

(2012) 02 MAD CK 0239

In the Madras High Court

Case No : Writ Petition No. 26622 of 2011 and M.P. No's. 1 to 3 of 2011

Mr. Gopal Pillai

APPELLANT

Vs

The District Collector, Kancheepuram District and Others

RESPONDENT

Date of Decision : 01-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Patta Pass Book Act, 1983 — Section 14

Citation : (2012) 02 MAD CK 0239

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : S.V. Vijay Prashanth, for the Appellant; R. Ravichandran Addl. Govt. Pleader For R1 to 5 and 11 and Mr. A. Ramalingam For R6 to 10, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma

1. The petitioner has invoked the extra-ordinary equitable jurisdiction of this Court to challenge the order passed by the District Revenue Officer, in exercise of Revisional Jurisdiction under the Tamil Nadu Patta Pass Book Act, 1983 (hereinafter referred to as "the Act"). The petitioner purchased a land in dispute in the year 1981 and on the basis of sale deed executed in favour of the petitioner, his name was entered in the Revenue Record by granting patta in his name. The respondent nos. 6 to 9, being aggrieved by the order passed by the Tahsildar in recording patta in the name of the petitioner, filed statutory appeal before the District Revenue Officer. The entry of patta in the name of the petitioner was challenged on the ground that the land was under the ownership of predecessor in interest of the petitioner, therefore, it was prayed that the patta be re-entered in the name of original owner as recorded in the year 1930.

2. In the appeal, prayer was also that the patta be entered in the name of respondent nos. 6 to 9, being successors in the interest of the owner of the

property.

3. The petitioner has challenged the order passed by the District Revenue Officer, in exercise of Revisional jurisdiction on the ground that though respondent nos. 2 & 3 were exercising quasi judicial powers under the Act, but the patta standing in the name of the petitioner was changed without issuing notice or making him party in the proceedings. In support of this contention, learned counsel for the petitioner referred to the proceedings of the Revenue Divisional Officer, to contend that he was not made party to the proceedings nor a copy of the order was sent to him, which clearly shows that the order was passed at the back of the petitioner, though it affected his right in the land.

4. Learned counsel for the petitioner challenged the impugned order also on the ground that in appeal filed against the order of the Revenue Divisional Officer, the petitioner was not impleaded as party and the impugned order was passed at the back of the petitioner.

5. A reading of the impugned order shows that the District Revenue Officer, while deciding the revision petition, recorded that the party aggrieved by orders passed under the Act, can approach the Civil Court for adjudication of their respective claim, as envisaged u/s 14 of the Act.

6. The contention of the learned counsel for the petitioner was that the orders being patently illegal, having been passed without notice to the petitioner, cannot be sustained in law and furthermore, the alternative remedy of suit will not bar the maintainability of the writ, as respondent nos. 2 & 3 violated the statutory provisions of law in proceeding with the matter at the back of the petitioner.

7. The stand of the learned counsel appearing for respondent nos. 6 to 9, on the other hand is that the petitioner was not entitled to invoke the equitable jurisdiction of this Court, having not come to the Court with clean hands.

8. The contention of the learned counsel for the respondent nos. 6 to 9 was that the petitioner was not only party, but also appeared before the learned Revenue Divisional Officer to record the statement.

9. The petitioner recorded his consent for change of patta in favour of the original owner.

10. A copy of the statement of the petitioner recorded by respondent no. 3 was also shown to the Court.

11. It was also contention of the learned counsel for the respondent nos. 6 to 9 that the petitioner, though party to the proceedings before the Revenue Divisional Officer, did not file any appeal against the order passed to change the entry regarding patta in the Revenue Record in favour of original owner, therefore, it is not open to the petitioner now to challenge the order of the Revisional authority under the Act. In any case, the parties can get their dispute settled in Civil Court, as per u/s 14 of the Act, and as recorded in the impugned

order.

12. On consideration, I find that this writ petition deserves to be dismissed, for the reason that the petitioner has not come to the Court with clean hand and made deliberate and intentional misstatement of fact.

13. The petitioner, taking advantage of the fact that respondent no. 3, though exercising quasi judicial powers, has not recorded the names of the parties in the form of Court order, i.e. to show names of the appellant and respondents. Nor the order mentions as to under which provisions of law, the appellate jurisdiction was exercised and made deliberate misstatement in the affidavit that the order of appellate authority was passed at his back.

14. Learned counsel for the State produced a copy of the statement of the petitioner, recorded by the Revenue Divisional Officer, which not only showed his presence, but also his participation in the proceedings. It may however be noticed that in spite of the fact that the Revenue Divisional Officer had recorded the finding against the petitioner, he chose not to take any step to challenge the order of the appellate authority before the Revisional authority.

15. However, it is not disputed that in the revision filed before respondent no. 2, the petitioner was not made party. At the same time, respondent no. 2, while disposing of the revision, gave liberty to parties to approach the Civil Court as envisaged u/s 14 of the Act. The action of revisional authority is bad in law. The revisional authority before entertaining the revision is required to see that all the parties are before it, as it is not permissible to exercise quasi judicial powers in absence of all the parties.

16. However, the petitioner, being guilty of concealment of facts from this Court and also being guilty of misstatement in submitting that the petitioner was not heard by respondent nos. 2 & 3 before passing the impugned order, is not entitled to invoke extra-ordinary equitable jurisdiction having not come to Court with clean hands.

17. It is well settled law that the person guilty of not approaching the writ Court with clean hand, is not entitled to discretionary relief under Article 226 of the Constitution of India. The Statute under which the order is passed itself provides that the person aggrieved by the order can challenge it before the Civil Court in accordance with law.

18. For the reasons herein stated above, the petitioner is not entitled to discretionary remedy under Article 226 of the Constitution of India.

19. Consequently, this writ petition is dismissed. No costs. Connected miscellaneous petitions are closed. No costs. However, this order shall not bar the petitioner to file Civil Suit as provided u/s 14 of the Act.