

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.09.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

W.A. NO. 1230 OF 2015

AND

M.P. NO. 1 OF 2015

T.Rajam @ Kaveri Kutty
rep. By her General Power
of Attorney Agent
Mr. A.Radhakrishnan

.. Appellant/Petitioner

- Vs -

1. The Government of Tamil Nadu
rep. By its Secretary
Revenue Department
Secretariat, Chennai 600 009.
2. The Special Commissioner &
Commissioner of Land Administration
Chepauk, Chennai 600 005.
3. The Director of Town & Country Planning
No.807, Anna Salai, Chennai.
4. The Joint Commissioner
Land Reforms, Villupuram.
5. The District Revenue Officer
Kanchipuram District
Kanchipuram.
6. The Tahsildar
Tiruporur Taluk
Tiruporur.
7. E.Sathyanarayana Reddy
8. C.Yeshwant Narayana Reddy
9. C.Dhavanthini
10. S.Nagarajan
11. A.Hasan Ali Alim
12. Rajan Dev
13. Benen Rajesh Kumar

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 10.08.2015 passed by the learned Single Judge in W.P. No. 7695 of 2015 filed under Article 226 of the constitution of India for a writ of certiorari, to call for the records pertaining to the order of the fourth respondent in RC.NO.A1/1463/2008, dated 23/16/2008.

For Appellants : Ms. Chitra Sampath, SC, for
Mr. A.R.Sakthivel

For Respondents: Mr. S.T.S.Murthy, AAG, assisted by
Ms.Srijayanthi, Spl. GP for RR-1 to 6
Mr.N.Anand Venkatesh for R-10
Mr. V.K.Vijayaraghavan for RR-7 & 11
No Appearance for RR-8, 9, 12 & 13

RESERVED ON	26.08.2016
PRONOUNCED ON	26.09.2016

JUDGMENT

HULUVADI G.RAMESH, J.

This writ appeal arises out of the order passed by the learned single Judge, whereby learned single Judge dismissed the petition filed by the appellant herein upholding the order passed by the Government in respect of the vesting of lands to the share of the respective respondents.

2. An abstract outline of the facts, which led to to the filing of the writ appeal is outlined hereunder :-

The lands, bearing Survey No.164/1, which is the subject matter of the present appeal, of an extent of 5 acres, situated in Thazhambur Village, Kelambakkam Firca, which is a portion out of the 600 acres of lands purchased by one Perumalsamy Reddy in a Court auction sale during the year 1929, stood vested with the Government under the Tamil Nadu Estate Abolition Act, 1948 (Act 26 of 1948). By virtue of the Settlement Proceedings, the lands were classified as Anadheenam lands, as there were no claimants for the said lands over a very long period of time. Therefore, the lands, on being classified as assessed dry waste, was assigned to political sufferers by the Tahsildar, Chengalpet. In the said assignment, the above survey No.164/1 in Thazhambur Village, Chengalpet Taluk was assigned in favour of one B.S.Radhakrishnan, vide proceedings dated 7.6.1966. After the said assignment, patta was obtained by the said Radhakrishnan and he was in enjoyment of the said lands until the execution of the sale deed in favour of the appellant in the year 1974 vide Document No.74 of 1974 on the file of the Sub-Registrar, Tiruporur. Since the purchase of the lands in the year 1974,

the appellant is in continuous enjoyment of the land with full right over the said lands.

3. The 7th respondent herein, son of Perumalsamy Reddy, based on an oral partition said to have been arrived at between his father and his brothers, after the death of the said Perumalsamy Reddy, applied for patta in respect of the share of the said Perumalsamy Reddy. However, rejection of the said claim by the Government entailed the 7th respondent herein to approach this Court by filing W.P. Nos.6165, 6125 and 7346 of 2000, wherein this Court, vide order dated 13.5.03 observed that patta in respect of the lands in survey No.164/1 had wrongly been given to the 7th respondent inspite of the orders passed by this Court and the Government in view of the fact that the lands in the said survey No.164/1 had already been assigned to one Radhakrishnan.

4. The 7th respondent herein, in view of the grant of patta by the 6th respondent, sold the property in Survey No.164/1 to respondents 8 to 13. No notice before the grant of patta in favour of the 7th respondent was issued to the appellant, insofar as survey No.164/1 is concerned, which land has been allotted to the political sufferers and stands excluded from the consideration of lands for which patta can be granted. Further, the 7th respondent was called upon by the 4th respondent to furnish the list of lands, which the 7th respondents intends to hold from out of the entire extent as permissible under the Land Reforms Act to which the list, as furnished by the 7th respondent disclose inclusion of Survey No.174/1. The above act came to light only when respondents 8 to 13 started preparing a layout, whereupon the appellant instituted a complaint with the Police authorities under the land grabbing laws. On enquiry by the police authorities, respondents 8 to 13 produced a copy of the order passed by the 4th respondent, only at which point of time the appellant came to know of the said order and, therefore, the writ petition was filed before this Court.

5. On notice, the respondents appeared before the Court and contended that the petitioner/appellant had no locus standi to question the said order as the petitioner has no vested right or title over the land as the assignment granted in favour of the said Radhakrishnan, from whom the petitioner/appellant had purchased the lands, had been cancelled by the Government for non-compliance with the conditions of assignment. It was submitted on behalf of the respondents therein that when the order of assignment itself stands cancelled, the sale, as made by the said assignee, in favour of the petitioner/appellant, becomes null and void and the said sale would not confer any right and title on the petitioner/appellant. It was further contended by the respondent authorities that the assignee not having complied with the mandatory condition of holding the land

for a minimum period of 10 years and having sold the land before the expiry of the said term, the assignment was cancelled and the lands assigned to him were taken over by the Government. The said order of cancellation not having been challenged and having become final, at this belated point of time, the petitioner/appellant cannot come before this Court and plead ignorance. The respondents also justified the allotment of the lands falling under the above survey number to the 7th respondent.

6. Similar contention with regard to the assignment of lands were taken by the 7th respondent before the learned single Judge on his behalf and on behalf of respondents 8 and 9 therein. Further plea was also taken that he is the absolute owner of the lands and is in possession of patta, which was granted to him and that he has been paying the kist. On the basis of the abovesaid documents, the 7th respondent sold the lands to respondents 10 to 13. The title having vested with the 7th respondents on the basis of the above documents, the plea as made by the petitioner that she got right and title from the assignee has no legs to stand as the said assignment stood cancelled by the Government. Similar counters were also filed by respondents 10 to 13. Reply affidavit was also filed by the petitioner and rejoinder was also filed by the 7th respondent.

7. Learned single Judge, considering the materials available on record as also the documents relied on by the learned counsel for the parties, while dismissed the writ petition, held that the original assignee having violated the conditions of assignment, the competent authority had passed the cancellation order and the assignee having not been impleaded as a party, the petitioner has no locus standi and further held that title to the land in dispute cannot be decided in the writ court. Learned single Judge further held that the cancellation of assignment has not been challenged at the earliest point of time and the sale deed entered into between the assignee and the petitioner cannot be termed as valid documents. Aggrieved against the said order, the present appeal has been filed by the purchaser of the land.

8. Ms. Chitra Sampath, learned senior counsel appearing for the appellant submitted the lands, which were assigned to the original land owner on account of him being a political sufferer, was sold to the appellant through a registered sale deed, which was subsequently cancelled by the Government. Though the said assignment was cancelled, the purchaser has not been put on notice, which is against the principles of natural justice. Once the land has been sold by the original assignee, it is incumbent on the part of the assignor to put the purchaser on notice before effecting cancellation of the assignment and the failure on the part of the Government to do so is in

violation of principles of natural justice. The purchaser, under the bona fide impression that the land is free of encumbrance and for valuable consideration has purchased the land from the assignee and before any adverse order is passed, the interests of the purchaser should also be safeguarded. Failure on the part of the Government to put the purchaser on notice is fatal to the cancellation order. The cancellation having been done behind the back of the purchaser, the purchaser having come to know about the cancellation and subsequent allotment to the 7th respondent belatedly, cannot be found fault with for approaching this Court at a belated stage.

9. It is the further contention of the learned senior counsel for the appellant that it is the case of the respondents that the father of the 7th respondent purchased the land in Survey No.164/1, which has been purchased by the appellant from the assignee, in a Court auction in the year 1930. The family of the 7th respondent owned vast extent of lands, which were taken over by the Government. Thereafter in the year 1992, the 7th respondent approached the Government seeking restoration of the lands. However, the records right from the court auction to the present request to the Government for restoration of lands reveal that survey No.164/1 does not form part of the court auction sale. It is the further submission of the learned senior counsel that pursuant to the agitation of the political sufferers, Government had submitted before this Court in W.A. No.2785 to 2787 of 2003, that the said lands, which had been assigned to the political sufferers would stand excluded while considering restoration of lands to the 7th respondent. Learned senior counsel, therefore, submitted that survey No.164/1, having not been part of the auction sale and having stood excluded from the restoration process, it is unfathomable as to how the Government could go beyond its undertaking to this Court and allot survey No.164/1 to the 7th respondent.

10. It is further submitted by the learned senior counsel for the appellant that the order of cancellation passed by the Revenue Divisional Officer/Sub Collector is without jurisdiction as the competent authority to pass the order of cancellation is the Commissioner of Land Administration. Lands, which have been assigned to political sufferers prior to 14.5.1973, the lands can be resumed back by the Commissioner of Land Administration/Government and the Revenue Divisional Officer/Sub Collector has no jurisdiction to order resumption. Such being the case, it is submitted by the learned senior counsel for the appellant that the order of cancellation is a nullity and void ab-initio and, therefore, the said cancellation is liable to be set aside.

11. It is further submitted by the learned senior counsel for the appellant that assuming without admitting that the cancellation order is valid, that will not entail the 7th respondent to claim the lands in Survey No.164/1, when the lands actually vested with the Government by way of acquisition and the same was assigned to the political sufferer, viz., Radhakrishnan. The 7th respondent, on the cancellation of the assignment in favour of Radhakrishnan cannot have the right to choose the land of his choice to bring the land within the permitted land holding.

12. It is the further submission of the learned senior counsel for the appellant that the appellant, being a bona fide purchaser, is entitled to resumption of land in his favour, more so, when the cancellation order passed is void. Further, the cancellation order having been passed during the year 1981, though the sale deed has been executed as early as in the year 1974, belated cancellation, that too without putting the subsequent purchaser on notice, is fatal to the case of the respondents.

13. Learned senior counsel placed reliance on the judgment of this Court in N.Padmanathan & Anr. - Vs - The District Revenue Officer & Ors. (CDJ 2005 MHC 1482).

14. Per contra, Mr. S.T.S.Murthy, learned Addl. Advocate General appearing for respondents 1 to 6 submitted that the cancellation of the land allotted to the assignee had been made in consonance with Revenue Standing Order 15 (23), wherein persons alienating the lands allotted to them within a period of ten years from the date of assignment are subject to cancellation for violation of conditions of assignment. In exercise of the said provision, the lands assigned to Radhakrishnan, from whom the appellant had purchased the lands, had been cancelled. It is further submitted by the learned Addl. Advocate General that the assignee having been stripped of the lands by the Government for violation of the conditions of assignment, the subsequent purchaser, viz., the appellant, cannot step into the shoes of the assignee to defend the resumption of the land when the original assignee, viz., Radhakrishnan has not challenged the resumption order passed against him. It is the further submission of the learned Addl. Advocate General that the original assignee having not challenged the order of resumption of lands by the Government, the appellant, being the subsequent purchaser, has no locus to question the resumption of lands. It is the further submission of the learned Advocate General that based on the revenue records, the lands to the extent of 15 standard acres was allotted to the 7th respondent as per his choice, which included survey No.164/1 and, therefore, the contention raised by the appellant that the said survey No.164/1 does not form part of

the original acerage held by Perumalsamy Reddy, has no legs to stand.

15. Countering the submissions of the appellant, learned counsel appearing for respondents 7, 10 and 11 contended that the survey No.164/1, which is the subject matter of this writ petition was purchased by the grandfather of the 7th respondent in a Court auction and ever since its purchase till its resumption under the Land Reforms Act, the said survey field has been in continuous enjoyment of the family of the 7th respondent. It is further submitted that pursuant to the family partition, the lands in survey No.164/1 fell to the share of the 7th respondent, whereinafter, he obtained patta for the said land in his favour and, thereafter, sold the same to the other respondents. It is the further submission of the learned counsel that as the Government had taken over the excess acerage, held by the family of the 7th respondent, under the provisions of the Land Reforms Act, the 7th respondent had approached the Government for retention of lands of his choice and after passing of necessary Government Orders allowing the 7th respondent to retain lands of his choice and the rest of the excess acerage having been taken over by the Government for assignment to poor landless persons, the 7th respondent had taken initiative and obtained patta in his favour. It is the further submission of the learned counsel for the 7th respondent that patta was granted in favour of the 7th respondent after following all the legal formalities as contemplated under the statute.

16. It is the further submission of the learned counsel for the 7th respondent that the appellant, being a purchaser from the original assignee, has no locus to question the resumption order passed by the Government when the original assignee has kept silent and has not challenged the resumption. Further, it is submitted by the 7th respondent that the appellant would not get any better right than the original assignee to challenge the resumption order, that too belatedly at this point of time. Without challenging the cancellation order and without making the original assignee or his legal heirs as a party to this proceeding, the writ petition filed before this Court is not maintainable for want of necessary parties. Therefore, it is submitted that this appeal should be dismissed in limine for want of necessary parties.

17. Learned counsel for the respondents placed reliance on the following judgments in support of their contentions: -

- i) C.Arumugathan - Vs - S. Muthusamy Naidu & 17 Ors. (1991 (1) LW 63;
- ii) Sriram Educational Trust - Vs - State of T.N. (2005 WLR 178) ;
- iii) Janki Vashdeo Bhojwani & Anr. - Vs - IndusInd Bank Ltd. & Ors. (2005 (3) MLJ 109 (SC));

- iv) State of Tamil Nadu - Vs - Kannigammal (2010 (3) LW 349); and
v) R.Arjunan - Vs - 1. Arunachala Gounder & Ors. (2006 (4) LW 520)

18. Heard the learned senior counsel appearing for the appellant, the learned Addl. Advocate General and the other respective learned counsel appearing for the respondents and perused the materials available on record as also the judgments relied on by the learned counsel for the parties.

19. It is not in dispute that Perumalsamy Reddy, the grandfather of the 7th respondent herein purchased vast extent of lands in court auction and had held vast extent of lands in his name until the passage of the Land Reforms Act, whereby, acreage in excess of the quantified acreage held by the landlords, were taken over by the Government for allotment to the poor/political sufferers. While it is the contention of the learned counsel for the 7th respondent that the lands, which is the subject matter of this appeal was purchased by Perumalsamy Reddy in the Court auction, however, a perusal of the records and the other documents available in the typed set of documents reveal that the said survey No.164/1 was never sold in the court auction nor the said Perumalsamy Reddy had held the said land in his name. Therefore, it cannot be said that the lands were in continuous enjoyment of the family of the 7th respondent.

20. Further, it is evident from the documents filed in the typed set of papers that the lands in survey No.164/1 was allotted in favour of one Radhakrishnan, which was in turn sold in favour of the appellant herein. However, for violation of the conditions of assignment, vide order dated 9.5.1981, passed by the Sub Collector, Chengalpet, the lands were resumed by the Government pursuant to the Standing Orders of the Board of Revenue, more particularly, RSO 15 (23), which is extracted hereinbelow for better clarity :-

"(23) Assignment of land to political sufferers
- (1) Provisions under the Old Scheme :- Under the assignment policy of the Government as enunciated in 1949, political sufferers were given first preference in the matter of assignment of land. The assignment of 4.4.5 Hec. of dry or 2.2.5 of wet was free of land value but subject to the special conditions of bringing the land under cultivation within a period of 3 years and not selling or otherwise alienating within a period of ten years from the date of assignment and cancellation and resumption of the land in the event of violation of conditions."

21. In view of the above said provision, the lands having been sold within a period of 10 years from the date of assignment, the lands were resumed by the Government in view of the powers conferred under the Revenue Standing Orders referred to above. Therefore, it cannot be said that the act of the Government is in violation of any rules. However, what is sought to be canvassed by the learned senior counsel for the appellant is that the resumption order has been passed by an authority, who has no jurisdiction to pass the same and, therefore, the said order is unsustainable. Reference in this regard has been placed to RSO 15 (2) (xi) of the Revenue Standing Orders, wherein insofar as lands assigned prior to 14.5.1973 are concerned, jurisdiction for resumption has been vested with the Commissioner of Land Administration/Government.

22. It is no doubt true that the resumption authority insofar as the lands assigned prior to 14.5.1973 are concerned is the Commissioner of Land Administration/Government. In the case on hand, the land has been assigned in favour of one Radhakrishnan, from whom the appellant had purchased the said lands. The original assignee, Radhakrishnan, has not challenged the cancellation of the assignment, be it valid or invalid. Such being the case, the appellant has no better right than the original assignee to question the resumption of the lands on the ground of want of jurisdiction. Therefore, the contention of the appellant that the order passed for resumption of lands is without jurisdiction cannot be entertained. Further, the original assignee having not been made a party to the petition before this Court, the appellant herein cannot question the act of the Government or its authorities in the absence of any locus. Useful reference can be had to the decision of this Court in State of Tamil Nadu - Vs - Kannigammal (2010 (3) LW 349), wherein this Court held as under :-

"42. As a logical corollary, when the Sub collector, Chengalpet had cancelled the conditional patta issued to Kannigammal as per his proceedings dated 03.12.1982, then the land once again vests with the Government and the title also passes to the Government. In as much as the respondent/plaintiff is only a subsequent purchaser from the original assignee namely Kannigammal (who has no marketable title), she has no right to file the present suit because of the simple fact that after vesting of the property with the Government, after cancellation of patta, respondent/plaintiff cannot be called as the owner of the schedule mentioned property."

23. Insofar as the resumption of lands for violation of conditions relating to assignment, RSO 15 (23) clearly stipulates that the Government is vested with power to cancel

the assignment and resume the lands in case of violation of the special condition pertaining to cultivation of the said lands within a period of three years and not selling or otherwise alienating within a period of ten years from the date of assignment. It is evident from the record that the lands were assigned to Radhakrishnan on 07.06.1966, from whom the appellant purchased the lands, on 24.01.1974. Thus it is clear that the lands were sold within the mandatory holding period of 10 years, for which violation, the Government is empowered to resume the lands. In such view of the matter, the assignment condition having been violated by the assignee, the resumption of the lands by the Government cannot be found fault with. Useful reference in this regard can be had to the judgment of this Court in C.Arumugathan - Vs - S.Muthusamy Naidu & Ors. (1991 (1) LW 63), wherein this Court, following the decision of the Supreme Court in Sri Manchegowda - Vs - State of Karnataka (AIR 1984 SC 1151), held as under:-

"Where the transferee acquires only a defeasible title liable to be defeated in accordance with law, avoidance of such defeasible title which still remains liable to be defeated in accordance with law at the date of commencement of the Act and recovery of the possession of such granted land on the basis of the provisions contained in Section 4 and Section 5 of the Act cannot be said to be constitutionally invalid and such provision cannot be termed as unconscionable, unjust and arbitrary.

Transferees of granted lands with full knowledge of the legal position that the transfers made in their favour in contravention of the terms of grant or any law, rule or regulation governing such grant are liable to be defeated in law, cannot and do not have in law or equity, a genuine or real grievance that their defeasible title in such granted lands so transferred is, in fact, being defeated and they are being dispossessed of such lands from which they were in law liable to be dispossessed by process of law."

24. Therefore, it is well settled by the proposition laid down by the Apex Court in Manchegowda's case (supra) that where the transferee with full knowledge of the legal position relating to such transfer, in contravention of the same, tries to defeat the law, cannot claim equity, even where a real grievance relating to their defeasible title exists.

25. In view of the above settled legal position, the assignee having violated the terms and conditions of grant, cannot claim equity venting out a grievance that the order of resumption passed is without jurisdiction. In the case on hand, the assignee having violated the terms in not retaining the land during the mandatory period and selling the same to the appellant herein, the appellant herein cannot plead that the order has been passed by an authority, who has no jurisdiction to pass the same. The appellant cannot step into the shoes of the original assignee and question the resumption when even the original assignee has no vested or defeasible right to question such resumption.

26. The further submission of the appellant that no notice was given to the appellant before passing of the resumption order cannot also be countenanced. A person, who did not have a right or has lost the right cannot create any sale in favour of others and any sale made in favour of such a person shall be void. Therefore, the appellant has no legal right to assert any claim over the land in question as the alleged possession is not legal and the appellant has no locus standi to question the resumption proceedings, as the same is only between the original assignee and the Government. Useful reference in this regard can be had to the judgment of this Court in *Sriram Educational Trust - Vs - State of T.N.* (2005 WLR 178), wherein this Court, in relation to quashing an order for breach of natural justice, which would result in revival of another order, which in itself is illegal, held as under :-

"20. As pointed recently in *M.C. Mehta v. Union of India*; there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in *Gadde Venkateswara Rao v. Govt. of Andhra Pradesh*, , it is not necessary to quash the order merely because of violation of principles of natural justice.

21. In *M.C. Mehta* it was pointed out that at one time, it was held in *Ridge v. Baldwin* (1964) AC 40 that breach of principles of natural justice was in itself treated as prejudice and that no other "de facto" prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in our country. In *S.L. Kapoor v. Jagmohan Chinnappa Reddy, J.* followed *Ridge v. Baldwin* and set aside the order

of supersession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.

22. Chinnappa Reddy, J. in S.L. Kapoor case , laid down two exceptions (at p.395 of SCC) (at p.147 and 148 of AIR) namely, "if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

24. The "useless formality" theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Singham, Megarry, J. and Staughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

17. In the above judgment, the Honourable Supreme Court held that there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. The situations are that quashing the order which is in breach of natural justice is likely to result in

revival of another order which is in itself illegal. If upon admitted or indisputable facts leading only to one conclusion, it is not necessary to quash the order which was passed in violation of natural justice and the said theory becomes useless. The ratio laid down in the above judgment squarely applicable to the facts and circumstance of the case on hand. Hence, we reject the arguments that the alleged violation of principles of natural justice advanced by the learned counsel appearing for the appellant."

27. Further, the appellant has placed on record a death certificate purporting to be that of one Thyagi B.S.Radhakrishnan. A perusal of the said death certificate, though discloses the date of death as 25.2.1974, however, do not disclose the names of the parents of the said Radhakrishnan. Further, it also does not disclose the address of the deceased at the time of death. Further, the date of death of the person, as reflected in the death certificate is 25.02.1974, which is within a month from the date of execution of sale agreement, i.e., 24.1.1974. When there is no cogent material correlating the said Radhakrishnan as the person in whose favour lands were assigned by the by the Government, no importance can be attached to the said death certificate. Further, even if the death certificate produced relates to Radhakrishnan to whom the lands were assigned by the Government, mere production of the death certificate in the absence impleading the legal heirs of the said Radhakrishnan is fatal to the case of the appellant herein.

28. Thus, viewed from any angle, the resumption of the lands by the Government for violation of the conditions of assignment could, in no way, be termed as bad in law, warranting interference at the hands of this Court, more so when the appellant has not impleaded the original assignee or his legal heirs, which is detrimental to the case of the appellant. Further, the original assignee having not challenged the proceedings of resumption, the appellant cannot step into the shoes of the original assignee, that too at this belated stage, and challenge the same as the very sale made by the original assignee itself is illegal and void.

29. Insofar as the lands in survey No.164/1, which is the subject matter of this present proceeding is concerned, a cursory perusal of all the records right from the pleading of the 7th respondent that the said land was taken in a court auction sale right upto the issuance of patta issued in favour of the 7th respondent, the records clearly reveal that over a period of more than 5 decades, the lands in survey No.164/1 was

never a part of the entire holdings of Perumalsamy Reddy. Though a plea was made by the learned Addl. Government Pleader before the writ court that before grant of patta, based on the objections of the freedom fighters, the records were verified and the objections were considered on merit and on the basis of documentary proof, the Special Commissioner, Land Administration had issued patta, however, no records substantiating the said averment has been placed before this Court to sustain the plea that that all along the lands in survey No.164/1 has been under the holding of Perumalsamy Reddy. That being the case, this Court is unable to understand as to how all of a sudden, the said survey No.164/1, which was assigned to Radhakrishnan had been made over to the 7th respondent.

30. May be, the said land in survey No.164/1 might have been swapped for some other lands held by the 7th respondent. However, nothing is available on record to show that such has been the case. Even had there been any swapping permitted, under what circumstances and in lieu of which lands the said swapping has been permitted is not clear.

31. Be that as it may. In the light of the above stated factual scenario, it cannot be said that the land in survey No.164/1 was at any point of time held by the 7th respondent, which stands fortified by the records available in the typed set of documents. That being the case, this Court is unable to understand as to what prevailed upon the authorities to grant patta in favour of the 7th respondent. Had there been any pertinent records proving the title of the 7th respondent to the said land, definitely the same would have been placed before this Court. Absence of any record to the said effect only prevails upon this Court to draw an adverse inference that all is not well with the issuance of patta in favour of the 7th respondent. However, this Court is not dwelling further into the matter except to direct the Government to consider the matter about the grant of patta in favour of the 7th respondent taking into consideration the records as may be made available relating to the title/right of the 7th respondent to the said lands in question. The Government may also look into the matter as to under what circumstances the property in question, viz., survey No.164/1 was made available to the 7th respondent and take steps for the resumption of the lands in accordance with law, if the grant of patta is not borne out by records.

32. Insofar as the right of the appellant to claim title to the land in survey No.164/1, this Court has already held that the original assignee not having challenged the resumption proceeding, the sale executed in favour of the appellant is a void transaction and has no legal sanctity. Further no challenge having made to the order of resumption in a manner

known to law by the original assignee, the appellant herein has no vested right or title to question the resumption, which has attained finality. The sale made in favour of the appellant cannot in any way grant title to the appellant herein to question the resumption, as the appellant has no locus to question the transaction to which the appellant is not a party.

33. With the above observations, this writ appeal is dismissed. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Secretary
Revenue Department
Government of Tamil Nadu
Secretariat, Chennai 600 009.
2. The Special Commissioner &
Commissioner of Land Administration
Chepauk, Chennai 600 005.
3. The Director of Town & Country Planning
No.807, Anna Salai, Chennai.
4. The Joint Commissioner
Land Reforms, Villupuram.
5. The District Revenue Officer
Kanchipuram District
Kanchipuram.
6. The Tahsildar
Tiruporur Taluk
Tiruporur.

+1cc to Mr.N. Anand Venkatesh, Advocate, S.R.No.54758
+1cc to Mr.V.K. Vijayaraghavan, Advocate, S.R.No.54967
+4ccs to the Government Pleader, S.R.No.55065
+2ccs to Mr.A.R. Sakthivel, Advocate SR.54810

MSM(CO)
EU(04/10/2016)

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