(2014) 01 MAD CK 0208

In the Madras High Court

Case No : Writ Petition No. 34288 of 2012

Muthusamy APPELLANT

Vs

The Revenue Divisional Officer (R.D.O), Muthayi and Mani RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Tamil Nadu Patta Pass Book Act, 1983 — Section 10 12 13 14 3

Citation : (2014) 01 MAD CK 0208

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : S. Arokia Maniraj, for the Appellant; S. Navaneetham, Additional Government Pleader for Respondent-1, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Petitioner has filed the instant Writ of Mandamus, praying for issuance of an order by this Court in directing the First Respondent to conduct the enquiry based on the enquiry notice dated 10.08.2012 and to pass suitable order on merits based on the records within a time frame to be determined by this Court. It is the case of the Petitioner that the land in Survey No. 386/4 measuring to an extent of 83 cents, in Survey No. 386/5 measuring to an extent of 90 cents, in Survey No. 387/1 measuring to an extent of 85 cents, in Survey No. 387/2 measuring to an extent of 22 cents and in Survey No. 387/3 measuring to an extent of 3.77 acre in Lathuvadi Village, Salem Taluk was conditionally assigned in favour of his late father Karuppana Gounder.

2. The aforesaid lands were conditionally assigned to the Petitioner''s father through ''D'' Form patta which governs several terms and conditions. Added further, it is the stand of the Petitioner that from the date of assignment, his father was in absolute possession and enjoyment of the property and he expired on 15.02.1997. After the demise of his father, he is in absolute possession and enjoyment of the aforesaid properties till date without any hindrance.

3. In order to cancel the patta granted in favour of the Petitioner and his wife, the Respondents 2 and 3 have submitted a petition before the First Respondent/ Revenue Divisional Officer (R.D.O), Athur Taluk Revenue Division, Salem District and the First Respondent issued a notice on 10.08.2012 determining the date of enquiry as 22.08.2012. The said notice has been issued to the Petitioner and the Second and Third Respondents as seen from the memorandum of the First Respondent/Revenue Divisional Officer (R.D.O), Athur Taluk Revenue Division, Salem District in Na.Ka. No. 4626/2010(1). Even in the reference of the aforesaid memorandum, the Second and Third Respondents petitions dated 16.07.2012 have been referred to.

4. In the present Writ Petition, the Petitioner seeks for passing of an order in directing the First Respondent/Revenue Divisional Officer (R.D.O), Athur Taluk Revenue Division, Salem District to conduct an enquiry based on the enquiry notice dated 10.08.2012, on the risk of repetition, this Court pertinently points out that the First Respondent/Revenue Divisional Officer (R.D.O), Athur Taluk Revenue Division, Salem District has issued enquiry notice dated 10.08.2012 based on the petitions of the Respondents 2 and 3 dated 16.07.2012.

5. It is to be pointed out that as per Section 3 of Tamil Nadu Patta Pass Book Act, 1983 Tahsildar shall issue a patta pass book to every owner in respect of land owned by him, on an application made by him in this behalf. Section 4 of the Act speaks of Presumption of correctness of entries in the patta pass book. Section 5 of the Act deals with making of entries of registration of alienation or transfer in the patta pass book.

6. Section 6 of the Act refers to the ''Entries in the patta pass book to be prima facie evidence of title'' (vide) (presumption). Section 10 mentions about the filing of an application for modification of entries in the patta pass book. Section 12 deals with filing of an Appeal by any person aggrieved by an order made by the Tahsildar. Section 13 speaks about filing of revision before District Revenue Officer authorised by the Government. Section 14 deals with bar of suits.

7. At this stage, the Learned Additional Government Pleader brings it to the notice of this Court that the Respondents 2 and 3 as plaintiffs have filed the suit in O.S. No. 181 of 2011 on the file of the Learned Sub-ordinate Judge, Athur seeking a relief of passing of a preliminary decree for Division of the suit property into three equal shares and allotting to such shares to the plaintiffs. It appears that the writ petitioner and the Respondent Nos. 3 and 2 are brothers and sister. Obviously there is litigation between them in respect of the property whether the parties are seeking division of properties seeking necessary quantum of shares as morefully and particularly described in the relief portion of the plaint. When the suit in O.S. 181 of 2011 on the file of the learned Sub-ordinate Judge, Athur is very much pending as on date, it is not possible for the First Respondent/Revenue Divisional Officer (R.D.O), Athur Taluk Revenue Division, Salem District to conduct an enquiry in respect of purported improper transfer of patta concerned patta No. 134 etc., mentioned in the notice dated

10.08.2012 of the First Respondent. Therefore, to prevent aberration of justice and to promote substantial cause of justice, the Petitioner and Respondents 2 and 3 who are the parties to the partition suit in O.S. No. 181 of 2011 are directed to await for the outcome of the judgment to be pronounced in the main suit (of course after contest). In the meanwhile, the relief sought for by the Petitioner in the Writ Petition in regard to the conduct of enquiry, based on the enquiry notice dated 10.08.2012 issued by the First Respondent cannot be granted by this Court in the interest of justice. Viewed in that perspective, the Writ Petition filed by the Petitioner sans merits and consequently, it fails. In the result, the Writ Petition is dismissed leaving the parties to bear their own costs. Further, the parties are directed to abide by the decisions/judgment to be rendered by the trial Court in O.S. No. 181 of 2011. After the disposal of the suit in O.S. No. 181 of 2011, the parties are further directed to work out the remedies by informing the First Respondent/Revenue Divisional Officer (R.D.O), Athur Taluk Revenue Division, Salem District and other authorities concerned to proceed further in accordance with law. The parties are directed to lend their assistance and co-operation to the concerned revenue authorities if situation so warrants (after the disposal of the suit in O.S. No. 181 of 2011 on the file of the trial Court).

