
(2014) 10 MAD CK 0110

In the Madras High Court

Case No : W.P. (MD) No. 4222 of 2012 and M.P. (MD) Nos. 1 of 2012 and 2 of 2013

P. Karmegam

APPELLANT

Vs

The Commissioner of Land Administration

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Citation : (2015) 3 CTC 334

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Judgement

R. Mahadevan, J.—This writ petition has been filed praying that this Court may be pleased to issue a writ of Certiorari to call for the records pertaining to the impugned order in Ref. No. K4/7401/2012, dated 21.03.2012 and consequential order of stay passed on 21.03.2012 by the first respondent by way of suo motu review under RSO No. 31-8(A) of the fourth respondent's proceedings and quash the same as illegal and unconstitutional.

2. Brief facts leading to the filing of the writ petition, would run thus:

2.1. It is the case of the petitioner that he is the owner of the land in S. No. 175/2, comprised in Patta No. 2087, at Thiruparankundram Village, Madurai South Taluk. While so, the said land had been wrongly classified as "Salai Poramboke" in the year 1987, without giving any notice to the petitioner. However, he came to know about such classification only in the year 2010 and immediately thereafter, he approached the third respondent seeking to rectify the same. As the said request was not considered by the third respondent, he filed W.P. (MD) No. 14088 of 2010 before this Court seeking a direction and this Court, by order dated 01.12.2010, directed the fourth respondent herein to consider the petitioner's representation dated 27.09.2010 and pass orders thereon.

2.2. Thereafter, the fourth respondent conducted an enquiry and submitted his

report to the second respondent, stating that the land in question stood in the name of the petitioner. The third respondent also confirmed the same and after rectifying the mistakes, ordered to issue a new patta and patta No. 3904 was issued to the petitioner on 06.09.2011. However, the fifth respondent raised an objection before the second respondent stating that the land in question originally belonged to Arulmighu Subramaniasamy Thirukovil, Thiruparankundram and the same was acquired as per the Land Acquisition Act, 1894, so as to lay a road and since the said land had not been put to use for which purpose it was acquired, the fifth respondent pleaded to reconvey the land to the temple.

2.3. In such an event, the second respondent, by communication dated 29.08.2011, informed the first respondent that the third respondent had wrongly classified the land in S. No. 175/2 and issued patta in favour of the petitioner. Later, the first respondent passed the impugned order, granting stay of the proceedings of the third respondent, without any notice to the petitioner and the same is under challenge in the present writ petition.

2.4. The respondents 1 to 4 filed the counter affidavit denying the allegations of the petitioner and contended that though G.O. Ms. No. 409, Revenue Department, 02.07.2008, was passed withdrawing the second revision against the order of the District Revenue Officer to the Commissioner of Land Administration in the patta transfer matters, the suo motu powers under the Revenue Standing Order 31(8), had not been deprived of and therefore, the impugned order is sustainable in law and accordingly, he prayed for the dismissal of the writ petition.

2.5. Whereas the fifth respondent filed a counter affidavit stating that the land in S. No. 175/2, Thiruparankundram Village, was acquired by the Government to lay a road as per Award No. 2/55, dated 09.07.1955 and compensation was also fixed. According to the fifth respondent, the said land was originally acquired for laying a bye-pass road to the Grand Southern Trunk Road within the limits of Thiruparankundram by the Highways Department and the said land was not the ancestral property of the petitioner and the petitioner, without exhausting his remedy before the first respondent, had come before this Court with the present writ petition. It is the specific plea of the fifth respondent that the petitioner is not justified in approaching this Court by way of this writ petition, while the suit filed by him in O.S. No. 449 of 2010, on the file of the District Munsif, Thirumangalam, is still pending and therefore, he prayed for the dismissal of the writ petition.

3. Mr. G.R. Swaminathan, learned Counsel for the petitioner submitted that the first respondent has no jurisdiction to pass the impugned order and that as per the G.O. Ms. No. 409, Revenue SSI(1) Department, dated 02.07.2008, the revisional powers of the first respondent had been withdrawn. He further submitted that the first respondent had not considered the fact that the suit filed by the petitioner had been pending and that there was an interim order of

injunction granted by the trial Court and that the fifth respondent ought to have adjudicated the issue before the trial Court in the pending suit. He also brought to the notice of this court that mutation of records had taken place much before passing of the impugned order. Therefore, he prayed for setting aside the impugned order.

4. In support of his submissions, he relied on the following decisions:

(i) B. Ravi v. The Principal Secretary and Commissioner of Land Administration [W.P. (MD) No. 8259 of 2010, decided on 22.01.2011];

(ii) C. Sabesan Chettiar (Deceased) and others v. The District Revenue Officer [W.A. No. 553 of 2009, decided on 11.08.2011];

(iii) Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, ;

(iv) V.C., Banaras Hindu University and Others Vs. Shrikant, ;

(v) The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, ; and

(vi) State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, .

5. Per contra, Mr. C. Selvaraj, learned Special Government Pleader for the respondents 1 to 4 reiterated the averments found in the counter affidavit filed by them and submitted that the impugned order is tenable since the first respondent had invoked his suo motu review powers and that the same could not be found fault with.

6. Whereas Mr. S. Manohar, learned Counsel for the fifth respondent, placing reliance on the counter affidavit filed by the fifth respondent, contended that the writ petition is premature and that the land in question originally belonged to the temple and that the same had been wrongly classified in favour of the petitioner and that the said land ought to have been reconveyed in favour of the temple, since the same had not been put to the purport for which it was acquired and that the writ petition is not maintainable and therefore, he prayed for the dismissal of the writ petition.

7. I have considered the rival submissions and perused the materials available on records.

8. At the outset itself, this Court finds that it is just and necessary to analyse the purport of G.O. Ms. No. 409, dated 02.07.2008 and the operative portion of it, would read thus:

"4. In the above circumstances, the Government examined the proposal of the Special Commissioner and Commissioner of Land Administration in detail, and decided to accept Amendment to R.S.O. 31.8(A) as mentioned in para 3 above. Accordingly, the Government direct the Special Commissioner and Commissioner of Land Administration that all ongoing enquiries may be carried on to the logical conclusion and orders issued. The Special Commissioner and Commissioner of

Land Administration should ensure that in all cases where enquiries are not commenced, they may be returned back, with direction to approach Competent Court of Law."

(emphasis added.)

9. A bare perusal of the above Government Order would make it clear that the second revision powers vested with the first respondent had been withdrawn and the parties concerned have to approach the competent civil forum for redressal of their grievance as per law.

10. Here, in the case on hand, the first respondent, by invoking his suo motu review powers, had called upon the petitioner to show cause as to why the order of the District Revenue Officer in granting patta in his favour, should not be cancelled, but, without affording an opportunity of personal hearing to the petitioner, granted stay of the proceedings of the District Revenue Officer till the completion of the suo motu review. Challenging the same, the petitioner is before this Court.

11. Admittedly, a civil suit in O.S. No. 449 of 2010, on the file of the District Munsif Court, Thirumangalam, has been filed by the petitioner seeking a relief of declaration of title and permanent injunction, relating to the very same property in question in this writ petition. When the suit filed by the petitioner is still pending, the first respondent is not justified in passing the impugned order and hence, this Court is of the view that the impugned order passed by the first respondent warrants interference at the hands of this Court.

12. For the foregoing reasons, the order passed by the first respondent in exercise of his suo motu review powers, in contradiction to the above said Government Order, is hereby quashed and the parties concerned are directed to adjudicate the civil suit filed in O.S. No. 449 of 2010 on the file of the District Munsif Court, Thirumangalam, in the manner known to law.

13. In the result, this writ petition is allowed as above. No costs.