BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2024

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.19256 of 2015
and
M.P.(MD) Nos.1 and 2 of 2015

K.Sathiyamoorthy .. Petitioner

Vs.

1.The District Collector,
Dindigul District,
Dindigul.

2.The Revenue Divisional Officer,
Dindigul District,
Dindigul.

3.The Tahsildar,
Nilakottai Taluk,
Dindigul District.

4.The Sub Registrar,
Nilakottai Sub Registration Office,
Nilakottai Taluk,
Dindigul District.

5.S.Poun Raj

6.A.Sonai Pillai .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the Respondents 1 to 4 resulting in the second respondent's impugned order dated 01.10.2015 passed in Na.Ka.No.2176/2015/Aa 4, served on 13.10.2015 and quash the same and forbear the respondents 1 to 3 from allowing the fifth respondent or any other persons through him from anyway interfering with the peaceful possession and enjoyment of the petition land bearing Survey No.392/4 situated at Pallapatti Village, Nilakottai Taluk, Dindigul District on the strength of the Impugned order and consequently restore the patta to the original name which is existing prior to passing of the impugned order.

For Petitioner	:	Mr.V.R.Venkatesan
For R1 to R4	:	Mr.D.S.Nedunchezhiyan Government Advocate
For R5 & R6	:	Mr.C.Jaganathan

ORDER

Questioning the impugned order passed by the second respondent dated 01.10.2015 in and by which the second respondent had cancelled the patta standing in the name of the petitioner, he is before this Court.

2. The facts are set out hereinbelow:

The property subject matter of this writ petition originally belonged to one Ammaiyanayakannor, Zamin, Madurai Jilla. The grandfather of the petitioner Kathiriya Goundan had pattayam in respect of the petition mentioned land in S.No.392/4, which was issued to him on 23.06.1915. Thereafter, he was in absolute possession and enjoyment of the same and from him, the property travelled to the petitioner's father Krishnasamy Goundan by inheritance and through a partition, the same fell to the share of the petitioner. It is the contention of the petitioner that from 1915 to 1969, his father and grandfather were in continuous possession and enjoyment of the property by paying *kist.*

3. The petitioner would submit that in the year 1970, under a partition, the property came to the petitioner and between 1970 to 2015, the patta stood in his name. Therefore, they have been in continuous possession and enjoyment of the property for over 100 years. The system of Chitta and Adangal were introduced by the Revenue Authority in the

year 1974 and the petitioner had started paying the *kist* from the year 1979 to till 2015. The petitioner had got the property under a registered partition deed dated 01.05.1970. The petitioner would submit that there are about 103 coconut trees planted, which are well over 25 years in the property and the property has been fenced. The fifth respondent is an adjacent owner. He had on several occasions, requested the petitioner to alienate the subject property to him which was refused and therefore, miffed by the refusal, the fifth respondent had after a lapse of 65 years, made an application to the second respondent to cancel the patta issued to the petitioner stating that the land belonged to him on the basis of entries made in the Survey Land Register in the year 1956. Without even verifying the title deed and other connected documents and by simply directing the petitioner to give his written statement, the second respondent had passed the impugned order dated 01.10.2015 cancelling the patta granted to the petitioner. The order was served on the petitioner on 13.10.2015 when he had visited the office of the second respondent. The fifth respondent, on obtaining the patta, sold the property. On 14.10.2015, a day after receiving the impugned order, the petitioner had approached the fourth respondent's office and he was informed that the patta in his name has been cancelled and in that place, the names of the four sons of Ayyamperumal Pillai have been inserted. Therefore, the petitioner is before this Court.

4. Respondents 5 and 6 have filed a counter affidavit *inter alia* contending that the second respondent is the statutory authority under the Tamil Nadu Patta Pass Book Act, 1983 (hereinafter referred to as "the Act"). They would submit that it is in collusion with the revenue officials that the petitioner has obtained patta on the basis of the partition amongst themselves and this was not by the third parties. They would also submit that the petitioner has an alternate remedy in the form of revision before the District Revenue Officer and without exhausting the same, he has rushed to the Court and prayed for dismissing the writ petition.

5. The learned counsel appearing for the petitioner would submit that the order impugned is nullity, as it is passed by an authority, who

does not have jurisdiction to consider the same. He would submit that under the Tamil Nadu Patta Pass Book Act, it is the Tahsildar, who is the competent authority to modify the relevant entries in the patta pass book. He would rely on the judgment of a Hon'ble Division Bench of this Court in ***Vishwas Footwear Company Ltd., vs District Collector, Kancheepuram and others*** reported in ***2011 (5) CTC 94*** and the judgment of a learned Single Judge in ***T.R.Dinakaran vs Revenue Divisional Officer, Aruppukottai and others*** reported in ***2012 (3) CTC 823***. He would further submit that the petitioner is not claiming right only on the basis of the partition deed, but also on the basis of the longer possession starting from the year 1915 onwards, when the property had been purchased by his grandfather.

6. The learned counsel for respondents 5 and 6, on the other hand, would submit that the Survey Land Register of the year 1956 would show that the property in question is registered in the name of Ayyamperumal Pillai. He would submit that the petitioner herein had filed a suit in O.S.No.136 of 2015 on the file of the District Munsif

Court, Nilakottai for a declaration and a consequential injunction to restore the patta in the name of the petitioner and for an injunction restraining the fourth respondent from registering any document submitted by respondents 5 and 6. The sixth respondent was the first defendant and the fifth respondent was the second defendant therein. The first and third respondents were arrayed as defendants 3 and 4 and the Sub-Registrar has been arrayed as the fifth defendant therein. He would submit that this suit has been withdrawn by the plaintiff-writ petitioner and therefore, the entire claim of the petitioner is without any basis.

7. The learned counsel for the petitioner would clarify that the suit in O.S.No.136 of 2015 had been withdrawn by the petitioner with a liberty to institute a fresh suit and with the liberty, the suit has been dismissed.

8. Heard the learned counsel on either side.

9. Since the issue of jurisdiction has been taken as the main defence, the same shall be dealt with first, since an order passed by an authority or Court without jurisdiction is nullity.

10. Section 10 of the Tamil Nadu Patta Pass Book Act, 1983 stipulates that any modification of entries in a patta pass book has to be made to the Tahsildar. He is the original authority. Against the order passed by the Tahsildar, an appeal would lie before the Revenue Divisional Officer under Section 12 of the Act and thereafter, a revision to the District Revenue Officer under Section 13 of the Act. Respondents 5 and 6 have made an application for cancellation of the patta before the Revenue Divisional Officer.

11. An argument was attempted to be made that an order passed by the Tahsildar cancelling the patta is an appealable order. This argument cannot be countenanced in the light of the judgment of both the Hon'ble Division Bench and the learned Single Judge referred *supra*. The learned Single Judge, after extracting the various provisions of the Tamil Nadu

Patta Pass Book Act, 1983, and the Rules has opined in paragraph 15 as follows:

> *"15.From the reading of the above said provisions under the Tamil Nadu Patta Pass Book Act, 1983 and the Rules made thereunder, it could be seen that the Tashildar is the competent authority under Section 10 for modifications of the relevant entries in the Patta Pass Book and such modifications are also possible only under the following circumstances, namely, (i) by reason of the death of any person; or (ii) by reason of the transfer of interest in the land; or (3) by reason of any other subsequent change in circumstances. Therefore, the Tashildar is empowered to make modification of entry in the Patta Pass Book only under those three circumstances as referred above. Even for making such modification based on Application filed by the person, the Tashildar is bound to give reasonable opportunity to the parties concerned to make their representations either orally or in writing. Thereafter, the Tashildar shall pass an order accordingly, and also make such consequential changes in the Patta Pass Book as appears to be necessary for giving effect to his order. If the Tashildar decides that there is no necessity for effecting any modification, he shall reject the application seeking for modification."*

12. The learned Single Judge has clearly observed in paragraph 17 that the Revenue Divisional Officer can only exercise power as appellate authority against an order passed by the Tahsildar. Therefore, the original authority to whom an application for cancellation of patta has to be made is only the Tahsildar and not the Revenue Divisional Officer. The learned Judge has also referred to the proviso to Section 14 of the Act. The said proviso reads as under:

> *"14.Bar of suits.- No suit shall lie against the Government or any officer of the Government in respect of a claim to have an entry made in any Patta Pass Book that is maintained under this Act or to have any such entry omitted or amended :*
>
> *Provided that if any person is aggrieved as to any right of which he is in possession, by an entry made in the Patta Pass Book under this Act, he may institute a suit against any person denying or interested to deny his title to such right, for a declaration of his rights under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963); and the entry in the Patta Pass Book shall be amended in accordance with any such declaration."*

13. Therefore, the remedy available to respondents 5 and 6 is only to move the civil Court. The learned Single Judge relied on the judgment of the Hon'ble Division Bench of this Court in ***Vishwas Footwear Company Ltd.,*** in his judgment. Therefore, in the light of the above judgment of the Division Bench, the impugned order passed by an authority, who has no jurisdiction, has to necessarily be set aside. Accordingly, it is set aside and the Writ Petition is allowed. The remedy available to respondents 5 and 6 is only to file a suit and establish their rights. Therefore, in the light of the writ petition being allowed and the impugned order being set aside, the third respondent-Tahsildar shall restore the patta in the name of the petitioner which stood prior to the impugned order within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

01.10.2024

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

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To

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P.T.ASHA, J.

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