

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 30/09/2015

DATED:27/01/2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.12346 of 2011

and

M.P.No.1 of 2011

1.A.Andiappan

2.A.Karuppaiah

.... Petitioners

Vs.

1.The Special Commissioner and
Commissioner (Land Reforms),
Ezhilagam Building,
Chepauk, Chennai-5.

2.The Assistant Commissioner (Land Reforms)
165-D, Barathi Ula Street,
Race Course Colony,
Near Thamaral Thotti,
Madurai - 20.

3.D.Sundari

4.A.Pichchi

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, calling for the records in D1/R.P.No.5/2007 (L.Ref) dated 17.03.2011 on the file of the first respondent and quash the same as illegal and direct the respondent 1 and 2 to forbear from taking possession of the property bearing survey Numbers 153/1B, 153/2A and 153/1C, 153/2B situated in K.Alagapuri from the petitioners'.

For Petitioners : Mr.A.Thiagarajan, Senior Counsel
for Mr.S.Ramesh Kumar

For Respondents : Mr.M.S.Ramesh (for R1 and R2)
Additional Government Pleader

Mr.R.N.Amarnath (for R3 and R4)

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O R D E R

The brief facts of the case are as follows:-

The first petitioner has submitted that the properties bearing Survey Nos.153/1B and 153/2A, was allotted to the first petitioner herein and Survey Nos.153/1C and 153/2B was allotted to the second petitioner herein. He submits that the petitioner being the poor agricultural Adi Dravidar Labourers, the allotments were made as per the scheme and the market value was fixed which the petitioners have paid. He submits that the assignment was made to them as early as 14.05.1980 and they were in possession of the property and enjoying the same for more than 15 years and paid the market value and they are in possession and enjoyment of the property. He submits that this being the factual position it seems that the third and fourth respondents herein have given a petition to the Tahsildar, Karaikudi, Sivagangai District alleging that they are in the possession of the property. He submits that the second respondent has not conducted any enquiry or whatsoever but assigned the property to them by an order dated 27.09.1996. He submits that they came to know about this when the third and fourth respondents attempted to disturb them in 2009 they requested the respondent to furnish copies of all the proceedings and relevant documents by sending representations. He submits that inspite of their repeated representations dated 20.03.2003, 12.10.2004 and 06.07.2005, the respondents 1 and 2 have not furnished the copies of the adverse order passed against the petitioners which forced them to file the writ petition for issue of the copies in W.P.(MD)No.9254 of 2005 and directions were issued by the High Court (Madurai Bench of Madras High Court) on 17.10.2005.

2.The first petitioner has further submitted that this Court was pleased to observe that the representations dated 20.03.2003, 12.10.2004 and 06.07.2005 have to be considered by second respondent and other authorities and further observed that the petitioners to approach the Tahsildar, Karaikudi, Sivagangai District for the copies of the orders. He submits that as per the directions of this Court, the petitioners made a representation on 29.12.2005 to the Assistant Commissioner (Land Reforms), Madurai as well as to the Tahsildar, Karaikudi. He further submits that the Tahsildar Karaikudi sent a communication dated 20.01.2006 that the copies were not traceable and advised them to approach the second respondent herein for getting the copies of the orders. He submits that inspite of the Court order the authorities to whom direction has been given by the Court has not taken any appropriate steps regarding to it. He submits that they have sent a legal notice to the Assistant Commissioner / Land Reforms (Land Ceiling), as well as to the Commissioner (Land Ceiling), Ezhilagam, Chennai to furnish all the copies within two weeks from the date of the receipt of the notice.

3.The first petitioner has further submitted that the second respondent herein by his letter dated 11.12.2006 accepted to give all the four items which has been mentioned in the notice except fifth i.e., the Payment Receipts and no due Certificate copy issued by the second respondent herein. He submits that after receipt of the orders and copies they have filed a Revision Petition No.D1/R.P.No.5/07 (L.Ref) on the file of the first respondent and the same was disposed on 17.03.2011 stating that the cancellation of assignment of petitioners' land is valid and the reassignment of lands to the third and fourth respondents is invalid. He submits that notice of hearing dated 27.03.2007 was issued fixing the hearing on 26.03.2007 and adjourned to 27.04.2007. He further submits that at the time of hearing on 27.04.2007 the Commissioner (Land Reforms) was pleased to call for a report from the District Collector, Sivagangai about the actual possession and enjoyment of the property at the time of cancellation Notice issued by the Assistant Commissioner (Land Reforms), Madurai for the year 1996. He submits that 11 persons have given third party affidavits swearing that the petitioners herein are in possession and enjoyment of the property, from the year 1980 till the cancellation notice issued by the Assistant Commissioner (Land Reforms), Madurai in the year 1996. He further submits that the material facts from the year of assignment in favour of the petitioners herein till date of the correspondence made by the petitioner to the various authorities, representation, Writ Petition filed, High Court order, copies of the receipts of payments made by the petitioners, No due Certificate issued by the second respondent herein in the year 1995, copies of the Revenue Records of 'A' Register copies showing upto 2006 in favour of the petitioners, Patta of Village Cultivation Register and so on would prove that the petitioners are in continuous possession.

4.The first petitioner has further submitted that the first respondent passed an order in D1/R.P.No.5/2007 (L.Ref) dated 17.03.2011 holding as follows:

"The above facts clearly show that the lands assigned to the revision petitioners were not enjoyed by them and they have also alienated their assigned lands within the conditional period, which amounts to violation of conditions of assignment. Therefore, he find no reason to interfere with the cancellation order dated 27.09.1996 passed by the first respondent. Further the records show that the re-assignment order dated 28.12.1996 passed by the second respondent in favour of the third respondent also suffers from procedural irregularities. There is no material evidence available to substantiate the fact that the 3rd and 4th respondents were cultivating the above said lands for a long time. They have not produced even residential and income proof before the assigning authority at the time of enquiry. Therefore, the assignment order dated 28.12.1996

passed by the first respondent is hereby set aside and the lands are resumed to Government. The first respondent is directed to take action to proceed with the re-assignment of the lands in strict compliance of the provisions contained under the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 as amended. Hence, this writ petition is filed.

5.The first and second respondents have filed a counter statement which are as follows:-

The first respondent has submitted that the office of the second respondent has been disbanded and the post of Assistant Commissioner (Land Reforms), Madurai has also been disbanded as per the orders of Government in G.O.Ms.No.34, Revenue, dated 14.01.2015 and the powers of 'Authorised Officer' under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, as amended and the 'Assigning Authority' under the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 have been conferred to the Sub Collectors / Revenue Divisional Officers in the State as per the notifications published in the Tamil Nadu Government Gazette dated 04.03.2015 and 05.03.2015. As the lands lie in the jurisdiction of Revenue Divisional Officer, Devakottai, the Revenue Divisional Officer, Devakottai is to deal with the present case.

It is submitted that the following points which are vital in this case are submitted to this Court as detailed below:-

(i)The petitioners have violated the conditions of assignment by not engaging themselves in direct cultivation as per Rule 9(1)(iv) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, as amended hereinafter referred to as 'the Rules';

(ii)The petitioners have also violated the conditions of assignment by selling the assigned lands within the conditional period of 20 years as per Rule 9(1)(i) of the Rules, 1965;

(iii)As per Rule 9(2) of the Rules, the assignment was cancelled after affording due opportunities to the petitioners;

(iv)The petitioners had not offered their explanation on the notices issued to them also by Registered Post with Acknowledgment Due by the second respondent before cancellation of assignment and they cannot claim anything after having not availed the opportunities extended to them;

(v)The petitioners are making false statements regarding non-receipt of copies of relevant documents. The documents that were stated have been given to the petitioners, or they have been permitted to pursue and receive a copy, which was not done by them.

6.The first respondent has further submitted that the petitioners have narrated their reasons leading to the filing of this writ petition before this Court, which are baseless from the facts on records and against law with reference to the provisions and procedures as per Act and Rules, since the second

petitioner has sold the land to Tvl.Ramasamy S/o Muthuraman and Duraisingam S/o Chockalingam and patta changed in their names under Patta No.758 during the year 1995 (Falsi year 1405). The Special Revenue Inspector (Land Reforms) has reported the above fact and hence the act of the writ petitioner amounts to violation of conditions made in Form 'F' Deed (Patta). Further the first writ petitioner had also sold the land assigned to them to Thiru.Andiappan and Valliammal through the former's power agent Thiru.Vellaisamy vide registered document dated 05.01.1993 and patta changed in their name bearing patta No.858. Encumbrance certificate produced before the Land Commissioner, Chennai during enquiry on revision petition shows the transactions effected.

7.The first respondent has further submitted that the Tahsildar, Karaikudi had addressed to Assistant Commissioner, (Land Reforms) Madurai stating that Tvl.Solaimalai and Duraisingam of Palaiyur, Kanadukathan Village has requested patta transfer for S.No.153/1B, 1.86 acres and S.No.153/2A - 0.14 acres (assigned to Thiru.Andiappan) and therefore he has requested to state whether the conditional period of the lands was over and the assignee has any due for remittance of the land value, so as to effect patta transfer in favour of the petitioner. So it is clear that the purchasers of the lands have applied for patta transfer before Tahsildar, Karaikudi and the Tahsildar Karaikudi in turn addressed the second Respondent. As such cancellation of assignment was ordered by second respondent in his order No.MRIV/172/Svg/B4 dated 27.09.1996. Further the lands were assigned to the third and fourth respondents who applied for assignment on the publication Form B Notice in the village on 11.11.1996 calling for application for assignment. Admittedly this Court have ordered in W.P.(MD) No.9254 of 2005 dated 17.10.2005 directing the Tahsildar, Karaikudi for furnishing copies of the patta transfer if representations were received from the writ petitioners.

8.The first respondent has further submitted that the averments made by the writ petitioners in para 4 and 5 are denied. A reply has been sent to the petitioners father Thiru.A.Andiappan through letter dated 28.10.2006 for his petition dated 09.01.2006. Further an intimation dated 28.11.2008 was also sent to the writ petitioner on their request dated 24.10.2008, that the petitioner did not disclose the copies of orders required. Copies of the required records were also sent to Thiru.Andiappan in letter No.11.12.2006 and an another letter dated 28.11.2008 was also sent to the writ petitioner to appear in person and obtain the required copies of documents failing which further action will be dropped in the matter. Finally the petitioners have been informed to obtain the copies of documents which were sent to the Land Commissioner, Chennai for enquiry on the Revision Petition filed before the Land Commissioner, Chennai. It is stated that the

writ petitioner did not appear in the office of the second Respondent to receive them. Hence the averments made in this para fails before the natural justice. The Tahsildar, Karaikudi who was the Respondent No.3 in the order of the writ petition No. W.P.(MD)No.9254 of 2009 dated 17.10.2005, has furnished the details of land value paid by them on the assignment of the lands in his letter R.C.A5/268/2006 dated 20.01.2006. However replying to their petition, the details of the land value paid by them till date and information regarding the subsequent assignment made in the disputed lands were furnished in letter dated 22.12.2010 and 05.03.2007 by the second respondent. A notice dated 23.02.1996 and 07.08.1996 have been sent to the petitioner by the Assistant Commissioner (Land Reforms) Madurai to show cause the reason for not taking up cultivation of assigned land within 15 days time. As no reply received from them, the assignment was cancelled in order MRIV/172/PMT/ dated 27.09.1996. A verification of this office file also reveals that copies of the documents requested by them were sent to them in letter MRIV/172/Svg dated 11.12.2006 through Registered Post with Acknowledgment Due which was acknowledged by the first writ petitioner. Hence, the first respondent entreats the Court to dismiss the above writ petition.

9.The third respondent has filed a counter statement which are as follows:-

The third respondent has submitted that by order dated 13.12.1978 the Government resumed 36.60 acres of land comprised in Old Survey No.146/3 and present Survey Nos.148, 149 and 153 of Kallangudi Village, Karaikudi Taluk, Sivagangai District under Tamil Nadu Reforms (Fixation of Ceiling on Land) Act 1961 herein after called "The Act". The land in new Survey No.153 was sub-divided as 153/1A, 153/1B, 153/1C and 153/1D. On the date of the said resumption of the land, the land was in actual possession and enjoyment of herself and her predecessor in title who are belonging to Valaiyar Community. They have been residing in the property and doing cultivation by using Electric Motor pump set.

10.The third respondent has further submitted that the land admeasuring 0.75.5 hectares comprised in Survey No.153/B was originally in possession and enjoyment of her grandmother Mrs.Kaliammal. After her demise her father Late.Azhalar was in possession and enjoyment of the property. As far as the land in Survey No.153/1C is concerned, 0.78.5 hectares of land is in possession of Mrs.Pichi, the fourth respondent herein. The said land was originally was in the enjoyment of one Mr.Andiappan who is the husband of Mrs.Pichi. Their possession and enjoyment over the land was recognized by the authorized officer under the Act in his report dated 14.08.1980. However the land which was in her possession and enjoyment in Survey No.153/1B admeasuring 0.75.5 hectares was allotted in the name of the first writ petitioner. The said land was wrongly allotted to the said writ

petitioner though they were not in possession and enjoyment of the property. Even after the allotment the writ petitioner did not do any cultivation in the land on the contrary she was doing cultivation in the property.

11.The third respondent has further submitted that the writ petitioner sold the property in favour of one Valliammai by a registered Sale Deed dated 05.11.1993 M/s.Solaimalai and Duraisingam approached the Assistant Commissioner (Land Reforms) Madurai stating that they have purchased the property and sought for transfer of patta in their name. However at that time the computerized Chita was in her name. The said M/s.Solaimalai, Valliammai and Duraisingam belong to Vallambar Community which is notified as Backward Community. On receipt of the application seeking transfer of patta in the name of the said M/s.Solaimalai and Duraisingam, proceedings were initiated to cancel the assignment on the ground that the assignees violated the terms of assignment thereby transferring the land. On the basis of the report of the Tahsildar, the Assistant Commissioner (Land reforms) Madurai conducted an enquiry. By order dated 27.09.1996, the second respondent cancelled the assignment and resumed the land.

12.The third respondent has further submitted that the respondents 3 and 4 were not possession and even now they are not having any other land other than the subject land. They have been in possession and enjoyment of the said land even prior to declaring the land as surplus land. On resumption of the land from the writ petitioners, the second respondent initiated proceedings to re-assign the land. They have produced the computer chita and other documents before the second respondent seeking to assign the land in their favour since they were in possession of the land throughout by doing cultivation without any interruption. After holding enquiry, examining witnesses and village administrative officers who coming to the conclusion that they are in possession and enjoyment of the property and that they do not have any other land, by order dated 28.12.1996 the lands were assigned in their favour by the second respondent. She has further submitted that questioning the order dated 27.09.1996 and the order dated 28.12.1996 the present writ petitioners filed a Revision Petition before the first respondent herein. The first respondent finds that the writ petitioners never took possession of the property pursuant to the assignment, that they have transferred the property to the said Solaimalai and Duraisingam who are belonging to backward community. The first respondent finds that the writ petitioners alienated the property within the conditional period thereby violating the conditions of assignment and cancelled the patta in favour of writ petitioners. The Special Tahsildar Madurai have acknowledged before the first respondent that the lands are being in possession and enjoyment of respondents 3 and 4 herein. The first respondent issued notice to the respondents

3 and 4 herein. They have produced documents showing that they are in possession and enjoyment of the property.

13.The third respondent has further submitted that M/s.Valliammai, Solaimalai and Duraisingam who are claiming rights in the property by virtue of the Sale Deed executed by the writ petitioner are necessary and proper parties in the writ petition. Since they are not impleaded the writ petitioner is liable to be dismissed for non-joinder of necessary parties. She further submits that the first respondent while cancelling the re-assignment granted in favour of the respondents 3 and 4, resumed the land to the Government and directed the second respondent herein to hold fresh enquiry and proceed to assign the land in strict compliance with the provisions of the Act. She further submits that the writ petition is not maintainable since the writ petitioners sold the land in favour of the third parties. Hence, the writ petitioners cannot claim that they are in possession of the property. She further submits that the said Solaimalai and Duraisingam are caste Hindus doing real estate business. They are using the members of the Schedule Caste and Schedule Tribe in and around Sivagangai area to get lands through them for the purpose of doing real estate business. In the circumstances, she prays that this Court may be pleased to direct the first respondent to hold an enquiry with regard to the eligibility of the persons to get the land in accordance with law.

14.The fourth respondent has filed a counter statement which is identical to the one filed by the third respondent.

15.The learned senior counsel Mr.A.Thiagarajan appearing for the petitioners submits that the property bearing Survey No.153/1B and 153/2A, was allotted to the first petitioner and the property comprised in Survey Nos.153/1C and 153/2B, was allotted to the second petitioner. The petitioners are poor agricultural Adi dravidar. The petitioners have paid the market value of the said land. Subsequently, the lands have been allotted to them in the year 1980. From the date of allotment, they are in possession and enjoying the said properties. Under the circumstances, the third and fourth respondents have made a representation to the Tahsildar, attached to the Taluk Office, Karaikudi, stating that they are in possession of the property. The second respondent, without conducting an enquiry had assigned the said lands, by his order dated 27.09.1996. After a long period of time, the third and fourth respondents had attempted to disturb the petitioners in the year 2009. Besides, the respondents 3 and 4 had not produced any relevant records to prove their rights.

16.The very competent senior counsel further submits that the petitioners made several representations to the first and second respondents and requested them to furnish copies of all

the proceedings relating to the said properties. The same was not considered. Hence, the petitioners have filed writ petition before the Madurai Bench of Madras High Court and the Court had directed the first and second respondents to dispose the petitioners' representation. Even then, the respondents had not complied with the Court's orders. However, the second respondent had sent a letter dated 11.02.2006 and accepted to give all the four items of property particulars. Subsequently, the petitioners have filed revision petition before the first respondent and the same was disposed on 17.03.2011, stating that the cancellation of assignment of petitioners land is valid and the reassignment of lands to the third and fourth respondents is valid.

17.The very competent senior counsel further submits that 11 persons had given third party affidavits, swearing that the petitioners herein are in possession and enjoyment of the property i.e. from the date of assignment till cancellation notice issued by the second respondent. The petitioners, till date, had made representations and corresponding with the appropriate authorities. As per the revenue records, especially 'A' register, it reveals that the petitioners are in possession. As per the village administrative records namely Chitta and Adangal, it is disclosed that the petitioners are cultivating the said lands. The first respondent, erroneously, has come to a conclusion that the petitioners are not enjoying the assignment and they have also alienated their assignment lands within the stipulated period, which amounts to violation of conditions of assignment.

18.Further, the assignment order dated 28.12.1996 passed by the second respondent to and in favour of third and fourth respondents also suffers from procedural irregularities. Besides, there is no documentary fact available to substantiate the fact that the third and fourth respondents are cultivating the lands from the date of reassignment. Therefore, the first respondent's reassignment order is not suitable for execution.

19.The learned senior counsel further submits that the market value fixed by the second respondent for the said land had been paid by the petitioners. As such, the petitioners are having rights over the said property as the original assignees. The second respondent, without issuing prior notice to the petitioners, had passed the reassignment order, which is not sustainable under law. The petitioners have been enjoying the said property from 14.05.1980. After assigning the said land, they spent huge money to level the lands and brought it suitable for cultivation. The petitioners had enjoyed the property for more than the specified period i.e. conditional period. As such, the petitioners have not violated any conditions enforced by the second respondent as per the original assignment order.

Further, the third respondent is not residing in the said village, wherein the subject lands are situated. Therefore, the reassignment order is not appropriate to be operated upon any further. The Adangal extracts till 1995 clearly proves that the petitioners are in possession. Before passing reassignment order i.e. final order, the second respondent ought to have given prior notice / preliminary notice / show cause notice to the petitioners and after conducting a comprehensive enquiry, then only the second respondent can pass any order. Therefore, on the basis of the second respondent's order, the order passed by the first respondent is also not valid.

20.The learned Additional Government Pleader Mr.M.S.Ramesh, appearing for the first and second respondents has submitted that the first and second petitioners were not enjoying the said lands as per original assignees, as per the conditions. Hence, the assignment order has been cancelled on 28.12.1996 and the land was reassigned to the third and fourth respondents herein. As per the revenue records, the patta and have been effected in favour of the third and fourth respondents herein and they are in physical possession. The patta proceedings had been issued dated 03.07.1997. Further, the original assignees / petitioners had violated the assignment conditions.

21.The very competent Additional Government Pleader further submits that the petitioners are not engaging themselves in direct cultivation. Further, as per condition, the subject matter of assignment lands shall not be alienated within 20 years but the petitioners alienated the same within the specified period. Further, the second petitioner had sold the land to the third parties namely one Mr.Ramasamy and Duraisingam, subsequently, patta has also been changed in the year 1995. As such, the petitioners have violated the assignment conditions. On the basis of documentary proof, the impugned order has been passed by the first respondent which has been confirmed by the second respondent reassignment order. Hence, the learned counsel entreats the Court to dismiss the above writ petition.

22.The learned counsel Mr.R.N.Amarnath appearing for the third and fourth respondents submits that the land was originally belonging to the grandmother of the third respondent to an extent of 0.75.5 hectares in the said survey number. The same was wrongly allotted to the writ petitioners. After the said allotment order, the petitioners had sold the property to and in favour of one Valliammai. Thereafter, one Solaimalai and Duraisingam approached the second respondent and informed that they have purchased the said properties. Therefore, cancellation proceedings had been initiated and a report has been collected from the concerned Tahsildar. Thereafter, a detailed enquiry was conducted and original assignment order was cancelled and reassignment order had been passed dated

28.12.1996. Thereafter, the petitioners filed a revision before the first respondent wherein the third and fourth respondents have produced relevant records to show that they are enjoying the said lands. The sale deed executed by the petitioners to and in favour of Valliammal, Solaimalai and Duraisingam, who are belonging to Caste Hindu Community. Actually, the benefit of assignment of surplus land should go to poor persons belonging to Scheduled Caste.

23. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed set of papers, it is seen that the petitioners have alienated the subject matter of the lands to and in favour of M/s. Solaimalai, Valliammai and Mr. Duraisingam under a registered sale deed dated 05.11.1993. On the strength of sale deed, the alienee / purchaser made an application and sought transfer of patta in their name. Therefore, the competent authority namely second respondent had obtained report from the appropriate authority, namely Taluk Tahsildar and passed cancellation order since there is violation that the subject matter of lands had been alienated within 20 years from date of original assignment. Further, the alienee is belonging to Caste Hindus. The first respondent had conducted a comprehensive enquiry and had scrutinised the relevant records and passed the impugned order in an appropriate manner. Therefore, the above writ petition does not generate much force to allow it. Hence, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst. Registrar (CS VII)

/true copy/

Sub Asst. Registrar

vs

To

1. The Special Commissioner and
Commissioner (Land Reforms),
Chepauk,
Chennai-5.

WEB COPY

2.The Assistant Commissioner (Land Reforms)
165-D, Barathi Ula Street,
Race Course Colony,
Near Thamarai Thotti,
Madurai - 20.

1 cc to Mr.R.N. Amarnath, Advocate, Sr. 54471

W.P.No.12346 of 2011 and
M.P.No.1 of 2011

VD (CO)
kk 23/2



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