

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 10/09/2015

DATED: 29/01/2016

CORAM

THE HONOURABLE **MR.JUSTICE C.S.KARNAN**

W.P.No.23105 of 2015 &
M.P.Nos.2 and 3 of 2015

S.Sivashanmugam

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue Department,
Fort St.George,
Chennai-600 009.
- 2.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.
3. The Director cum Special Officer,
Tamil Nadu Boodhan Board,
Chennai-600 005.
- 4.The Special Secretary,
Commissioner of Land Reforms,
Tamil Nadu Boodhan Board,
Chennai-600 005.
- 5.The District Collector,
Collectorate Complex,
Coimbatore District,
Coimbatore.
6. The District Revenue Officer,

Coimbatore District,
Coimbatore.

7.The Tahsildar,
Taluk Office-North,
Coimbatore District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Declaration, to declare the petitioner as owner in respect of the lands comprised in Survey No.5/1A1B, measuring an extent of 2.00 acres, situated at Vellaikinaru Village, Coimbatore (North) Taluk, Coimbatore District and consequently direct the respondents to re-assign / re-allot the lands with power of alienation, comprised in Survey No.5/1A1B, measuring an extent of 2.00 acres, situated at Vellaikinaru Village, Coimbatore (North) Taluk, Coimbatore District in favour of the petitioner.

For Petitioner : Mr.N.Sureshkumar

For Respondents : Mr.M.S.Ramesh
Addl. Govt. Pleader for R1 & R5 to R7

Mr.B.Vivekavanan for R2 to R4 (for TNHB)

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ORDER

The petitioner has submitted that the "Boodhan Yagna Movement" was launched by "Boojya Acharya Vinobha Bhave" with the object of accepting the lands donated by the philanthropists and landlords with a generous intention of distributing such lands to the landless poor with certain conditions. The petitioner has further submitted that accordingly, the Tamil

Nadu Bhoodan Yagna Act, 1958 was enacted and the lands as donated by third parties shall be distributed to the landless poor and for community purpose and to provide in Gramdan Villages for the vesting of lands in the Management of those lands by the Sarvodaya Panchayat in the State of Tamil Nadu. The landless person means, a person who either is not a owner of land or a owner of land which does not exceed the limits prescribed in this behalf and whose annual income does not exceed three hundred rupees (such sum not exceeding five thousand rupees as may be prescribed - Amended Act 37/2000).

2. The petitioner has further submitted that the lands comprised in Survey No.5/1A1B, measuring an extent of 2.00 acres, situated at Vellaikinaru Village, Coimbatore (North) Taluk, Coimbatore District have been allotted by the Tamil Nadu Boomidhan Board, Coimbatore vide documents dated 13.07.1964 to and in favour of his late father R.Subbaiya Gounder for the purpose of developing the underprivileged people in the society. After the demise of the above said P.Subbaiya Gounder, he is in possession and enjoyment of the said properties. The petitioner has further submitted that a certificate has been issued by the Village Administrative Officer, Vellaikinaru, Coimbatore (North), dated 27.05.2002 stating that he is getting a sum of Rs.10,000/- by doing agriculture in the above said lands. The petitioner has further submitted that the lands have been allotted under the Bhoomidhan

Scheme to the underprivileged people specifically to the Schedule Caste and Tribe to augment their life standards. And more so, the G.O.Ms.No.2078 (Rev), dated 27.12.1984 has also prescribed the prior permission from the District Collector of the respective Districts.

3. The petitioner requested the respondents to re-assign/re-allot the said lands in his name with the power of alienation and for which, he undertakes to pay the cost of the land, as it will be beneficial for his family's livelihood. Moreover their predecessors and they are in possession for more than 50 years and are cultivating the lands for their livelihood. Hence, the petitioner has filed the above writ petition.

4. The learned counsel Mr.N.Sureshkumar, appearing for the petitioner submits that Bhoodan Yagna Movement was established by Vinobha Bhave, with the object of accepting the lands donated by the philanthropists and landlords with a generous intention of distributing such lands to the landless poor agriculturists with certain conditions. Pursuant to this movement, the Tamilnadu Government enacted Bhoodan Yagna Act, 1958 and the lands as donated by third parties shall be distributed to the landless poor people in villages for the vesting of lands in and the management of these lands by the Sarvodaya Panchayat in the State of Tamilnadu. The very competent counsel has further submitted that the landless person means, a

person who, either is not a owner of land or a owner of land which does not exceed the limits prescribed on this behalf and whose annual income should not exceed Rs.200/- initially, subsequently, the act has been amended in the year 2000, wherein it was modified that the annual income does not exceed a sum of Rs.25,000/-.

5. The highly competent counsel has further submitted that the lands are comprised in Survey No.5/1A1B, situated at Vellaikinaru Village, to an extent of 2.00 acres. The said lands had been allotted to the father of the petitioner vide document dated 13.07.1964 by the Tamil Nadu Bhoodan Board. After death of his father, the petitioner and his mother are in possession and enjoyment. After his mother's death, the petitioner is now enjoying the entire lands. The Village Administrative Officer had certified that the petitioner's late mother was getting Rs.10,000/- as annual income by doing cultivation over the subject lands. The petitioner made representation to the respondents to reassign / reallocate the said lands in his name with the power of alienation and for which the petitioner undertakes to pay the cost of the lands, as it will be beneficial for the livelihood of his family. Besides, the petitioner's predecessors and he and his family members are in possession for more than 50 years and cultivating the same for their livelihood. Hence, the learned counsel entreats the Court to allow the above writ petition.

6. The learned Additional Government Pleader Mr.M.S.Ramesh, appearing for the respondents 1, 5, 6 and 7 has submitted that initially the lands had been allotted to the father of the petitioner with certain conditions. The revenue authority namely Taluk Tahsildar attached to the Taluk Office, Coimbatore North had inspected the subject lands and found that the lands had not been cultivated for long time. Therefore, the said lands had been classified as "Tharisu". Therefore, as per allotment condition, the erstwhile allottee had committed breach of condition. Now, the lands are under the care and maintenance by the respondents / Government. The highly competent counsel further pointed out that if the subject land has not been cultivated for the period of three consecutive years, then the assignment order can be cancelled as per the Bhoodan Land Act. Besides, the petitioner's prayer is to reassign the land, with power of alienation. This prayer runs against the first condition of the Bhoodan assignment condition. Therefore, the above writ petition is not maintainable.

7. The very competent Government Advocate Mr.B.Vivekavanam appearing for the respondents 2 to 4 has submitted that the same petitioner has filed similar writ petition on the similar issue and on the same prayer, the above writ petition has been filed. As such, the above writ petition is not maintainable as per Section 11 of *Res judicata*. The subject lands has been acquired by the Special Tahsildar in the year 1995. After acquiring the said

lands, the same has been handed over to the Tamil Nadu Housing Board. Further, the Tamil Nadu Bhoomidan Board, in its letter dated 12.09.1995, had given consent for the acquisition with request to pay the amount of compensation in favour of the President, Tamil Nadu Bhoomidan Board. Accordingly, the subject lands have been acquired and compensation was paid to the Bhoomidan Board for the subject land. After completing the acquisition, all the relevant records have been mutated in the name of Tamil Nadu Housing Board. The said lands are under the care and maintenance of Tamil Nadu Housing Board since 1998. Therefore, the above writ petition is not maintainable after lapse of 20 years.

8. 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, this Court is of the view that the same writ petitioner has already filed writ petition before this Court and the same was dismissed, it is also seen that the Special Tahsildar had acquired the subject lands and adjacent lands for the purpose of neighbourhood scheme on the request of Tamil Nadu Housing Board for the general public. The land acquisition Tahsildar had acquired the lands after notification in the year 1995 from the Tamil Nadu Bhoomidan Board. After acquiring the said land from them, the compensation amount has been paid to the President, Bhoomidan Board, in the year 1998. Therefore, considering the current position, the above writ

petition does not exert sufficient force to allow it. Hence, it is dismissed. The petitioner has filed impleading petition to implead the proposed respondents 8, 9 and 10 namely Executive Engineer, Managing Director and Special Tahsildar respectively and they are attached to the second respondent herein. As such, they are not necessary party in the above case. Hence, M.P.No.2 of 2015 and M.P.No.3 of 2015 are dismissed.

29/01/2016
(2/2)

Index : Yes.
Internet : Yes.

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C.S.KARNAN, J.
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Pre Delivery Order made in
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