
(2017) 04 MAD CK 0288
In the Madras High Court
Case No : 15151 of 2016

The Tirunelveli Diocesan Trust Association	APPELLANT
Vs	
The District Collector	RESPONDENT

Date of Decision : 13-04-2017

Acts Referred:

Constitution of India, Article 226 -
Patta Pass Book Act, 1983, Section 12

Citation : (2017) 04 MAD CK 0288

Hon'ble Judges : V. Parthiban

Bench : SINGLE BENCH

Advocate : V. Parthiban

Judgement

1. The Petitioner has approached this Court invoking Article 226 of the Constitution of India seeking quashment of the order passed by the 2nd respondent in Na.Ka.A7/2770 of 2016 dated 25.07.2016.
2. The petitioner Tirunelveli Diocesan Trust Association is the body corporate registered under the Companies Act, 1956. The Trust Association owns a number of properties, which include St.Johns School, Palayamkottai, a Oldage Home and a Hospital. The School including its playground, Oldage Home and the Hospital is a private property owned by the petitioner. The property is located in S.No.149/1, Palayam Chettikulam Village, which is later reclassified as Town Survey No.59/1.
3. According to the petitioner, the property originally belonged to one Nellainayagam Pillai and on his demise the property is said to have been devolved on his legal heirs Sivasubramaniam Pillai and Kumarasami Pillai. According to the petitioner, the property held by Nellainayagam Pillai is an Inam property and a part of the property to an extent of 10 Acres and 5 Cents came to be leased to the petitioner by a registered lease deed dated 01.11.1927. In addition to the same, the said Kumarasami Pillai also executed a sale deed in favour of the petitioner conveying the property to an extent of 22.5 cents in

favour of the petitioner on 17.12.1951. On the death of Sivasubramania Pillai, who is the father of the third respondent herein, the third respondent along with his brothers inherited the property and they sold a further extent of 7 Acres 25 cents in favour of the petitioner by a registered sale deed dated 31.03.1954.

4. According to the petitioner, the Association has been in absolute enjoyment and possession of the aforesaid conveyed property. While matter stood thus, in 1963, the Tamil Nadu Inam Estates (Abolition and Conversion in Ryotwari) Act, 1963 came to be introduced with effect from 01.01.1964 and by operation of Section 3 of the said Act, all Inams came to be abolished and the same came to be vested in the Government free of all encumbrances. Thereafter, it appears that on completion of the settlement proceedings under the said Act, the Settlement Officer, Kovilpatti by his order dated 26.09.1974 granted Ryotwari patta in respect of Survey No.149, Palayamchettikulam Village, Tirunelveli District in favour of the petitioner. According to the petitioner, the settlement in favour of the Tirunelveli Diocesan Trust Association became final as no appeal or revision was filed by any party.

5. It is the case of the petitioner that all these years, the petitioner association has been in absolute possession and enjoyment of the property in question without any disturbance. While so, a suit also filed by the petitioner in O.S.No.50 of 2007, on the file of the Subordinate Judge, Tirunelveli against the legal heirs of the said Kumarasamy Pillai and another as they claimed title to the property. The suit is one for declaration of title and permanent injunction against the defendants therein. According to the petitioner, the said suit is still pending and the issue of title between the petitioner and the legal heirs of Kumarasamy Pillai and another is yet to be decided.

6. According to the petitioner, the association has been enjoying the uninterrupted possession and title to the subject property for over 50 years. The third respondent is said to have preferred an application seeking inclusion of his name in the patta by his application dated 26.05.2016 to the second respondent in respect of the property in S.No.149/1, Palayam Chettikulam Village, which is reclassified as Town Survey No.59/1. The third respondent appears to have submitted an application for a joint patta in respect of the subject property along with the petitioner association. On coming to know about the application filed by the third respondent dated 26.05.2016, the petitioner had filed an objection petition dated 23.06.2016 to the second respondent. The petitioner inter-alia contended in the objection petition that the second respondent has no jurisdiction to entertain the application as the settlement has become final as early as in the year 1974 and admittedly no appeal or revision was filed against the settlement of property. Moreover, it was also contended that the question involved is with regard to the title of the property and therefore, the second respondent had no jurisdiction to go into the title dispute between the parties as the competent Civil Court alone has jurisdiction in this issue.

7. According to the petitioner, the suit is also pending on the file of the

competent civil Court. Therefore, it was not open to the second respondent to consider the application filed by the third respondent for mutation of revenue records. According to the petitioner, as per Rule 4(4) of the Tamil Nadu Patta Pass Book Rules, 1987, the competent authority will have to direct the parties to approach the civil Court. The second respondent notwithstanding the objection raised by the petitioner has passed the order dated 25.07.2016, to include the name of the third respondent as joint pattathar and directed to mutate the revenue records in order to give effect to the order passed by the second respondent, which is impugned in the writ petition.

8. Per contra, a counter affidavit was filed on behalf of the third respondent, in which it is stated that the members of the third respondent family were in complete and peaceful enjoyment of the property measuring an extent of 9.87.2 hectares in S.No.149/1, now Town Survey No.59/1 out of which 7 acres and 25 cents was sold to the petitioner. The said property was not an Inam property as alleged by the petitioner and therefore, the Tamil Nadu Inam Estates (Abolition and Conversion in Ryotwari) Act, 1963 is not applicable to the property owned by the third respondent. Therefore, the third respondent is in no way concerned about the order dated 26.09.1974 of the Settlement Officer. It is averred in the counter affidavit that the said Kumarasamy Pillai and the suit filed by the petitioner against his legal heirs and another had nothing to do with the third respondent and therefore, the pendency of the suit was no obstacle for the third respondent to approach the revenue authorities for mutation of revenue records in his favour on the basis of his claim.

9. According to the third respondent, as averred in the counter affidavit, though a portion of the land was sold i.e., 7 Acres and 25 cents to the petitioner vide registered sale deed dated 31.03.1954 in document No.811 of 1954 in Survey No.149/1 and Town Survey No.59/1, the petitioner had obtained patta to the entire extent of land measuring 9.87.2 hectares, although the remaining land after the sale of 7 Acres 25 cents was in absolute possession and enjoyment of the third respondent. In the above circumstances, according to the third respondent, he approached the revenue officials and the third respondent has issued joint patta, on the basis of the materials available in the revenue records, on 15.10.1996 and 26.06.1997. According to the third respondent, over a period of time without notice to the third respondent patta had been transferred solely in the name of the petitioner and the third respondent was not aware of the change in the revenue records and including the petitioner's name only as a sole pattathar in respect of the entire piece of land i.e. 9.87.2 hectares in S.No. 149/1 and Town Survey No.59/1. Therefore, on coming to know about the mutation of records, the third respondent has approached the second respondent for restoration of the patta which was originally granted to them. The second respondent after considering all the objections by the petitioner finally passed the impugned order in favour of the third respondent and while passing the order there was no question of second respondent deciding the title of the rival claimants, but only restoration of the original patta granted in favour of the third

respondent, which was subsequently changed without notice to the third respondent. In all, the third respondent contended that the petitioner cannot have any grievance for grant of joint patta in favour of the third respondent as admittedly only 7 acres 25 cents was sold to the petitioner by the third respondent. The counter affidavit has also emphasized the fact that the suit in O.S.No.50 of 2007 filed by the petitioner against the legal heirs of Kumarasami Pillai and another has nothing to do with the claim made by the petitioner herein.

10. The second respondent has also filed a counter in the writ proceedings stating that the second respondent has rightly passed the order in view of the fact that the third respondent was enjoying the property in question and the order was also passed on the basis of spot inspection. According to the second respondent, in case the writ petitioner is aggrieved by the order passed by the second respondent, it is always open to him to approach the revenue Divisional Officer, Tirunelveli under Section 12 of the Patta Pass Book Act, 1983.

11. Mr.M.Ajmalkhan, the learned Senior Counsel appearing for the petitioner strongly contended that the impugned order passed by the second respondent is vitiated for more than one reason. Firstly, he would contend that the second respondent lacked jurisdiction in entertaining the application filed by the third respondent in 2016 after more than 40 years when the settlement granted in favour of the petitioner by the settlement officer dated 26.09.1974 under the Tamil Nadu Inam Estates (Abolition and Conversion in Ryotwari) Act, 1963 became final and no appeal or revision had been filed against the said settlement within the time stipulated in the Act. Moreover, the petitioner was not heard in the application filed by the third respondent although objections had been raised on behalf of the petitioner. The learned Senior Counsel would further contend that even otherwise if the second respondent had jurisdiction, the order passed by him amounting to deciding the title issue as between the third respondent and petitioner and such power is not vested in him under the provisions of the Patta Pass Book Act. Therefore, he would contend that the order passed by the second respondent in its entirety has to be set aside as the same is un-sustainable in all the fours.

12. The learned Senior Counsel appearing for the petitioner would also rely upon two decisions of this Court. One is reported in 2011 (5) CTC 94 in the matter of Vishwas Footwear Company Ltd., v. The District Collector, Kancheepuram (DB) and another in 2011 (2) CWC 337 in the matter of C.Sabesan Chettiar (Deceased) v. The District Revenue Officer (DB).

13. Mrs.Nalini Chithambaram, the learned Senior Counsel appearing for the third respondent would strenuously contend that the petitioner is unnecessarily trying to mix up the issue regarding the sale of the property by one Kumarasamy Pillai, which has nothing to do with the third respondent. She would further contend that the settlement order passed by the settlement officer on 26.09.1974 is in no way concerned with the claim of the third respondent herein and therefore the question of filing appeal or revision against the order passed by the settlement

officer under the Tamil Nadu Inam Estates (Abolition and Conversion in Ryotwari) Act, 1963 would not arise at all. She would further strongly contend that since the third respondent had been granted patta as early as in 1996, recognizing his status as joint owner of the property in question, cannot be divested of right of patta by the revenue officials without any notice to him. According to her, in the instant case, patta has been changed to the detriment of the third respondent and the third respondent's attempt was only to restore the status which prevailed originally in the year 1996 and therefore, there was no question of deciding any title issue between the petitioner and the third respondent. According to her, the pendency of O.S.No.50 of 2007 has nothing to do with the third respondent and the averments regarding the pendency of the suit by the petitioner is intended only to mislead this Court and intended to non-suit the third respondent from getting benefits of the order dated 25.07.2016.

14. According to the learned Senior Counsel for the third respondent, since both the parties owned lands in the said survey numbers, the second respondent did not go into the disputed question as to the title and the application of the third respondent was only for issuance of joint patta and the second respondent granted joint patta after examination of the relevant documents. Therefore, according to the learned Senior Counsel for the third respondent, the rules referred to under the Patta Pass Book Act and the decisions cited by the learned Senior Counsel for the petitioner would have no application as to the facts involved in the present case. In all, she would submit that there is no infirmity in the order passed by the second respondent. She finally contended that in case the petitioner is aggrieved by the order of the second respondent, it is always open to the petitioner to file appeal under Section 12 of the Patta Pass Book Act. Therefore, she prays for dismissal of the Writ Petition.

15. Mr.M.Alagathevan, the learned Special Government Pleader appearing for the respondents 1 and 2 would reiterate the averments made in the counter statement of the second respondent.

16. I have heard the rival submissions made by the learned Senior Counsel appearing for the petitioner and third respondent and the learned Special Government Pleader appearing for the respondents 1 and 2 and perused the pleadings and the materials on record.

17. I find that there is considerable force in the contention put forth by Mrs.Nalini Chidambaram, the learned Senior Counsel appearing for the third respondent that the second respondent was not called upon by the third respondent to decide the title issue between the petitioner and the third respondent and was only called upon to issue joint-patta to the third respondent, being the joint owner of the property in question. In fact it was mere restoration of the patta, which was earlier granted to the third respondent in 1996-1997, which came to be changed subsequently without any notice and without the knowledge of the third respondent.

18. The decisions relied on by the learned Senior Counsel appearing for the petitioner reported in 2011 (5) CTC 9 4 (supra) and 2011 (2) CWC 337 (supra) deal with the issue as to whether the revenue officials can decide the title dispute between the parties and the Hon'ble Division Bench of this Court clearly held that the title dispute has to be decided by the competent civil Court and not by the revenue officials. This Court will have no quarrel with the legal propositions laid down by the Division Bench of this Court. However, the same cannot be applied to the factual matrix of the present case.

19. Although Mr.M.Ajmal Khan, the learned Senior Counsel appearing for the petitioner had taken serious objections to the manner in which the second respondent has passed the impugned order dated 25.07.2016, yet this petitioner always has a remedy by filing appropriate appeal under the Patta Pass Book Act and can urge all their objections assailing the order passed by the second respondent before the appellate authority.

20. As rightly pointed by the learned Senior Counsel appearing for the third respondent pendency of O.S.No.50 of 2007 obviously has nothing to do with the claim of the third respondent and therefore, the contention put forth by the learned Senior Counsel appearing for the petitioner would not hold good for allowing the writ petition in his favour.

21. The submissions made by the learned Senior Counsel appearing for the petitioner that the settlement of the property by the settlement officer was dated 26.09.1974 and no appeal or revision was filed against the settlement, is strongly disputed by the third respondent stating that the settlement of property under the Tamil Nadu Inam Estates (Abolition and Conversion in Ryotwari) Act, 1963 has nothing to do with the sale of property by the third respondent and predecessor in title to the petitioner. Moreover, the contention of the learned Senior Counsel for the petitioner that no opportunity was afforded to the petitioner and therefore, there was a clear violation of principles of natural justice and hence called for interference from this Court cannot be countenanced both in law and facts for the simple reason that objection was submitted on behalf of the petitioner admittedly vide objections dated 23.06.2016 and the objection is also referred to in the impugned order passed by the second respondent.

22. After having given my anxious consideration to the submissions of the learned Senior Counsels for the petitioner and the third respondent and the learned Special Government Pleader for the respondents 1 and 2 and having considered all the averments made in the pleadings and the legal contentions, I am of the considered view that the writ petitioner herein has approached this Court without exhausting the remedies available to them under the Patta Pass Book Act, 1983, wherein an appeal and revision remedies are made available. Therefore, if the petitioner feels that the contentions raised in the writ petition will support their case, the same can always be raised before the appellate authority and any disputed questions of fact incidentally occur during the

adjudication of the appeal, the same can always be decided by the appellate authority and not by this Court while exercising the Judicial Review under Article 226 of the Constitution of India. Moreover, no prejudice would be caused to the petitioner if an appeal is filed under Section 12 of the Patta Pass Book Act or revision under Section 13 of the Patta Pass Book Act since it is always open to the petitioner to raise all pleas, points, grounds which are available to them in assailing the order passed by the second respondent.

23. In the above circumstances, this Court is of the view that the writ petition filed without exhausting the appeal or revision which are available under the statute, which actually provide an effective alternative mechanism for resolving the disputes of the present nature, invoking the jurisdiction of this Court under Article 226 of the Constitution of India straightaway by-passing such effective mechanism provided under the Statute is not maintainable. Of course, the Courts have held that in extraordinary circumstances this Court can entertain the writ petition without driving the party to resort to appeal remedy provided under a statute. But I am of the considered view that this is not one of the extraordinary case or extraordinary wrong meted out to the petitioner in order to entertain the writ petition straightaway.

24. In these circumstances, this writ petition cannot be maintained and therefore, the same is dismissed. However, it is always open to the petitioner to approach the appellate or revisional authority, as the petitioner may be advised, against the order passed by the second respondent dated 25.07.2016. In case appeal or revision is filed, the authorities shall decide the same on merits and in accordance with law, uninfluenced by any of the observations made in this writ petition. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.