

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.24803 of 2009
and
M.P.No.2 of 2009

S.K.Sundaram

... Petitioner

vs.

1. The District Revenue Officer
Erode District
Office of the Collector of Erode District
Erode

2. The Tahsildar
Bhavani District
Erode District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to call for the records of the first respondent in his proceedings No.Mu.Mu.75574/88/U2, dated 08.12.1990, and consequential orders in Nos.Mu.Mu.1675/2008/U4, dated 22.02.2008, Mu.Mu.59104/2008/U4, dated 17.11.2008 and Mu.Mu.72751/08/U4, dated 31.08.2009 and quash the same and consequently direct the respondents to grant Patta in favour of the petitioner in respect of the land of an extent of Ac.2.00 Cents in Old Ka.Sa.No.1123/7, New Ka.Sa.No.613/9 in Bargur Village, Bhavani Taluk, Erode District.

For Petitioner : Mr.K.Ramu

For Respondents : Mr.P.Karthikeyan
Govt. Advocate

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O R D E R

Reserved on : 28.10.2015
Pronounced on : 25.11.2015

The prayer in the writ petition is for issuance of a writ of certiorarified mandamus to quash the proceedings in Mu.Mu.75574/88/U2, dated 08.12.1990, Mu.Mu.1675/2008/U4, dated 22.02.2008, Mu.Mu.59104/2008/U4, dated 17.11.2008 and Mu.Mu.72751/08/U4, dated 31.08.2009, issued by the first respondent and consequently to direct the respondents to grant Patta in favour of the petitioner in respect of the land in Old Ka.Sa.No.1123/7, New Ka.Sa.No.613/9 of Bargur Village, Bhavani Taluk, Erode District, measuring about 02 Acres.

2. The short facts of the case are as follows:

According to the petitioner, originally the land in Old Ka.Sa.No.1123/7, New Ka.Sa.No.613/9 of Bargur Village, Bhavani Taluk, Erode District, measuring about 04 Acres 36 Cents, was assigned in favour of one Ramaswamy Gounder, under D.R.No.179/74, dated 30.11.1964. Out of the said 04 Acres 36 Cents, the said Ramaswamy Gounder sold an extent of 02 Acres to him, under a Sale Deed, dated 08.08.1974, and registered as document No.891 of 1974, in the S.R.O.Andhiyur and ever since the date of purchase, he is in possession and enjoyment of the said property and cultivating the same.

3. In such circumstances, the second respondent initiated proceedings to cancel the assignment made to his vendor Ramaswamy Gounder and to resume the land on the ground that as per the condition of the original assignment made to the said Ramaswamy Gounder, he was prohibited from alienating the same for a period of ten years from the date of assignment i.e. 30.11.1964. Against the said proceedings, the petitioner preferred an appeal and the first respondent, by order dated 08.12.1990, dismissed the appeal and directed him to pay the value of the land.

4. According to the petitioner, the respondents are not entitled to take any action after fourteen years. Infact, the purchase made by him was only six months prior to expiry of the period of ten years fixed as one of the conditions that the original assignee shall not alienate the property. He claims to be a poor agriculturist and he purchased the land without knowledge of the conditions that the same should not be alienated within ten years of assignment, which was originally assigned on 30.11.1964. He has spent huge sums of money for the development of the said land and he does not posses any other agricultural land. Even though the respondents cannot take action belatedly nearly after fourteen years from the date of his purchase, he was ready and willing to pay the then existing market value for 02 Acres as per the orders passed by the second respondent, dated 08.12.1990.

5. According to the petitioner, in spite of his offer to pay the existing market value of the land, the officials who succeeded the then respondents, did not specify the amount payable by him nor informed him the amount to be paid by him. He was making several representations. But, the same fell on deaf ears. The matter was being dragged on. On his representation, dated 04.01.2008, the first respondent, vide proceedings, dated 22.02.2008, rejected his request on the ground of existence of a Government Order regarding ban on assignment of land in hill and forest areas. Against which, he made further representation, dated 23.09.2008. The same was also rejected by the first respondent vide proceedings, dated 17.11.2008, by citing G.O.Ms.No.1168, Revenue Department, dated 25.07.1989, which imposed ban on an assignment of lands in forest and hill areas. Once again, he made a representation, dated 25.07.2009, and the same has also been rejected by the first respondent by Order, dated 31.08.2009.

6. According to the petitioner, the reasons for rejection of his request by the first respondent is erroneous in law and facts. Already the predecessor in office of the first respondent has passed an order, dated 08.12.1990, giving him liberty to retain the land on payment of the existing market value. The land, for which he had been denied the right, had already been assigned in favour of his vendor in 1964 itself. Thus, there is no question of assigning the land afresh and granting a fresh Patta. Thus, the said G.O.Ms.No.1168, Revenue Department, dated 25.07.1989, which come into effect about 25 years after the original assignment of the land, has no application to the facts of his case as the said Government Order refers to only fresh and new assignments or grants. Thus, the impugned order of the first respondent is erroneous and suffers from total non-application of mind to the facts of the case.

7. According to the petitioner, in an identical case, the first respondent, vide proceedings, dated 01.12.1993, allowed one Gunatharan to pay the value of the land and he had also purchased the land from the original assignee before expiry of ten years period during which alienation was prohibited under the original assignment made in favour of his vendor James. In another identical circumstance, even as against a show-cause notice issued by the Revenue Divisional Officer, Gobichettipalayam, Erode District, against one Kunhalavi, for resumption of land for violation of conditions of original assignment, the said Kunhalavi filed W.P.No.6583 of 1988 and this Court by Order, dated 22.04.1997, quashed the proceedings. Similarly, M/s.Sree Venkateswarar Granites also filed W.P.No.6229 of 1988 and this Court has also quashed the proceedings of the first respondent. Therefore, the petitioner has filed this writ petition seeking the relief as stated above.

8. The first respondent has filed his counter affidavit contending that the land measuring about 04.36 Acres, in Old S.F.No.1123/7, R.S.No.613/9 of Bargur Village, Bhavani Taluk (now Andhiyur Taluk), Erode District, was assigned to the said Ramasamy Gounder, vide D.R.No.179/1974, dated 30.11.1964, subject to a condition that the land should not be sold within ten years from the date of grant. But, he sold a portion of the property, measuring about 02.00 Acres, to the petitioner under a Sale Deed, dated 09.05.1974, and registered as document No.891 of 1974. When the Sub Collector, Gobichettipalayam, took the matter for review of post assignment cases, it was found that the sale of the land to the petitioner took place within the period of ten years and thereby the said Ramasamy Gounder had violated the condition of assignment. Therefore, the assignment was cancelled as per Para 15(3)(xi)(b) of Revenue Standing Order in view of contravention of condition 11 of the assignment order by the Sub-Collector, Gobichettipalayam, in S.R.3/79 B3, dated 17.03.1988 and the land was resumed to the Government. Subsequently, the classification of the said land was changed as "Assessed Waste". Challenging the same, the petitioner preferred an appeal on 29.04.1988 and the same was rejected by the first respondent. While rejecting the appeal, the first respondent has considered the request of the petitioner on humanitarian ground keeping in view of spending amount towards reclamation and continuous enjoyment and instructed the second respondent to initiate assignment proposal if the petitioner agrees to pay the land cost to the Government. However, the Government in G.O.Ms.No.1168, Revenue Department, dated 25.07.1989, imposed a ban prohibiting assignment of cultivable lands and regularization of encroachments in hill areas. In view of the same, the representations of the petitioner regarding assignment of land on collection of market value were turned down.

9. The first respondent has further contended that the sale effected in favour of the petitioner is a clear violation and contravention of condition No.11 of the grant and it is invalid and it could pass no title to the petitioner. As the land was resumed under Para 15(3)(xi)(b) of Revenue Standing Order as early as during 1988, the land is vested with the Government and not with the petitioner. Since the land has already been classified as "Assessed Waste" and the unauthorized occupation of the petitioner has already been brought into B.Memo account, his possession in respect of the said property was in the nature of trespassing. In such circumstances, the contentions of the petitioner are not correct and the writ petition is not maintainable in law.

10. Further, the first respondent has contended that since there is a clear violation of provisions of Revenue Standing Order 15(3)(xi)(b) and contravention of Condition 11 of the grant, the Sub-Collector, Gobichettipalayam, took the matter for review and cancelled the assignment vide proceedings, dated 17.03.1988 as per the rules. The appeal preferred by the petitioner before the first respondent was also set aside with a direction to initiate action to assign the land on collection of market value if the petitioner agrees to pay the land value. Hence, it is false to state that the first respondent passed orders permitting the petitioner to pay the value of the land. On the other hand, a suggestion was only made in favour of the petitioner considering that his expenditure towards reclamation and it cannot taken as order and hence the contention of the petitioner is not sustainable in accordance with law.

11. The first respondent has further contended that the sale deed executed without any alienation or right, is void in the eye of law. The petitioner has not perfected his title to the property and he has no locus standi to question the action taken by the respondents as he is a trespasser. The purchase of conditionally assigned land long before and uninterrupted possession of the property for more than 14 years is not an excuse for the violation of conditions. The assignee does not have any right to execute a sale deed and thus the sale itself is not a valid one as per law and he cannot claim right over the property on account of delay in initiating resumption process. The contention of the petitioner that he was unaware of the condition of assignment does not justify his purchase. In this connection, it is pertinent to note that ignorance of law is not an excuse. Hence, the contentions of the petitioner are untenable.

12. Further, the first respondent has contended that the petitioner's possession over the property is not overt and exclusive. As soon as the land was resumed to the Government, his occupation was treated as encroachment. The Government in G.O.Ms.No.1168, Revenue Department, dated 25.07.1989, has imposed a ban prohibiting from assigning cultivable land and regularizing encroachments in hill areas. Hence, the encroachment of the petitioner cannot be regularized even if he agrees to pay the land value.

13. The first respondent has further contended that he never passed orders of assignment in favour of the petitioner. On the other hand, while disposing the appeal preferred by the petitioner, he made an observation that the land can be assigned in favour of the petitioner after collecting the market value. But, the petitioner failed to advert the contents of the orders passed on appeal in a proper perspective. The observation made was only discretionary and not mandatory. Even before his

order, dated 08.12.1990, the Government has ordered ban on assignment of cultivable lands and regularization of encroachments in hill areas in G.O.Ms.No.1168, Revenue, dated 25.07.1989. Even assuming the assignment order in favour of the petitioner by the first respondent is not admitted, the order will be normally inoperative in view of the ban order of the Government. Hence, the petitioner cannot place reliance on the orders of the first respondent, dated 08.12.1990. At the time of issuance of Government Orders prohibiting the regularization of encroachments in hill areas, the land was absolutely vested with the Government. The petitioner misconceived the fact and put forth the averments to suit his arguments according to the convenience of his interest.

14. Further, the first respondent has contended that the averment made by the petitioner is not correct as the said Gunatharan has not purchased the land from the original assignee. The land was subsequently purchased from Doddaiya Thambi during 1985 after 19 years. Furthermore, the cases referred and decided on 22.04.1997 and 31.03.1997 are not applicable to the present case, since the facts of the present case is different from the facts decided in the quoted Judgment. In the present case, the vendor of the petitioner do not have any right to execute the sale deed as per the provisions contained in Para 15(3)(xi)(b) and condition No.11. As such the sale deed executed in favour of the petitioner is invalid and it will not pass any valid title to the petitioner. The property is vested with Government and not with the petitioner. The status of the petitioner in respect of the property is a trespasser. Hence, the contentions of the petitioner are unsustainable in law and liable to be set aside.

15. Further, the first respondent has contended that the petitioner cannot claim any right over the property on account of delay in initiating review of post assignment cases. The respondents have absolute right to review the case and take action against violation. If any violation relating to the assignment of land is found, it is open to the Government to cancel the assignment and resume the land to the Government at any point of time. Having regard to this matter, the petitioner has no right to agitate on the cancellation of the grant and he is not at all concerned with the assignment. There is no limitation in proceeding against the violation of conditional assignment cases.

16. The first respondent has further submitted that the land under encroachment of the petitioner is required for hill area development programmes. Preservation of Government lands in hill areas is very essential. The Government has no bifurcated Bhavani Taluk i.e. into two Taluks viz., Bhavani Taluk and Andhiyur Taluk. Bargur Village, wherein the subject

land is situated, comes under Andhiyur Taluk and the newly formed Taluk is gaining importance in tribal welfare and development activities. The availability of Government lands in hill areas is running short. In the wake of globalization and urbanization, people are misusing available land resources and as a result causing scarcity of land for public purpose. Public interest has no doubt priority over private or individual interest. For all the above reasons, the first respondent prayed this Court to dismiss the writ petition.

17. The learned counsel appearing for the petitioner has submitted that the subject land, measuring about 04 Acres 36 Cents, was originally assigned in favour of one Ramaswamy Gounder, during 1964. Out of the said land, he sold a portion, measuring about 02 Acres, to the petitioner, during 1974. From the date of alienation, the petitioner is in possession and enjoyment of the said property and cultivating the same. After a period of fourteen years, the second respondent initiated proceedings to cancel the assignment order and to resume the land on the ground that the original assignee had violated the assignment conditions. Actually, as per the conditions of the said assignment, the assigned land could not be alienated within ten years from the date of assignment. But, in the instant case, the original assignee had alienated the assigned land after a period of fourteen years and as such the assignment conditions, as alleged by the respondents, had not been violated. Against the said order, the petitioner had preferred an appeal before the first respondent, who had passed orders permitting the petitioner to pay the value of the land.

18. Further, the learned counsel has submitted that the petitioner is a poor agriculturist and he had spent huge sums of money for developing the said land and excepting the said land, he has no other immovable property. The petitioner was even ready and willing to pay the then existing market value. However, the respondents did not specify the amount payable by the petitioner, after making repeated representations. Subsequently, the first respondent rejected the petitioner's representations, on the ground that a ban order for assignment is in force. The first respondent had not assigned any valid reason to reject the petitioner's representations. The order, dated 08.12.1990, passed by the predecessor of the first respondent, is existing and as per the said order, the petitioner has to be permitted to pay the land value. In a similar case, one Gunatharan had received similar benefits from the first respondent. Hence, the learned counsel prayed this Court for appropriate direction to the respondents to issue Patta in favour of the petitioner besides the learned counsel has produced property tax receipt and also possession

certificate issued by the concerned Panchayat. The revenue authorities have also received mandatory taxes from the petitioner for cultivating the said land.

19. Per contra, the learned Government Advocate appearing for the respondents has submitted that the respondents had assigned the land, measuring about 04 Acres 36 Cents to and in favour of the said Ramaswamy Gounder during 1964 after imposing certain conditions and one of the conditions was that the assignee shall not alienate the assigned land within ten years from the date of assignment. However, the assignee alienated a portion of the assigned land to the petitioner during 1974, as such the assignee had violated the prime condition. Hence, the assignment was cancelled by the Sub-Collector and subsequently the assigned land was changed as "Assessed Waste". Against the said cancellation of assignment, the petitioner had preferred an appeal before the first respondent, who had also rejected the appeal on merits.

20. Further, the learned Government Advocate has submitted that the Revenue Department had issued a Government Order, dated 25.07.1989, imposing a ban prohibiting assignment of cultivable land and as such collection of market value from the petitioner cannot be entertained. Furthermore, since the sale deed, dated 09.05.1974, is not sustainable under law, the prayer of the petitioner with regard to issuance of Patta in his favour, is not maintainable. As per the revenue records, the subject land has been maintained by the Government. However, the petitioner made a wrong entry in the said lands and cultivating the same. Therefore, the petitioner is not the owner of the subject land and he does not possess any title over the same in order to claim ownership. Hence, the learned Government Advocate made a deep request to dismiss the writ petition since the petitioner is an encroacher.

21. Considering the facts and circumstances of the case and the arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the respondents had assigned land, measuring about 04 Acres 36 Cents, situated at Bargur Village, in favour of one Ramaswamy Gounder, after imposing several conditions. One of the conditions is that the assignee shall not alienate the assigned land within a period of ten years from the date of assignment. In the instant case, the date of assignment is 30.11.1964 and the date of the sale deed, executed by the original assignee in favour of the petitioner in respect of a portion of the assigned land, is 09.05.1974 i.e., within a period of ten years. Hence, writ petition is liable to be dismissed and this Court is not inclined to give direction to the respondents to grant Patta in favour of the petitioner.

22. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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-s/d-

Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To:

1. The District Revenue Officer,
Erode District,
Office of the Collector of Erode District,
Erode.
2. The Tahsildar,
Bhavani District,
Erode District.

+ 1 cc to Mr.K.Ramu, Advocate SR 64487

+ 1 cc to Govt.Pleader SR 64178

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and
M.P.No.2 of 2009

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