
(2008) 12 MAD CK 0229

In the Madras High Court

Case No : Writ Petition No. 20461 of 2008 and M.P. No's. 2 and 3 of 2008

K.V. Sathyanarayanan, Vimala Sathyanarayanan, Poornima
and Srinivas

APPELLANT

Vs

The District Revenue Officer and Others

RESPONDENT

Date of Decision : 18-12-2008

Acts Referred:

Constitution of India, 1950 — Article 19, 226

Citation : (2008) 12 MAD CK 0229

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : G. Rajagopal, Sr Counsel for P. Mani, for the Appellant; L.S.M. Hasan Fizal, Government Advocate for Respondents 1 to 3, N. Jothi, for Respondents 4 to 6 and G. Jermiah, for 7 Respondent, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—By consent of both sides the writ petition is taken up for final disposal.

2. The prayer in this writ petition is to quash the order passed by the first respondent dated 18.7.2008 and the order of the second respondent dated 9.11.2007.

3. The learned Counsel appearing for respondents 4 to 6 as well as the learned Counsel for the 7th respondent raised a preliminary objection with regard to the maintainability of the writ petition, which was answered by the learned Senior Counsel for the petitioners by submitting that the impugned order passed by the first respondent is contrary to the judgment made in A.S. No. 36 of 2003 by the learned Principal District Judge, Chengalpet, dated 29.4.2005, wherein a finding is given with regard to the petitioner's title to the suit property, which is the subject matter of the property, for which patta is claimed by the petitioner's as well as respondents 4 to 7.

4. The learned Counsel for the respondents 4 to 7 on the other hand submitted that the respondents 4 to 7 are not parties in the suit filed in O.S. No. 187 of 1999 on the file of Sub Court, Ponneri, though the suit was filed after the purchase of the property by the respondents 4 to 7 and therefore the said judgment passed by the appellate Court is not binding on them.

5. The learned Senior Counsel for the petitioners submits that as against the denial of injunction in the appellate Court order, the petitioners have preferred S.A. No. 1120 of 2006, and the petitioners have now filed petition to implead the respondents 4 to 7 as parties in the second appeal.

6. The matter in issue is relating to the grant of patta. The petition filed by the petitioners for the grant of patta before the Tahsildar was ordered on 4.6.2002. The respondents 4 to 7 filed appeal before the Revenue Divisional Officer, Ponneri, and the appeal was allowed on 19.11.2007 in which status-quo was ordered to be maintained till the second appeal is disposed of, against which the petitioners filed revision before the District Revenue Officer, which was dismissed by order dated 18.7.2008 with a direction to file revision before the Special Commissioner, Land Administration, Chepauk, Chennai-5. The said order is challenged in this writ petition.

7. The learned Counsel for the respondents 4 to 7 produced copy of the Government Order issued in G.O.Ms. No. 409 Revenue Department, dated 2.7.2008, wherein the Government withdrew the provision of second revision vested with the Special Commissioner of Land Administration, with a direction to refer all the pending untried cases to the appropriate Civil Court. Thus, the provision of second revision to the Special Commissioner and Commissioner of Land Administration is not available now and the Civil Court is given the jurisdiction to go into the issue with regard to the validity of the order passed by the District Revenue Officer.

8. The learned Senior Counsel for the petitioner as well as the learned Counsel for the respondents 4 to 7 raised several factual disputes with regard to the purchase of lands made by the respondents 4 to 7. Thus, it is admitted that the facts are in dispute especially with regard to the ownership of the property in question, for which patta is sought for.

9. Who is the actual owner and who is in possession and enjoyment of the immovable property can be decided only before the Competent Civil Court and the said factual aspects cannot be gone into in writ proceedings.

10. Whether the High Court is entitled to go into the disputed questions of fact in a writ petition filed under Article 226 of Constitution of India, is already decided by the Honourable Supreme Court.

(a) In *Arya Vyasa Sabha and Others Vs. The Commissioner of Hindu Charitable and Religious Institutions and Endowments, Hyderabad and Others*, the view taken by the High Court that disputed questions of fact are to be left open to be

decided before the Civil Court was upheld by the Supreme Court.

(b) In the decision reported in Rourkela Shramik Sangh Vs. Steel Authority of India Ltd. and Another, it is held that the disputed questions of fact could not be entertained in the writ proceedings. In paragraph 19, the Supreme Court held as follows:

19. The question as to whether the workmen concerned had been continuously working for a period of ten years so as to enable them to derive benefit of the judgment of this Court in R.K. Panda and Others Vs. Steel Authority of India and Others, was essentially a question of fact....

In paragraph 22, the Honourable Supreme Court further held as follows:

22...a disputed question of fact normally would not be entertained in a writ proceeding. This aspect of the matter has also been considered by a Constitution Bench of this Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.,

(c) In Himmat Singh Vs. State of Haryana and Others, , the Honourable Supreme Court held that "the statement of the appellant or the 5th respondent was correct or not could not ordinarily be tested in writ proceedings and it is well known that in writ petition ordinarily such a disputed question of fact could not be entertained".

(d) In yet another decision reported in (2007) 7 MLJ 687 (Food Corporation of India v. Harmesh Chand), the Supreme Court held as follows:

Since the facts were seriously disputed by the appellant and no factual finding could be recorded without consideration of evidence adduced by the parties, it was not an appropriate case in which the High Court ought to have exercised its writ jurisdiction. The parties could have approached a civil court of competent jurisdiction to adjudicate the matter.

(e) Following the above referred decisions, I have dismissed W.P. No. 23948 and 23949 of 2008 by order dated 24.10.2008 granting liberty to the petitioners therein to approach the Civil Court, if they want to establish their alleged right over the property in question.

(f) Apart from the above decisions, a Division Bench of this Court in the decision reported in Kuppuswami Nainar Vs. The District Revenue Officer and Others, in paragraph 4 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....

(g) In *Dwarka Prasad Agarwal (D) by LRs. and Another Vs. B.D. Agarwal and Others*, the Honourable Supreme Court considered similar issue and in paragraphs 28 and 39 (in SCC) held as follows:

28. A writ petition is filed in public law remedy. The High Court while exercising a power of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or a statutory authority. Remedy under Article 226 of the Constitution of India cannot be invoked for resolution of a private law dispute as contra distinguished from a dispute involving public law character. It is also well settled that a writ remedy is not available for resolution of a property or a title dispute. Indisputably, a large number of private disputes between the parties and in particular the question as to whether any deed of transfer was effected in favour of M/s Writers & Publishers Pvt. Ltd. as also whether a partition or a family settlement was arrived at or not, were pending adjudication before the civil courts of competent jurisdiction. The reliefs sought for in the writ petition primarily revolved around the order of authentication of the declaration made by one of the respondents in terms of the provisions of the said Act. The writ petition, in the factual matrix involved in the matter, could have been held to be maintainable only for that purpose and no other.

39. We may, however, hasten to add that as at present advised we do not intend to enter into the contention of the petitioners that their fundamental right under Article 19 of the Constitution of India had been infringed. This Court would have entered into the question if the facts were undisputed or admitted. The question as regards infringement of fundamental right and that too under Article 19 of the Constitution of India cannot be gone into when the facts are disputed. Whether Dwarka Prasad Agarwal and consequently the substituted petitioners are owners of the newspapers and if so, to what extent being disputed, it cannot be said, that by reason of the impugned order dated 3-9-1992 passed by the first respondent herein alone, the fundamental right of the petitioners under Article 19 had been infringed.

11. In the light of the above decisions of the Supreme Court as well as the

judgments of this Court and having regard to the availability of alternate remedy of filing Civil Suit as per G.O.Ms. No. 409 Revenue Department dated 2.7.2008, the petitioners are not entitled to challenge the order by way of this writ petition and they can only establish their right through the Civil Court by duly impleading all the parties, who are likely to be affected by virtue of the grant of patta.

12. The writ petition is dismissed with liberty to the petitioners to approach the civil Court to redress their grievance if any. No costs. Connected miscellaneous petitions are also dismissed.