(2013) 09 MAD CK 0348

In the Madras High Court

Case No : Writ Petition No. 44830 of 2002

S. Hemamalini APPELLANT

Vs

The Special Commissioner for Land Administration Chepauk, The District Revenue Officer Nagapattinam, The Revenue Divisional Officer Mailaduthurai and P. Muthaiah RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0348

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : R. Lakshminarayanan AGP for R1 to R3, for the Respondent

Final Decision : Disposed Off

Judgement

C.S. Karnan, J.—The prayer in the writ petition is for issuance of Writ of Certiorari to quash the order dated 21.11.2002 in G2/17930/1997, passed by the first respondent. The short facts of the case are as follows:-

The petitioner submits that she is residing at Old No. 3/90A, Kumaran Street, Sembanarkoil, Tharangambadi Taluk, Nagapattinam District, along with her husband and his family members for over several decades and as per the Tamil Nadu Government Scheme, the petitioner had applied for granting of Patta, in respect of 2 Cents, in Survey No. 78/1, Sembanarkoil, Tharangambadi Taluk, Nagapattinam District.

2. The Tahsildar, Tharangambadi Taluk, after considering her request, verifying all the relevant documents and made a personal inspection of the place, wherein the petitioner and her family are living, had granted a Patta in her favour under his Proceedings No. Na.Ka. 9516/1993/A3, dated 31.03.1994.

3. During the pendency of the proceedings, the fourth respondent has filed his objection before the Tahsildar and the Tahsildar after verifying the objection had found his objection as not valid and ultimately granted the Patta in favour of the

petitioner herein by his Order dated 31.03.1994.

4. As against the said order passed by the Tahsildar, the fourth respondent had filed an appeal before the third respondent/the Revenue Divisional Officer, Mayiladuthurai and the third respondent after verifying all the relevant documents and after hearing all the parties concerned had set aside the order of the Tahsidar by his proceedings in Na.Ka. No. 7700/1994/A-4, dated 25.08.1994.

5. As against the said order passed by the third respondent/the Revenue Divisional Officer, dated 25.08.1994, the petitioner has filed a revision petition before the second respondent/the District Revenue Officer, Nagapattinam District. The second respondent after verifying all the relevant records and after hearing all the parties, has set aside the order dated 25.08.1994, passed by the third respondent and allowed the revision petition filed by the petitioner, by Proceedings in Na.Ka. No. 44802/1996/F3, dated 21.03.1997.

6. Against the order dated 21.03.1997, passed by the second respondent, the fourth respondent had filed a revision petition before the first respondent/the Special Commissioner for Land Administration. The first respondent, after hearing the parties and after verifying the relevant records, has set aside the order passed by the second respondent and allowed the revision petition filed by the fourth respondent by his Proceedings No. G2/17930/1997, dated 21.11.2002.

7. As against the order passed by the first respondent in Proceedings No. G2/17930/1997, dated 21.11.2002, the petitioner has filed this writ petition after revoking the provision under Article 226 of Constitution of India.

8. The first respondent has filed a counter statement and resisted the writ petition by stating that the petitioner filed the above writ petition against the order dated 21.11.2002, bearing No. G2/17930/1997, in the matter of house site assignment of land in R.S. No. 78/1, measuring an extent of 0.01.0 Are in Sembanarkoil Village, Tharangambadi Taluk. The total extent of land in R.S. No. 78/1 (classified as Natham Poramboke) is 2.09.0 Hectare.

9. Further, the first respondent has submitted that the house site assignment pattas have already been made in Natham special survey in R.S. No. 78/1 i.e., the land in question, to several persons splitting and changing the survey number into several sub divisions. As per the above assignment order, R.S. No. 157/22 has been involved in this case. The total extent of this survey number is 180 sq. mt., (4.44 cent). The petitioner has marked one Muthiah as fourth respondent. He has got rights over this land as per the sale records, Will and other documents produced by him at the time of enquiry.

10. It is submitted that the house site assignment in R.S. No. 78/1 has been made to the petitioner as per Taluk Officer, Tharangambadi file No. Rc. 9516/93/ B3, dated 31.03.1994. The petitioner has resided on rental basis as tenant in R.S. No. 78/1. The petitioner has originally got patta by giving false statements. Now, it is clear and evident that the fourth respondent has got rights over the

said land as per Natham Survey settlement records. Therefore, the petitioner has no title over the land as she has not produced proper documents for the land in question.

11. Further, it is submitted that the assignment has been made to the fourth respondent, on appeal, on the basis of records produced by him with demarcation of four boundaries of the said land in question. Therefore, the objections raised by the petitioner are null and void.

12. Further, it is submitted that the petitioner has resided for many years in the land in question, on rental basis, i.e., only as tenant. The owner of the land in this case is the fourth respondent. Hence, the petitioner has no rights in this land in question.

13. It is submitted that the fourth respondent has got rights over the land in question by taking this land in an open auction in file No. F.P. 692/31 and he has also proved the title of the land by producing the demarcation of four boundaries and other evidences at the time of enquiry. Hence, the petitioner''s plea that she has got title over the land in question was not proved by proper documents. Therefore, the allegations raised by the petitioner are not correct.

14. It is submitted that a suit in O.S. No. 145 of 1992 was filed before the District Munsif Court, Nannilam, against the petitioner for not paying the rent for her residence place. It clearly proves that the petitioner is only a tenant and not the owner of the land in question. It is submitted that the documents produced by the fourth respondent, at the time of enquiry, for getting patta, was genuine and correct. Hence, the petitioner''s plea is not tenable.

15. The fourth respondent has filed his counter statement and resisted the claim of the petitioner by stating that the subject matter of the dispute is in respect of 2 Cents in R.S. No. 78/1 at Sembanarkoil Vattak, Mayiladuthurai Taluk. He has submitted that his great grandfather Muthukumara Pathar had purchased an extent of 5 Cents in R.S. No. 78/1, on 20.09.1932, in the Court Auction Sale conducted in E.P. No. 692 of 1931, on the file of the District Munsif Court, Sirkali. Subsequently, the said Muthukumara Pathar had executed a Will dated 11.03.1954, bequeathing the property purchased in the Court auction sale in favour of his son i.e., father of the fourth respondent Pavadai Pathar.

16. Subsequently, on 12.07.1979, a lease agreement was entered into with one Veerappa Mudaliar, father-in-law of the writ petitioner, in respect of the shop constructed in the R.S. No. 78/1. The constructed area is only 3 Cents and the remaining 2 Cents was vacant. The lease was in respect of constructed portion only and the lease was extended. Since the lessee Veerappa Mudaliar, father-in-law of the writ petitioner did not pay rent regularly, the father of the fourth respondent Pavadai Pathar filed a suit in O.S. No. 145 of 1992, on the file of the District Munsif Court, Nannilam, for recovery of possession of the leased portion of 3 Cents and for arrears of rent Rs. 1,080/- with costs against the lessee Veerappa Mudaliar. During the pendency of the suit, the father of the fourth

respondent died and therefore, the fourth respondent and other legal heirs were impleaded as legal representatives in the suit.

17. Further, he has submitted that during the pendency of the above suit, the petitioner herein, who is none other than the daughter-in-law of the above said lessee Veerappa Mudaliar applied for issuance of Patta in respect of vacant portion of 2 Cents in R.S. No. 78/1 and the fourth respondent had filed his objections on 13.09.1993 to the Tahsildar, Tharangambadi Taluk, stating that the suit in O.S. No. 145 of 1992 is pending and the 5 Cents in R.S. No. 78/1 is the ancestral property of the fourth respondent. Subsequently, the suit in O.S. No. 145 of 1992 was decreed ex parte.

18. He has submitted further that during the pendency of the suit the Tahsildar had issued patta in respect of 2 Cents in R.S. No. 78/1 in favour of the petitioner herein on 31.03.1994. Aggrieved by which, the fourth respondent had filed an appeal before the third respondent and the third respondent, after considering all the materials and records, had rightly held that the 2 cents is the ancestral property of the fourth respondent and cancelled the patta issued in favour of the writ petitioner.

19. Further, he has submitted that the petitioner had preferred a revision before the second respondent and the ex parte decree in O.S. No. 145 of 1992 was set aside and the suit was pending at that time. Therefore, the revision was dismissed on 24.06.1996 with a direction to approach the authorities after the disposal of the suit in O.S. No. 145 of 1992. Subsequently, the petitioner filed a revision before the second respondent and the second respondent had misread the Will dated 11.03.1954 and erroneously allowed the revision on 21.03.1997. Therefore, he had preferred the revision before the first respondent. During the pendency of the above revision, the suit in O.S. No. 145 of 1992 was decreed on merits on 21.08.2001. The first respondent, after considering all the relevant records and considering the four boundaries regarding the disputed land has rightly allowed the revision filed by him holding that the 5 Cents in R.S. No. 78/1 is the ancestral property of the fourth respondent and patta for 2 cents issued to the petitioner belonged to the family of the fourth respondent and therefore patta cannot be issued in respect of the 2 cents in R.S. No. 78/1. The patta issued in favour of the petitioner was cancelled by the first respondent. As against the same, the petitioner has come forward with the above writ petition to quash the order dated 21.11.2002, passed by the first respondent.

20. The learned counsel appearing for the petitioner has raised the grounds that the petitioner and her family members are living in the said property for over several decades, wherein the Tahsildar, Tharangambadi Taluk had granted patta, after a physical verification and on scrutinizing the documents, which are standing in the name of the petitioner and after considering the objections raised by the fourth respondent. Further, the first respondent ought to have seen that the fore-father of the fourth respondent namely Muthukumar Pathar had executed a Will in favour of his grandson namely Pavadai Pathar in respect of 5

Cents, in Survey No. 78/1. The fourth respondent is the son of the said Pavadai Pathar. The said Muthukumara Pathar had also mentioned in the said Will in respect of 5 Cents in Survey No. 78/1 in favour of one Sambandhan in B-Schedule of the said Will. Admittedly, the said Muthukumara Pathar had purchased only 5 Cents through the Court auction in E.P. No. 692 of 1931. Whilst, the said Muthukumara Pathar had executed the Will in respect of the same property in favour of two different persons. The fourth respondent had not established that which is his 5 cents as per the Will.

21. The learned counsel further raised the grounds that the first respondent ought to have seen that the fourth respondent had filed a civil suit in O.S. No. 145 of 1992, on the file of the District Munsif, Nannilam, for the recovery of possession of the property in respect of 3 Cents in survey No. 78/1, against one Veerappa Mudaliar. Neither the fourth respondent nor his father have mentioned anything in the said suit about the 5 Cents in Survey No. 78/1. There is mention only about 3 cents. If they are the owner of the properties in respect of the 2 cents in Survey No. 78/1, wherein the Patta was granted in favour of the petitioner, they ought to have mentioned in the suit with all details. Therefore, the second respondent had correctly held that the said 2 cents is not belonging to the fourth respondent and the order passed by the Tahsildar in granting Patta in favour of the petitioner is valid and correct. This aspect has not been properly considered by the first respondent.

22. Further, he has submitted that the first respondent had failed to consider that the boundaries of the properties in respect of 5 cents in Survey No. 78/1 and boundaries of the property regarding 2 cents in Survey No. 78/1 are different. However, the first respondent has stated in her order that the boundaries are similar in both the properties and held that the contention of the revision petition is valid and correct. The first respondent has not mentioned anything clearly about the property whether it is belonging to Government or belonging to the particular individual. All the revenue records clearly show that the property is Village Natham. This aspect has also not been properly considered by the first respondent while passing the impugned order.

23. The learned Additional Government Pleader appearing for the respondents 1 to 3 has argued that as per revenue records the property situated in R.S. No. 78/1 classified as Natham poramboke and the property to an extent of 2.09 Acres. As such, the property is absolutely belonging to Government. The first respondent is being the Special Commissioner for Land Administration and he is holding the highest position in the Revenue Department, had scrutinized his subordinate orders and also verified the connected records and passed the impugned order, which is maintainable. Regarding title, enjoyment, patta and civil right disputes have to be decided on the basis of relevant records which are pertaining to the property before the single forum including the first respondent order after framing necessary issues. Therefore, the writ petition is not maintainable before this Court, since an adjudication is absolutely required to

sort out the issue. Hence, the highly competent counsel requests the Court to dismiss the writ petition.

24. The learned counsel for the fourth respondent has submitted that the petitioner''s property to an extent of 5 Cents situated in R.S. No. 78/1 was purchased by Muthukumara Pathar''s father in Court auction on 20.09.1932 as per the E.P. Proceedings No. 692 of 1931, on the file of the District Munsif Court, Sirkali. The said property bequeathed in favour of the fourth respondent by way of executing a Will. Out of 5 cents, 3 cents was leased out to Veerappa Mudaliar, father-in-law of the petitioner by Pavadai Pathar''s father, who is the father of the fourth respondent.

25. The highly competent counsel further pointed out that the lessor Pavadai Pathar''s father has filed a suit in O.S. No. 462 of 1990, on the file of the District Munsif Court, Mayiladuthurai, against the lessee namely Veerappa Mudaliar. The said suit had been transferred to the District Munsif Court, Nannilam and renumbered as O.S. No. 145 of 1942. The further proceedings initiated by daughter-in-law of the Veerappa Mudaliar, while the pending of the suit, the said suit decreed ex parte. Patta for 2 cents issued in favour of the petitioner by the Tahsildar, the same has been cancelled by the Revenue Divisional Officer through appeal. Under the circumstances, the ex parte decree is set aside by way of revision petition and directed the parties to file the suit again. Again the suit decree became ex-parte. By virtue of ex parte decree eviction order has been passed against the petitioner''s father-in-law in respect of 3 cents, who was the original lessee. On the basis of judicial order, the impugned order has been passed, which is sustainable. Hence, the very competent counsel expects the Court to dismiss the writ petition since the property is an ancestral one.

26. After the above discussion, this Court is of the view that:

i. As per the revenue records the said property classified as Natham Poramboke. As per the fourth respondent''s title deed over the said property classified as patta land, since the land had been purchased by the grandfather of the fourth respondent in the Court auction conducted by the District Munsif Court, Sirkali, in E.P. No. 692 of 1931. This is the main issue whether the property belongs to Government or private individual.

ii. At the time of granting Patta, in favour of the petitioner by the Tahsildar, after physical verification and revenue records and documents of the writ petitioner, is in lawful position and she is found continuously in possession.

iii. The suit in O.S. No. 145 of 1992 has been filed by the fourth respondent against the father-in-law of the petitioner, the said suit decreed ex parte on 25.11.1996 for the second time. At that point of time, the petitioner is in physical possession of the property and also patta was issued in her favour on 31.03.1994 by the Tahsildar, Tharangambadi, as such both of them are necessary parties in the title suit in O.S. No. 145 of 1992 filed by the fourth respondent and decreed on 25.11.1996 without added her as necessary party.

iv. As per the Indian Constitution Law, the judiciary is the highest branch and the executive is functioning under the judiciary, therefore the executive order passed by the Tahsildar on 31.03.1994 by way of granting patta in favour of the writ petitioner and subsequently handled by the superior authorities namely the respondents 1, 2 and 3 herein. All the executive authorities have no locus standi to pass any orders since the original suit in O.S. No. 462 of 1990 has been initiated on the file of the District Munsif Court, Mayiladuthurai, filed by the father of the fourth respondent for the same property.

27. On verifying the factual position of the case and on arguments advanced by the learned counsel on all sides and on perusing the impugned order of the first respondent and this Court''s view 1 to 4 as above, the writ petition is disposed of and the impugned order passed by the first respondent is set aside. The fourth respondent is at liberty to file a fresh suit for ownership and delivery of his property after impleading the Revenue authorities and the writ petitioner as necessary parties for delivery of property, until such time the petitioner''s possession should not be disturbed. In the result, the above writ petition is disposed of with the above observation. Consequently, connected miscellaneous petitions are closed. No costs.

