deeds, by which the petitioner purchased the land and the sale deed, by which, her vendor sold, are fraudulent in nature. After considering the facts of the case, by an order, dated 02.12.2022, the District Registrar allowed the petition and held that the two sale deeds are fraudulent in nature in view of the fact that a will is registered on 01.09.1983 which stands both in the name of *Ganesan* as well as *Suresh Kumar*. It is the further claim that originally, the land belong to one *Koolappan*, the grand-father of the said *Suresh Kumar* and *Ganesan*. On that score, the documents were held to be fraudulent. Subsequently, in view of the said order, further order was passed by the Revenue Divisional Officer, Krishnagiri (first respondent in W.P.No.27141 of 2024) cancelling the mutation of patta in favour of the petitioner and restored it in the name of *Ramachandran*, the father of *Suresh Kumar*. Challenging both the orders, the present Writ Petitions are filed.

4. *Mr.M.S.Swathish Kumar*, learned Counsel for the petitioner would submit that by the order passed by a Division Bench of this Court in ***M.Kathirvel and Ors. Vs. Inspector General of Registration and Ors.***[1], now, the matter is no longer *res integra* as Section 77-A of the Registration

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Act, 1908 is held to be unconstitutional and all the orders passed under Section 77-A also have to go. As far as the consequential order passed by the Revenue Divisional Officer is concerned, the same is also only on the basis of the order passed under Section 77-A and therefore, the same also has to go.

5. *Mr.G.Velu*, the learned Additional Government Pleader for the first respondent in W.P.No.27141 of 2024, relying upon the counter-affidavit, would submit that the order, with reference to the mutation of patta, is not only passed based on the Section 77-A order, but, further findings with regard to the title is also given in paragraph No.2 of the said order. Therefore, when the entire title, with reference to the purchase of the petitioner is incorrect, the patta was wrongly granted.

6. *Mr.C.Sathish*, learned Government Advocate for the respondent Nos.1 and 2 in W.P.No.27390 of 2024, would submit that indeed, by virtue of the Division Bench order, the limited prayer, with reference to the orders passed under Section 77-A, can be granted by this Court.

7. *Mr.S.Tamil Selvan*, learned Counsel for the respondent Nos.2 and 3 in W.P.No.27141 of 2024 and the respondent Nos.3 and 4 in W.P.No.27390 of 2024, would submit that though the legal position was laid down by the Division Bench of this Court, this Court should take into consideration the actual facts of this case where the entire transactions are fraudulent. He would submit that by virtue of the Division Bench order, the parties would definitely approach a Civil Court and they will seek a remedy. However, all along, the parties have been pursuing lawful remedy available to them under law and therefore, that period has to be appropriately considered by this Court. He would further submit that this Court need not interfere with the order of cancellation of patta inasmuch as there was a serious title dispute and the same can be further altered subject to the outcome of the Civil Suit that may be filed by the parties.

8. I have considered the rival submissions made on either side and perused the material records of the cases.

9. As rightly contended and accepted by all the learned Counsel, the impugned order that was passed on 02.12.2022 has no legs to stand in view

of the order of the order of the Division Bench order stated *supra*. Now, the second question is as to the order impugned in the W.P.No.27141 of 2024, dated 24.06.2024. Though reasons are mentioned in paragraph No.2 of the said order, it can be seen that the patta was altered based on the order passed under Section 77-A. Therefore, once the order under Section 77-A goes, that order, dated 24.06.2024 is also liable to be set aside.

10. Even otherwise, when the property is not a Government interest property and is a private property and already, when there are entries in patta, even if there are rival claims, the revenue authorities cannot indulge into an exercise of deciding the title and altering the patta. The patta can be mutated only on the grounds of death and subsequent purchase. If there is any title dispute, it is for the private party to approach the Civil Court and only as per the Civil Court's decree, the alteration can be made. Therefore, the said order also has to go. At the same time, considering the overall facts and circumstances of the case, I find force in the submission of the learned Counsel for the respondent Nos.2 and 3 in W.P.No.27141 of 2024 and the respondent Nos.3 and 4 in W.P.No.27390 of 2024 that they were pursuing a remedy which was available for them under law. Therefore, from the date

of petition till the date of receipt of a web-copy of this order, they are very much entitled for the prayer to exclude the same for the purpose of limitation if they were to approach a Civil Court.

11. In view thereof, these Writ Petitions are disposed of on the following terms:-

(i) The order passed by the District Registrar (Admin), Krishnagiri, dated 02.12.2022 bearing Na.Ka.No.4891/U/2022 stands quashed;

(ii) The order passed by the Revenue Divisional Officer, Krishnagiri, dated 24.06.2024 bearing Pa.Mu.1294/2023/E stands quashed;

(iii) The pattas and the revenue records in respect of the subject matter land shall stand restored to the position as existent prior to the passing of the impugned order, dated 24.06.2024;

(iv) The entry in the Encumbrance Certificate, pursuant to the order under Section 77-A that was quashed, shall also be removed or an appropriate remark can be made that the entry is no longer valid;

(v) The period spent by the private respondents namely, *Ganesan* and *Suresh Kumar*, from the date of giving petition to the District Registrar of Societies i.e., from 20.06.2022 till the date of receipt of a web-copy of this order, shall be excluded, if they choose to file a Civil Suit and as and when such prayer is made, the same shall be considered positively by the Civil Court inasmuch as the petitioner has been bonafidely pursuing the lawful remedy which was existent;

(vi) It is needless to mention that the contentions of the private respondents namely *Ganesan* and *Suresh Kumar* as well as the petitioner are kept open to be decided in the Civil Court;

(vii) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

21.12.2024

Neutral Citation : no
grs

To

1. The Revenue Divisional Officer,
   Revenue Office,
   Krishnagiri.

2. The Deputy Inspector General of Registration,
   Salem.

3. The District Registrar (Admin),
   Krishnagiri - 635 001.

D.BHARATHA CHAKRAVARTHY, J.

grs

W.P.Nos.27141 and 27390 of 2024
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