(2014) 09 MAD CK 0353

In the Madras High Court

Case No : W.P. (MD) No. 19405 of 2013, M.P. (MD) Nos. 1 of 2013 and 1 of 2014

Sree Kumar Textiles Pvt. Ltd. APPELLANT

Vs

The District Revenue Officer RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

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

Citation : (2014) 09 MAD CK 0353

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—With the consent of both parties, this writ petition is taken up for final disposal.

2. The petitioner seeks for issuance of a writ of certiorari to quash the order, dated 25.10.2013, passed by the first respondent, by which the Patta standing in the name of the petitioner, in respect of the property, comprised in Survey Nos. 30/3 and 38/5 of Poovanthi Group, Thiruppuvanam Taluk, Sivagangai District, was corrected and issued in the name of the private respondents.

3. The petitioner is a private limited company said to have acquired large extent of land in Poovanthi Village for establishment of their textile mill. The petitioner purchased an extent of 1 Acre 88 Cents in Survey No. 30/3 and an extent of 1 Acre 54 Cents in Survey No. 38/5, by two registered sale deeds, dated 03.07.1980 and 23.07.1980 respectively. The revenue records were mutated in the name of the petitioner''s Company during 1982 and in a portion of the said property, the petitioner constructed building for establishing a textile mill. During 2007, the fourth respondent is said to have purchased an extent of 88 Cents out of 1 Acre 88 Cents in Survey No. 30/3 and 1 Acre 54 Cents in Survey No. 38/5, by a registered sale deed, dated 23.05.2007.

4. According to the petitioner, the purchase effected by the fourth respondent is invalid. Based on the said sale deed, dated 23.05.2007, the fourth respondent

submitted an application to the second respondent for mutation of the revenue records in his favour. The second respondent issued a notice, dated 27.06.2008, calling upon the petitioner to attend an enquiry based on the application submitted by the fourth respondent. The petitioner submitted their written objections to the second respondent. Whileso, the fourth respondent executed a settlement deed in favour of the fifth respondent, who is none other than his wife, by a settlement deed, dated 10.01.2011, this according to the petitioner was with a view to create a further problem and pressurized the revenue authorities to change the revenue records in the name of the fifth respondent.

5. In such circumstances, the petitioner filed a suit in O.S. No. 44 of 2011, on the file of the learned Additional District Munsif-cum-Judicial Magistrate, Manamadurai, seeking for a declaration of their title to the said property and permanent injunction. The Trial Court, by Judgment and Decree dated 09.08.2013, dismissed suit filed by the petitioner and as against which the petitioner preferred an appeal in A.S. No. 110 of 2013, before the Sub Court, Sivagangai. Therefore, it is submitted that the issue regarding the title to the property, comprised in Survey Nos. 30/3 and 38/5 of Poovanthi Village, is pending before the Civil Court in A.S. No. 110 of 2013.

6. The fifth respondent filed an application for cancelling the Patta granted in favour of the petitioner and to issue Patta in her name and based on the said application, the first respondent issued a notice of enquiry to the petitioner and the petitioner placed their objection, dated 01.10.2013 specifically stating that the dispute regarding the title is pending before the Civil Court and it is not proper for the first respondent to proceed further with the enquiry. Further, the petitioner is said to have placed all materials to substantiate their title over the property in dispute in the objections filed before the first respondent. It was pointed out in the objections that there is no error in the Patta issued to the petitioner and it is incorrect on the part of the fifth respondent to state that there is a mistake while implementing the UDR Scheme. Further, it was pointed out that a similar request was made to the second respondent by the fourth respondent, which was declined and therefore requested the first respondent to reject the claim of the fifth respondent.

7. The first respondent passed an order, dated 25.10.2013, directing the third respondent to issue a joint Patta in respect of the property comprised in Survey No. 30/3 in favour of the petitioner Company as well as the fifth respondent and in respect of the property comprised in Survey No. 38/5 directed the Patta to be changed in the name of the fifth respondent. The said order passed by the first respondent is impugned in this writ petition.

8. Mr. K. Srinivasan, learned senior counsel, assisted by Mr. M.P. Senthil submitted that the first respondent has no jurisdiction to entertain the application of the fifth respondent as he is not the original authority to entertain an application for modification or issuance of a Patta as he is a revisional authority under the Tamil Nadu Patta Passbook Act (hereinafter, referred to as

''the Act''). Further, it is submitted that the impugned order is beyond the jurisdiction of the first respondent having regard to the Sections 3, 10 and 13 of the Act. It is further submitted that an appeal is pending before the Sub Court, Sivagangai, in A.S. No. 110 of 2013, with regard to the title over the property in question and whileso the first respondent could not have usurped the powers of the Civil Court.

9. Further, it is submitted that the observation made by the first respondent in the impugned order stating that it is passed subject to the outcome of the Judgment in A.S. No. 110 of 2013 is erroneous. Further, it is submitted that from 1982 onwards, the entire revenue records stand in the name of the petitioner and if the impugned order is given effect to, the petitioner''s right would be greatly affected and till the appeal is decided by the Sub Court, Sivagangai, the entry in the revenue records should not be changed. On the above grounds, the learned senior counsel sought for setting aside the impugned order. In support of his contention, reliance was placed on the decisions of the Honourable Division Bench of this Court in the cases of Vishwas Footwear Company Ltd. Vs. The District Collector and Others ; P. Pathiah Moopar Vs. The Revenue Divisional Officer, and the decisions in the cases of M. Arumugam v. The Revenue Divisional Officer, reported in 2012 (1) CWC 19 and T.R. Dinakaran Vs. The Revenue Divisional Officer, Aruppukottai. and 9 Others, .

10. Mr. G.R. Swaminathan, learned counsel for the respondents 4 and 5, submitted that the property comprised in Survey Nos. 30/3, measuring an extent of 1 Acre 88 Cents and 38/5, measuring an extent of 1 Acre 54 Cents, originally belonged to Palaniyandi and Vellaiyan and their names are reflected in ''A'' Register and they sold the same to Rama Iyengar by a registered sale deed, dated 13.08.1958 and after his demise, the fourth respondent purchased an extent of 88 Cents in Survey No. 30/3 and 1 Acre 54 Cents in Survey No. 38/5, by a registered sale deed dated 23.05.2007, from one Srinivasan, who is the son of Late. Rama Iyengar and subsequently settled the said property in favour of his wife the fifth respondent herein, by settlement deed dated 10.01.2011.

11. Further, it is submitted that one Kallayee and Panchayee, legal heirs of Palaniyandi, sold the very same property to the writ petitioner during 1980 and Patta has been obtained by the petitioner based on such sale deed. It is submitted that the purchase effected by the petitioner is void since the said Kallayee and Panchayee had no title to the property. Therefore, the fourth respondent filed an application before the Tahsildar and thereafter submitted a representation to the Revenue Divisional Officer, Sivagangai and since no orders were passed the petitioner filed an application before the District Revenue Officer, Sivagangai.

12. It is further submitted that since the matter pertains to a correction in respect of UDR entry, the first respondent is the competent authority. Further, it is submitted that the suit filed by the petitioner in O.S. No. 44 of 2011 was dismissed by the Trial Court on 09.08.2013 and the appeal filed by the petitioner

in A.S. No. 110 of 2013 is pending and no interim order has been granted in the said appeal. Further, it is stated that the property is in possession of the private respondents and at that stage the writ petition has been filed and interim orders have been obtained and the writ petitioner is trying to take advantage of the interim order granted by this Court.

13. Further, it is submitted that the pendency of the first appeal cannot be a ground to set aside the impugned order and the first respondent is the competent authority to correct the errors, which had occurred while implementing the UDR Scheme and when the writ petitioner purchased the property from persons, who had no title over the same, they are not the original owner of the property. Further, it is submitted that the impugned order will not have any bearing on the first appeal pending before the Sub Court, Sivagangai and the first respondent took up the matter only after the suit was disposed of in favour of the respondents 4 and 5. On the above grounds, the learned counsel seeks to sustain the impugned order.

14. Heard Mr. M. Raja Rajan, learned Government Advocate for the respondents 1 to 3, on the above submissions.

15. The issue which falls for consideration is as to whether the first respondent was justified in passing the impugned order and directing the Patta to be issued in the joint names of the petitioner and the fifth respondent in respect of one of the property and to be changed in the name of the fifth respondent from the name of the petitioner, exclusively in respect of the other property when the appeal filed by the petitioner in A.S. No. 110 of 2013 against the Judgment and Decree in O.S. No. 44 of 2011 is pending before the Sub Court, Sivagangai.

16. In terms of Section 10 of the Act, under three contingencies a person can approach the Tahsildar, for mutation/change of entry in the revenue records, namely by reason of death of any person or by reason of the transfer of interest in the land or by reason of any other subsequent change in circumstances. In terms of Section 12 of the Act, the Revenue Divisional Officer is the appellate authority as against the order passed by the Tahsildar either under Section 10 or under any other provision of the Act. As against the order passed by the Revenue Divisional Officer, the District Revenue Officer is the revisional authority and he could examine the correctness of the order passed by the Tahsildar or the appellate authority, within whose jurisdiction the property is situate in respect of any proceedings under the Act by exercising revisional power under Section 13 of the Act. Rule 12 of the Tamil Nadu Patta Passbook Rules, 1982 (hereinafter, referred to as ''the Rules'') deals with applications for modification of entries in the Patta Passbook. Rule 14 prescribes that an appeal as against any order of the Tahsildar under the Act shall be filed before the Officer in charge of Revenue Division in whose jurisdiction the property lies, within a period of 30 days and in terms of Rule 15 revision application under Section 13 of the Act could be filed within a period of 90 days with a power to condone the delay if sufficient cause has been shown.

17. The private respondents would admit that they presented an application before the Tahsildar for grant of Patta/change of Patta in their name. This application was initially made by the fourth respondent, who claimed to have purchased the property by sale deed, dated 23.05.2007. Admittedly, the fourth respondent did not pursue the said application. Thereafter, he executed a settlement deed, dated 10.01.2011 in favour of his wife, fifth respondent in respect of the same property. In the counter affidavit, it is stated that the respondents 4 and 5 were advised to move the Revenue Divisional Officer and since he did not pass any orders, they filed a petition before the first respondent District Revenue Officer. However, on perusal of the impugned proceedings, it is seen that the first respondent has exercised power as original authority and though in the subject column of the impugned order there is a reference to UDR Scheme, in the body of the order there is no such specific reference that the application has been entertained for rectification of entry, made at the time of implementing the UDR Scheme.

18. The first respondent, in the impugned order, has admitted the fact that an appeal is pending in A.S. No. 110 of 2013, before the Sub Court, Sivagangai, as against the Judgment in O.S. No. 44 of 2011, which was dismissed by the Trial Court by Judgment, dated 19.08.2013. Admittedly, the fourth respondent claims to have purchased the property during 2007 after the purchase effected by the petitioner during 1980 and the Patta stood transferred in the name of the petitioner during 1982. The respondents 4 and 5 would submit that the vendor of the petitioner had no title to the property in question and the sale effected in favour of the petitioner was void. However, this issue cannot be decided by the first respondent and it is only a Civil Court, which can go into such a question and this issue is no longer res integra and settled by the Honourable Division Bench in the case of Vishwas Footwear Company Ltd., (cited supra), which has been followed in the subsequent decisions as well. The Honourable Division Bench took note of the earlier decision in the case of Kuppuswami Nainar Vs. The District Revenue Officer and Others, , wherein the Honourable Division Bench in categorical terms held that the question of title to the property has to be decided only by the Civil Court.

19. On a perusal of the operative portion of the impugned order, it is seen that the first respondent has gone into the title and virtually rendered a finding that the vendor of the petitioner had no title to the property. This finding should not have been rendered by the first respondent moreso when the appeal filed by the petitioner is pending before the Sub Court, Sivagangai, in A.S. No. 110 of 2013. The settled legal principle being appeal is a continuation of the original proceedings and dismissal of the suit could not have been the sole basis for the first respondent to adjudicate the title and render finding. The correctness of the decision rendered by the Trial Court is a subject matter of challenge before the Lower Appellate Court. Therefore, till the finality attains in the civil proceedings, the first respondent ought not to have exercised jurisdiction. That apart, the fourth respondent has admitted that initially he filed an application for grant of

Patta before the Tahsildar. It is not known as to why he abandoned such an application and after about four years settled the property in favour of the fifth respondent and then moved the revenue officials. The contentions raised by the respondents 4 and 5 that they initially approached the Tahsildar, who directed them to go before the Revenue Divisional Officer and since the Revenue Divisional Officer did not pass any orders, they approached the District Revenue Officer, are all statements not substantiated by any records.

20. As noticed above, there is no specific finding rendered by the first respondent stating that the impugned order has been passed to rectify the mistake, which has occurred while implementing UDR Scheme. If that be the case, the first respondent had no jurisdiction to entertain an application at the instance of the respondents 4 and 5 for grant of Patta and therefore the impugned order suffers from lack of jurisdiction. In the light of the above findings, the impugned order passed by the first respondent calls for interference.

21. In the result, the writ petition is allowed and the impugned order, dated 25.10.2013, passed by the first respondent, is set aside and the Patta is directed to be restored in the name of the petitioner and shall be maintained as such till the Civil Court decides the title to the property. The respondents 1 to 3 are directed not to entertain any application for mutation in respect of the properties in question and the revenue records shall stand in the name of the petitioner. The petitioner as well as the respondents 4 and 5 shall establish their title before Civil Court without any reference to any entry in the revenue records by establishing their title independently based on the oral and documentary evidence. Consequently, connected miscellaneous petitions are closed. No costs.

