(2011) 07 MAD CK 0347

In the Madras High Court

Case No : Writ Petition (MD) No. 10006 of 2005 and M.P. (MD) No. 10708 of 2005

Kannan, Venkateswaran and Koteeswaran APPELLANT

Vs

The District Collector Virudhunagar District, J. Vasanthi, ARV Jagadeesan and B. Vasumathi RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2011) 07 MAD CK 0347

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : M.S. Suresh Kumar, for the Appellant; S. Barathi Government, for 1st Respondent and V. Meenakshisundaram, for R2 and R3, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The Petitioner being aggrieved by the order, dated 11.08.2005 passed by the District Collector, Virudhunagar, has invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

2. The pleaded case of the Petitioner, is that under the family settlement, the land measuring 2 acres and 27 cents bearing survey Nos. 197/6-B, 197/3, 197/4 and 197/5 was given to the Petitioner. The family settlement was duly recorded, and on the recommendation of the Village Administrative Officer, the competent authority granted patta in favour of the Petitioner.

3. It is the case of the Petitioner that the 2nd Respondent set up a forged sale agreement, claiming it to be executed by the 4th Respondent, B. Vasumathi, and on the basis thereof, filed a suit for specific performance to enforce the contract of sale. The suit filed by J. Vasanthi stands dismissed by the civil court, however, the appeal is pending against the decree. Tmt. J. Vasanthi during the pendency of the civil suit filed W.P. No. 3685 of 2005 directing the District Collector, Virudhunagar to consider the representation filed by her against the grant of

patta in favour of the Petitioner on the basis of family settlement, wherein it was pleaded that the civil suit for specific performance was pending.

4. The case of the Petitioner is that in view of the order passed by this Court directing 1st Respondent to consider the representation, the impugned order has been passed directing the change of patta in the name of the 2nd Respondent. It has further been directed to take action against the Tashildar, Village Administrative Officer for having recorded patta in favour of the Petitioner.

5. The impugned order is challenged by the Petitioner:- firstly on the ground that the District Collector has No. jurisdiction to order the change of patta, as the registration of patta or modification thereof, is governed by the Tamil Nadu Patta Passbook Act 1983. Under the provision of Tamilnadu Patta Passbook Act 1983, the jurisdiction to entertain and modify patta vests only the Tashildar, the decision further subject to appeal and revision. The remedy thereafter is to challenge the decision in the civil court.

6. Secondly that the order is based on the misreading of facts, as the District Collector has failed to note, that the civil suit filed by the 2nd Respondent was dismissed. Therefore, the revenue authorities had No. jurisdiction to change patta, being bound by the decision of civil court.

7. Thirdly that the order of this Court had only directed to the District Collector, to consider the representation. The District Collector was bound to consider in accordance with law, by transferring the representation to appropriate authority, but could not be assumed jurisdiction which did not vest in him under the Act.

8. The learned Counsel appearing for the Respondents, on the other hand, contended that this Court had directed the District Collector to redress the grievances of the Petitioner. Therefore, it is not open to the Petitioner, to challenge the jurisdiction of District Collector to pass the order, when it is open to any revenue officer above the rank of DRO to exercise revisional jurisdiction.

9. On consideration, I find force in the contentions raised by the learned Counsel for the Petitioner. The District Collector, under the scheme of the Act has absolutely No. jurisdiction in absence of notification conferring revisional power to him to interfere with the grant of patta or change it. The grant of patta and any modification is governed by statutory provisions of law. The District Collector in pursuance to the orders of this Court could have treated the representation as appeal and referred it to the appellate authority under the Act.

10. It is well settled law that the authority vested with power under the statute, has to perform his duty in accordance with law without being influenced by any other considerations.

11. The order of the District Collector, prima facie is not as per the procedure laid down in the statute.

12. The order of the District Collector, therefore is without jurisdiction and out

come of misinterpretation of the order passed by this Court.

13. This Court while disposing the writ petition had only directed the District Collector, to look into the grievance of the Petitioner, which means that the District Collector was to deal with representation, in accordance with law. The order did not authorize that District Collector to assume jurisdiction not vested in him under the Act

14. The order is also outcome of the misleading of the facts as admittedly, the suit filed by the 2nd Respondent was dismissed. Though the appeal is said to be pending, but as on date the 2nd Respondent does not have any title to the property.

15. Even if for the sake of argument the agreement of sale is taken to be executed in her favour validly, still it does not confer title on Respondent No. 2 to claim to change in the patta. The title to property is passed on to buyer only on execution of conveyance deed and not on basis of agreement to sell.

16. For the reasons stated, the writ petition is allowed, the impugned order is set aside. It shall open to the parties to agitate the matter in accordance with law under Tamilnadu Patta Passbook Act, 1983, in case Respondent No. 2 succeeds in the suit for specific performance, and title is passed on to her. Consequently, Connected Miscellaneous Petition is closed. No. costs.