BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.04.2024

Delivered on : 11.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.3771 of 2021
and
W.M.P.(MD)No.3014 of 2021
and
W.M.P.(MD)No.21563 of 2022

Ilangovan : Petitioner

Vs.

1.The District Revenue Officer,
Madurai.

2.The Revenue Divisional Officer,
Madurai.

3.The Tahsildar,
Madurai East Taluk, Madurai.

4.V.Vaala Adaikkan : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order in Ni.Mu.No.18912/2015/G5, dated 02.02.2021 on the file of the first respondent and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.V.Om.Prakash,
Government Advocate, for R1 to R3.

: Mr.N.Vallinayagam, for R4.

O R D E R

This Writ Petition is directed against the order, dated 02.02.2021 passed by the first respondent, directing transfer of patta in favour of the fourth respondent's father and two others.

2. The case of the writ petitioner is that the properties situated in Survey No.45/8 and 45/13 of Poigaikaraipatti Village, Madurai East Taluk (then North Taluk) Madurai District originally belonged to one Chinnakaruppan and his two sons Periyakaruppan and Veeranan; that the said Chinnakaruppan for himself and on behalf of his two sons sold the said property to one Elamiammal vide sale deed, dated 29.01.1953; that the said Elamiammal had been in possession and enjoyment of the said property, since purchase and paid kist for the land in her name; that the said Elamiammal had a son by name Bose and a daughter by name Gandhiammal; that the said Bose had died as a bachelor; that the said Gandhiammal had two sons / Ilangovan petitioner herein and R.Mathi ; that the said property devolved upon the petitioner and his brother Mathi after

the death of their mother Gandhiammal and thereafter, they have been in possession and enjoyment of the same.

3. It is the further case of the petitioner that in the meanwhile, the fourth respondent claiming to be the legal heir of the original owner Chinnakaruppan made an application to the Revenue Divisional Officer/2nd respondent in the year 2015 stating that the said land belonging to him; that the second respondent issued a notice, dated 17.04.2015 and in pursuance of the same, the petitioner has appeared, but the second respondent has referred the said application to the first respondent; that though the first respondent has also issued a notice, dated 09.06.2015, there was no progress subsequently; that the Revenue Divisional Officer, who referred the matter to the first respondent, after becoming the District Revenue Officer has taken the matter and passed the impugned order, dated 02.02.2021, directing the authorities to change the patta in favour of the fourth respondent's father Veeranan and also in favour of Periyakaruppan and Chinnakaruppan.

4. It is evident from the records that the fourth respondent has submitted an application before the first respondent against the petitioner and his brother on 26.02.2014 alleging that the patta in respect of the

property in dispute and other properties were given to one Periyampillai, who is the fourth respondent's grandfather/Chinnakaruppan's brother; that subsequently patta was given to the fourth respondent's father Veeranan in respect of portion of the property in patta in S.No.335; that the petitioner and his brother, who were given patta in S.No.375 in respect of the land situated in S.No.45/8 and 45/13 was not belonging to them either ancestrally or through sale; that patta was wrongly issued in their favour and that therefore, sought to cancel the patta issued in favour of the petitioner and his brother and to issue patta in favour of the fourth respondent.

5. It is further evident that the second respondent Revenue Divisional Officer has issued notice to the petitioner and after the appearance of the petitioner, the Revenue Divisional Officer vide his letter, dated 17.04.2015 has forwarded the said application of the fourth respondent to the first respondent on the ground that he came to know in the enquiry that the above application came to be filed for rectifying the defects occurred in UDR scheme; that the first respondent has then issued a notice, dated 09.06.2015, directing the petitioner, his brother and the fourth respondent to appear for enquiry before the first respondent on 10.07.2015 and that thereafter, the first respondent has passed the impugned order, dated

02.02.2021, directing the authorities to change the patta in the name of the fourth respondent and two others by deleting the names of the petitioner and his brother.

6. It is pertinent to note that the petitioner after the receipt of enquiry notice from the first respondent has submitted a detailed reply in the year 2015 itself stating that the original owner Chinnkaruppan along with his two sons sold the property in dispute to Elamiyammal and that the fourth respondent in his application has completely suppressed the sale deed, dated 29.01.1953 and sought for cancellation of patta in favour of the petitioner and his brother and for issuance of patta in his favour.

7. It is also pertinent to mention that the first respondent in the impugned order has specifically mentioned about the sale deed executed by Chinnakaruppan on his behalf and on behalf of his minor sons in favour of Elamiyammal on 29.01.1953 in respect of 20 cents in S.No.45/8 and 57 cents and in S.No.45/13 totalling 77 cents in Poigaikaraipatti Village. The first respondent has also observed that the copy of the sale deed has been produced by the petitioner at the enquiry.

8. No doubt, the first respondent in the impugned order has referred the entries prior to and after the UDR scheme and as per the tabular column particulars, Periyakaruppan, Veeranan and Chinnakaruppan were shown to be the patta holders in respect of 20 cents in S.No.45/8 and 55 cents in S.No.45/13 prior to UDR scheme and that therefore, patta was shown to be issued in favour of the petitioner Ilangovan and his brother Mathi. Though the first respondent has referred about the sale obtained by Elamiyammal from the original owner Chinnakaruppan, has not given any finding as to why the sale deed was not taken into account.

9. It is not the case of the fourth respondent or the first respondent that the sale deed, dated 29.01.1953 is a fraudulent sale deed and as such, the same cannot be considered. As rightly contended by the learned counsel for the writ petitioner, though the property in dispute was originally owned by Chinnakaruppan, he subsequently sold the property along with his minor sons in favour of Elamiyammal and in the absence of any challenge to said sale deed, dated 29.01.1953, the fourth respondent has absolutely no basis to claim ownership over the property in dispute. As rightly pointed out by the learned counsel for the petitioner, the petitioner has shown some kist receipts issued in favour of Elamiyammal and that the fourth respondent has

not produced any documents including the kist receipts to show their alleged possession even *prima facie*.

10. As rightly contended by the learned counsel for the petitioner, when the petitioner has taken a specific stand that the property in dispute was purchased by his grandmother Elamiyammal from the original owner Chinnakaruppan and his sons and in the absence of any challenge to the sale deed or that the property in dispute is owned and possessed by the fourth respondent and his relatives continuously, the finding of the first defendant that there occurred a mistake at the time of UDR Scheme and therefore, the petitioner and his brother's name are to be deleted and patta is to be issued in favour of the fourth respondent and his legal heirs cannot be legally sustained. More importantly, as rightly pointed out by the learned counsel for the petitioner, the Revenue Divisional Officer, who has earlier referred the application of the fourth respondent to the first respondent has subsequently become the first respondent/District Revenue Officer and conducted an enquiry and passed the impugned order.

11. As already pointed out, the fourth respondent has submitted his application in 2014 and the same was referred by the second respondent to

the first respondent in the year 2015 and that the impugned order came to be passed in 2021.

12. The learned counsel for the fourth respondent would submit that the Writ Petition itself is not maintainable and relied on the decision of the Hon'ble Supreme Court in the case of State of Bihar and others Vs. Jain Plastics and Chemicals Ltd., reported in 2002 (1) CTC 254, wherein the Hon'ble Apex Court has specifically observed that writ is not the remedy for enforcing contractual obligations, that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court and equally, the existence of alternative remedy does not affect the jurisdiction of the Court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226 of Constitution.

13. In the case on hand, the impugned order came to be passed by the District Revenue Officer and even in the impugned order, it has been observed that if anyone is aggrieved, they have to approach the competent Civil Court. Moreover, the present case is not with respect to any breech of contract between the parties. Hence, the above decision cannot be applied to the case no hand.

14. The Hon'ble Division Bench of this Court in the case of ***Vishwas Footwear Company Ltd., rep.by Director V.Ravi Vs. The District Collector, Kancheepuram and others*** reported in ***2011 (5) CTC 94***, has observed that the Revenue Divisional Officer cannot adjudicate the disputed questions and is not competent to go into title and the relevant passage is extracted hereunder :

> *"19.Nevertheless, the core question involved in the writ petition is as to whether in the given facts and circumstances of the case, it could be entertained in the event patta has been granted in favour of a particular individual. On the strength of the title or possession, if any other person makes an application to the Revenue Divisional Officer for cancellation of that patta and in the event both the individuals claim title over the property, the Revenue Divisional Officer cannot adjudicate such disputed questions and accepting the case of the other person, he cannot cancel the patta. The right course to be adopted by the Revenue Divisional Officer in such case is only to refer the applicant who has come before him seeking for cancellation of patta to civil Court, especially when his claim is*

disputed by the individual who is holding the patta granted by the competent authority. In the event the Revenue Divisional Officer by exceeding his jurisdiction decides the question of title and cancels the patta, certainly the aggrieved person can approach this Court by way of a writ petition on the ground that the Revenue Divisional Officer was not competent to go into the title. The question of alternative remedy is not available to the aggrieved person as for the very same reason the District Collector also cannot go into the disputed question regarding the title or possession, as the case may be, in the event an appeal is filed.

15. In the case on hand, admittedly patta was issued in favour of the petitioner and his brother under the provisions of Patta Pass Book Act. Though the fourth respondent has claimed ownership and possession, he has not chosen to produce any iota of evidence to show a *prima facie* case in his favour. But without considering the sale deed in favour of the petitioner's grandmother and in the absence of any evidence on the side of the fourth respondent that they are owning and possessing property in dispute continuously, the first respondent, who has referred the above matter, when

she was the second respondent and for the reasons best known to her, has passed the impugned order.

16. A cursory perusal of the impugned order would go to reveal that the impugned order came to be passed in total non application of mind and in an mechanical fashion. Hence, this Court has not hesitation to hold that the impugned order which is legally unsustainable, is liable to be quashed.

17. In the result, the Writ Petition is allowed and the impugned order, dated 02.02.2024 in Ni.Mu.No.18912/2015/G5, on the file of the first respondent is quashed. The fourth respondent is at liberty to approach the competent Civil Court. Consequently, connected Miscellaneous Petitions are closed. No costs.

11.06.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
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To

1.The District Revenue Officer,
Madurai.

2.The Revenue Divisional Officer,
Madurai.

3.The Tahsildar,
Madurai East Taluk, Madurai.

K.MURALI SHANKAR, J

DAS

Order made in
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and
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Dated : 11.062024