

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.9620 of 2010
and
M.P. Nos.`1 and 2 of 2010

- 1.Somasundaram
- 2.Alagammal
- 3.Ganesan
- 4.Kannan
- 5.Murugan
- 6.Balu
- 7.Thangam
- 8.Muthulakshmi
- 9.Annalakshmi

.... Petitioners

Versus

1. Government of Tamil Nadu
rep. By its Secretary,
Revenue Department,
Fort St. George,
Chennai - 600 009.
2. The Principal Secretary and Commissioner
for Land Administration,
Ezhilagam, Chempauk, Chennai - 600 005.
3. The District Collector of Sivagangai,
Collectorate, Sivagangai.
4. The District Revenue Officer,
Sivagangai District, Sivagangai.
5. The Chief Engineer,
(Water Course)
Madurai Division, Madurai - 625 002.
6. The Tahsildar,
Manamadurai,
Sivagangai District.

7. The Village Administrative Officer,
Mangkulam Village Panchayat,
Manamadurai Taluk, Sivagangai District.

8. P.Selvam
9. P.Rajendran
10.S.Pandi
11.P.Kannan
12.K.Ramaiah

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue of Writ of Certiorari calling for the records relating to the orders of the first respondent namely the Government of Tamil Nadu represented by the Secretary, Revenue Department, in G.O. Ms.No.151 Revenue (nee Mu.1 (2) Department), dated 26.03.2010 and quash the same.

For Petitioners : Mr.V.Karthik,
Senior Counsel
Assisted by
J.Hariharan for Nicholas

For Respondents : Mr.P.Sanjay Gandhi,
Addl. Govt. Pleader for RR1 to 7
Mr.K.Lavan RR8 to 10

O R D E R

The prayer in the Writ Petition is for issuance of Writ of Certiorari calling for the records relating to the orders of the first respondent namely the Government of Tamil Nadu represented by the Secretary, Revenue Department, in G.O. Ms.No.151 Revenue (nee Mu.1 (2) Department), dated 26.03.2010 and quash the same.

2.The short facts which led to filing of this Writ Petition are as follows :-

The third petitioner's father namely Mr. Mani has purchased some agricultural nanja land in an extent of 5.52 acres in S.No.43/9, Sankarkulam Village, K.K.Pallam group, Manamadurai Taluk from one Ponnuthaiammal by a registered sale deed dated 15.03.1974. Similarly, the 1st petitioner also purchased some land at the same village by registered sale deed dated 11.03.1974. Thereafter since the father of the petitioners 3 to 9 namely Mani had received a notice under Land Encroachment Act treating them as encroachers, the vendor of the petitioners namely Ponnuthaiammal along with the first petitioner and the father of the petitioners 3 to 9 namely Mani have filed a suit in O.S.No.37 of 1978 on the file of the District Munsif Court, Manamadurai. The suit was dismissed on the ground that the said lands were vested with the Government when the Madras Estate

Abolition and Conversion into Ryotwari Act 26 of 1963 came into force. As against the said judgment and decree, the plaintiffs filed an appeal suit in A.S.No.69 of 1980 before the Sub Court, Sivaganga. The appeal was subsequently transferred to the file of the Sub Court, Ramnad in A.S.No.63 of 1980. At that time, there was a proposal to construct a Government Hospital at the said lands for the welfare of the public in Manamadurai. However, instead of waiting for the conclusion of Civil Court Proceedings between the plaintiffs mentioned above and the Government in the said A.S.No.63 of 1980 on the file of Sub Court, Ramnad, the Government intended to enter into an agreement/compromise with the petitioners and the Government had allotted an alternative lands to the plaintiffs. In view of the said compromise, the suit in A.S.No.63 of 1980 was withdrawn by the plaintiffs on 13.11.1981. According to the petitioners, the said land in S.No.43/9 at the said village owned by them was a very valuable land situated at the heart of the Manamadurai town and the same was handed over to the Government by the petitioners 1 and 2 and the father of the 3rd petitioner i.e. Mani. In lieu of such land, the Government assigned the lands situated at S.No.224/12, 13 and 14 in K.K.Pallam Village and patta was also issued to the assignees on 10.08.1982.

3. It is stated that the said lands in Survey Nos. 224/12, 13 and 14 was classified as "Oorani poromboke" in the revenue records. According to the petitioners, prior to the assignment, the lands in Survey Nos. 224/12, 13 and 14 were classified as "Ryotwari Punja Land" but after the assignment in their favour, it was erroneously classified as "Oorani Poromboke" even though there was no Oorani in existence. When it was brought to the notice of the Government, steps were taken to re-classify the land. In this context, the District Revenue Officer, Sivaganga had written a letter in Roc.C4/65776/87 dated 28.10.1988 to the Special Commissioner and Commissioner for Land Administration, Chepauk, Chennai - 5, the contents of which can usefully be extracted hereunder:-

The land in S.No.43/9, Pallam Village, Manamadurai Taluk, classified as assessed Wet Waste" measuring 4.91 acres was originally selected for the construction of the Government Hospital with 23 beds in Manamadurai Town. The construction work was in progress. At that time, three persons claiming ownership over the land to the extent of 4.45 acres out of the total extent of 4.91 acres, filed a suit against the State of Tamil Nadu in O.S.No.37/78 in District Munsif Court, Manamadurai for declaration of title and injunction on the land in S.No.43/9. They had claimed the ownership and possession over this property on the strength of the sale deed of 1973-74 for valid consideration from the owner one Thirumathi Ponnuthaiammal. The suit was, at last dismissed on

13.03.1980.

2) Therefore, the aggrieved parties went on appeal before the Sub Court, Sivaganga. The appeal in A.S.No.69/80 filed in the Sub Court, Sivaganga, was later, transferred to the Sub Court, Ramnad at Madurai. When the appeal was in progress, a compromise was arrived at on 19.11.81, on the condition that the appellants had to withdraw the suit and as a consideration for their withdrawal, the land in S.No.224/1 would be given in assignment. The appellants withdrew their suit on 30.11.81. As the construction of the hospital was in progress, the compromise was arrived at, to permit the construction of hospital building.

3) The land in S.No.224/1 was classified as Oorani in the revenue accounts. But it is not a Oorani on ground. Th lands is uneven on ground and it will cost more for reclamation. The land abuts Sivaganga Manamadurai Highways Road. The land has been sub-divided and on the western side residential quarters of the Revenue Inspector, Seikalathur firka have been constructed. The land has been further sub-divided as follows:-

S.No.	Extent
224/12	1.01.0
224/13	1.01.0
224/14	0.40.5

The above lands had been assigned by the Tahsildar, Manamadurai to the petitioners Thiru.Somasundaram, Thiru. Mani and Tmt. Alagammal of Manamadurai on 19.11.81, in OA.Nos.13,14 and 15/91 pending change of classification of the land in S.No.224/1 for eventual assignment, in conformity with compromise arrived at for the avoidance of any injunction against the construction of Government Hospital at Manamadurai.

The Tahsildar, Manamadurai has sent proposals for change of classification in this case through the Revenue Divisional Officer, Sivaganga, to this office. Since there is a ban on the disposal of water course lands as per G.O.Ms.No.41, Revenue, dated 20.1.87. I send herewith the proposals for change of classification for eventual assignment.

4) The land in question is not an Oorani on ground. Already it has been sub divided to make room for residential quarters for the firka Revenue Inspector. The G.O.Ms.No.41, Revenue, dated 20.1.87 banning the disposal of water course lands would not be applicable to this case, as the assignment was made during 1981, prior to the issue of the G.O. The concerned Panchayat has also given its consent, through resolution, for the transfer of classification for the eventual assignment

in this case.

5) The assignment of the lands in S.Nos.224/1 pending change of classification for eventual assignment was made to honour the terms and conditions of the compromise arrive at during the appeal stage at the Sub Court, Madurai, just to bring Government Hospital to the Manamadurai public in good faith and for a public purpose. If the Court had stayed the construction of building by injunction, the hospital could not have come into reality. The public will be badly affected by the absence of the hospital, catering to their ailments. The assignees are also landless poor people.

In view of the fact that the Government sanction for the construction of Government Hospital, Manamadurai should not lapse for want of allotment of suitable sites, the Tahsildar, Manamadurai had assigned the lands in S.No.224/1, pending change of classification for eventual assignment in order to honour the compromise arrived at out of Court. I request the Special Commissioner and Commissioner of Land Administration may be pleased to recommend this case to the Government for orders, in the light of the circumstances explained in the above paragraphs.

4. Thus, in the letter dated 28.10.1988 of the District Revenue Officer, Sivagangai, it was stated that there was no oorani in existence in the above said lands and in the Village lands records alone the classification of the lands were shown as "Oorani Poromboke". Therefore, it was submitted that there might not be any objection for the Public Works Department to convert the classification of lands from "Oorani Poromboke" into that of "dry waste". In pursuance of the said letter of the District Revenue Officer, Sivaganga, dated 28.10.1988 and the recommendations of the Commissioner of Land Administration, Chennai, the Government passed an Order in G.O.Ms.No.188, Revenue Department, dated 07.02.2002, whereby the classification of the lands in Survey No.224/12, 13 and 14 has been re-classified as "Dry waste". Challenging the above said G.O.Ms. No.188 dated 07.02.2002, the respondents 8 to 12 have filed WP No.2921 of 2001 before this Court. By an order dated 14.09.2009, this Court allowed the writ petition by holding that before issuing G.O.Ms.No.188, dated 07.02.2002, reclassifying the lands, they ought to have conducted a spot inspection and in the absence of the same, the Government Order cannot be sustained. Accordingly, this Court remanded the matter to the official respondents to re-do the exercise and to decide the issue. The relevant portion of the said order of this Court, dated 14.09.2009 reads as under:-

"6. The impugned Government order dated 07.05.2002 proceeds on a presumption as to two fundamental facts namely;

a) That the respondents 7 and 8 were landless poor, living below poverty line and

b) That the land in question was not a water course at all"

7. In so far as the first presumption is concerned, it appears from the representation dated 28.10.2002 sent by the villagers that the respondents 7 and 8 were well settled in life and they were not landless poor, living below poverty line. Though Mr.V.Nicholas, learned counsel for the contesting respondents contended that as per the deed of assignment, it was made as a compromise in respect of a civil suit and not on the basis that the respondents were poor persons, the impugned order does not reflect the same. The respondents 7 and 8 do not claim even now that they are landless poor. On the contrary, they are well settled in life. Therefore, the impugned order proceeding on the basis as though the respondents 7 and 8 are poor, suffers from non-application of mind.

8. As regards the second presumption, the positive case of the petitioners is that there is water logging during rainy seasons. Some photographs have also been produced. These photographs show that it is a water catchments area. Therefore, the respondent should actually have conducted a spot inspection before deciding the issue. Since it has not been done, the impugned order is liable to be set aside and the matter remitted back to the Commissioner for land Administration.

9. Accordingly, this Writ Petition is allowed, the impugned order is set aside and the matter remitted back to the third respondent i.e. The Land Commissioner. The Land Commissioner shall have an inspection conducted by the Regional Chief Engineer and the revenue officials and receive a report with regard to the status of the land in question and as to whether it is in fact a water course or water catchments area. After receiving such a report, the third respondent shall forward the papers along with his remarks to the first respondent Government for issuing orders afresh based upon the report submitted. The third respondent is directed to complete the process of inspection and sending a report within two months. The first respondent is directed to pass orders within a further period of two months from the date of receipt of the report."

5. Pursuant to the said order of this Court, the first respondent have called for a report from the revenue side (District Revenue Officer) as well as technical side namely the Chief Engineer, Public Works Department. Based on such reports

received from the two departments on 21.10.2009 and 10.12.2009 respectively, the Government passed the order in G.O.Ms.No.151, Revenue (Nee.Mu.1(2) Dept., dated 26.03.2010 by which the land at Survey No.244/12,13,14, to the extent of 2.425 hectares have been again reclassified as "Oorani Poromboke" by cancelling the re-classification already done as "Punja land".

6. Heard both sides. Mr.V.Karthik, learned Senior Counsel appearing for the petitioners would contend that the very basis of passing the earlier G.O.Ms.No.188 Revenue Department, dated 07.02.2002 was misconstrued by the private respondents. According to the learned Senior Counsel, the land situated in Survey No.43/9, Sankarkulam Village, K.K.Pallam Group, Manamadurai Taluk measuring 11.04 acres belonged to the petitioners. Since the Government misconstrued the land owners as encroachers, they have filed a suit and it was dismissed. When the plaintiffs in the suit preferred an appeal, a compromise was entered into between the plaintiffs and the Government to facilitate the Government to construct a building to accommodate the Government Hospital at Manamadurai. The compromise was agreed to by the land owners since the Government assured to provide them alternative lands. Even though the land in Survey No.43/9 was having higher value, the land owners have given up their right in lieu of the alternative lands proposed by the Government. According to the learned counsel for the petitioners, only by reason of the compromise, did the land owners have accepted for alternative lands. On the other hand, if they continued the appeal proceedings and if any adverse decision is made by the appellate Court against the Government, certainly the project of construction of General Hospital at the said town would have been paralysed. Therefore, the Government by taking swift action wanted to enter a compromise with the land owners and ultimately an agreement was entered between the land owners and the Government. On the basis of the compromise, the alternative lands in Survey No. 224/12, 13, 14 were assigned in favour of the petitioners in the year 1981 itself. However, after assignment, it came to light that the lands assigned to the petitioners were classified as "Oorani Poromboke". Therefore, on the basis of the representations made by the petitioners, the District Revenue Officer had written a letter dated 28.10.1988 to the land Commissioner/second respondent herein and if the contents of the letter is pursued, it can be easily found that the lands were meant to be assigned to landless poor. However, such lands have been assigned to the petitioners in lieu of compromise entered into with the Government as an alternative land in lieu of the lands which were taken over from the petitioners where the Government has constructed a hospital. When that being so, the learned Senior Counsel appearing for the petitioners would contend that, the re-classification made by the Government was proper. The order

of re-classification was cancelled without taking into consideration the reports of the Revenue Divisional Officer as well as Chief Engineer of Public Works Department in proper perspective.

7. In this regard, the learned Senior Counsel appearing for the petitioners would invite the attention of this Court to the Circular issued by the Commissioner of land Administration, Chennai, on 02.04.2001 wherein it is stated that if at all any decision has to be taken by the Government for assignment or reclassification, a report has to be received from the concerned departments and for the said purpose, a joint inspection of the concerned departments may be highly useful for taking a just decision. The learned Senior Counsel, by relying upon Clause 5 of the said Circular, has submitted that, had a joint inspection taken place, pursuant to the earlier Order of this Court, certainly, a comprehensive report would have been given by the departments concerned so that this anomaly now noticed in the impugned order could be avoided. The said Clause 5 of the Circular is reproduced hereunder :-

"5. A joint inspection of such lands, along with the District level, Public Works Department (WRO) authorities / Animal Husbandry Department / Department to which the poramboke lands relate, may be taken up, which will enable to get the remarks / opinion of the Regional Chief Engineer (WRO) PWD and the Director of Animal Husbandry Department or Heads of relevant Department at the earliest."

8. Therefore, the learned Senior Counsel would contend that the impugned order, once again revoking the re-classification into the original position without considering the issue based on the inputs, is totally unjustifiable and therefore, the impugned Government Order would not stand legally. Therefore, the learned Senior counsel for the petitioners prayed for allowing this writ petition.

9. Per contra, Mr. P. Sanjay Gandhi, learned Additional Government Pleader would contend that the land in question had never been in the status of "Nanja or Punja land" and for years together the said land was classified as Oorani. Only on the basis of the earlier report received from the Revenue Divisional Officer, as well as the Chief Engineer PWD, the earlier G.O.Ms.No.188 Revenue Department, dated 07.02.2002 was issued re-classifying the said land from Oorani to Punja. Since the said order was set aside by this Court by an Order dated 14.09.2009 and ultimately remanded the matter to the official respondents, the second respondent ordered for inspection by the

Chief Engineer, Public Works Department and the Revenue Officials and received reports regarding the status of the land in question as to whether it was in fact water course or water catchment area. Only on receipt of such report, based on the recommendation of the Special Commissioner, Land Administration, the Government has passed orders. The learned Additional Government Pleader would further contend that the said order of this Court has been scrupulously complied with by the official respondents. The Government, in fact was in receipt of such inspection report dated 21.02.2009 from the District Revenue Officer and spot inspection report from the Chief Engineer, Public Works Department, wherein it has been specifically stated that at present the lands in Survey No. 224/12, 13 and 14 is used as Water catchment area through which only the water are flowing to the nearby Oorani located. In view of the said categorical report of the Chief Engineer of the Public Works Department, the Government accepted the same and passed the order, which is impugned in this writ petition.

10. The learned Additional Government Pleader further contended that the said report of the Chief Engineer, Public Works Department was also accepted by the District Collector concerned who in turn also sent a report to the Government. All these reports were scrutinized and considered by the Government and each of such report would disclose the fact that the land in question has to to be necessarily re-classified to its original position as "Oorani". This Court has also by an earlier Order dated 14.09.2009 specifically directed the official respondents to decide as to whether the land was a water course or water catchment area, and based upon such decision, directed to pass orders. In such view of the matter, the first respondent has passed the impugned order reversing the re-classification earlier made. Therefore, according to the learned Additional Government Pleader, there is no infirmity in the said order as the same has been passed by following all procedures known to law and in fact, pursuant to the direction issued by this Court, stated supra.

11. The learned counsel appearing for the private respondents, who were also parties in the earlier round of litigation, would contend that the land in question is certainly a Oorani or Oorani Poromboke area, where water logging is always possible. Since the land is nearby a Oorani the same cannot be converted into a Punja land. The learned counsel also submits that agricultural activities cannot be undertaken during water logging of 2 ½ feet and above and therefore the assignment given to the petitioners is totally a wrong decision and in fact the assignment was given based on the category of landless poor or those who are under the poverty line. Since these petitioners

are well off, they can never be treated as landless poor. Therefore, the assignees certainly shall not have any vested right to claim the re-classification. Therefore in that view of the matter, there is no justification on the part of the petitioners to seek for re-classification of the land in to "punja" land and if such re-classification is considered, it would affect the living condition of the Villagers. Therefore, in the interest of the village public in general, the impugned Government order has to be sustained.

12. On consideration of the rival submissions it is seen that the land in question at Survey No.224/1 was originally classified as "Oorani land" and the same is reflected in the revenue records, which was produced by both sides. Even in the "A" Register of the village, dated 22.05.1994, which was prepared subsequent to the settlement of survey of the land at Survey Nos. from 212 to 230, which includes the subject land pertaining to the said village, indicated as Elatunkulkanmai i.e. Elantukulkanmai tank. The said classification cannot be disputed atleast at the time of revenue authorities decided to assign the same to the petitioners. However, if we look into the letter dated 28.10.1988 of the District Revenue Officer, Sivaganga to the second respondent, at para 3 of the said letter, the District Revenue Officer has stated that, the land in question is classified as "Oorani" as per revenue records "but that is not an Oorani", the land is uneven on ground and it cost more for reclamation. It is further stated that the land abuts Sivaganga-Manamadurai Highways. It is further stated that the land has been sub-divided and on the Western side, residential quarters of the Revenue Inspector, Solkalathur Firka have been constructed. In Para No.4, the District Revenue Officer has further stated that the land in question is not in Oorani, already it has been sub divided to make room for residential quarters for the Firka Revenue officials. As there was a ban on the disposal of water course lands since 20.01.1987, recommendations were made for re-classification of the lands. Reliance was also placed on G.O. Ms. No.41, Revenue dated 20.01.1987 to show that there was a ban for transfer of assignment of lands relating to water course. Therefore, he has requested the Government for reclassification of the land.

13. When the actual position is thus and though the land in question was originally classified as "Oorani", practically it was not "Oorani" as, there are residential quarters abutting the said lands to accommodate Revenue Inspector, Solkalathur Firka and it was constructed even in the year 1981. These factors were therefore taken into consideration by the land owners on the one hand and the Government on the other hand to assign the lands in

Survey Nos.224/12, 13 and 14. As it was contended that those lands were meant for assignment in favour of landless poor below the poverty line, the private respondents herein have filed the earlier writ petition No.2291 of 2001 challenging the order in G.O.Ms.No.188 dated 07.02.2002 and this Court, by an order dated 14.09.2009, quashed the Government Order and remanded the matter to the official respondents for reconsideration. As per paragraph No.8 of the said Order dated 14.09.2009, this Court observed that there was no joint inspection conducted by the Revenue Officials as well as the Public Works Department. In Clause 5 of the Circular, mentioned supra, a joint inspection has to be conducted before assignment of the lands and it was not done in this case. In this case, no such joint inspection has been conducted or a comprehensive report was sent to the Government before assignment of the lands. However, the fact remains that the lands owned by the petitioners have been taken over by the Government where they have also constructed a hospital. In lieu of the lands taken from the petitioners, the lands in Survey Nos.224/12, 13 and 14 have been assigned to them. The question is whether such land is a water body or catchment area, has to be ascertained by conducting appropriate inspection as per the Circular mentioned supra. On the contrary, separate inspection has been conducted by the revenue authorities as well as the officials of Public Works Department and based on such reports, the present impugned order has been passed. Such a procedure should not have been resorted to by the respondents when Clause 5 of the Circular requires a joint inspection to be conducted before assigning the lands. Therefore, this Court holds that the impugned order is liable to be interfered with.

14. Accordingly, the impugned order is set aside and the writ petition is allowed. The matter is remitted to the official respondents for consideration of the claim of the petitioners afresh. In this regard, the second respondent is directed to make a joint inspection of the lands in question with the officials of the Revenue department as well as the Public Works Department by fixing a date and the date of such inspection shall be intimated to the petitioners as well as private respondents herein. Such inspection shall be carried out within a period of three months from the date of receipt of a copy of this order. After completing the Joint Inspection in the presence of the petitioners and private respondents herein, the officials who are part and parcel of the joint inspection team shall prepare a comprehensive report and forward the same along with the objection from among the members of the Joint Inspection team, if any, to the second respondent, who in turn shall consider it and forward his recommendation to the first respondent for taking an appropriate decision. It is needless

to mention that the lands in question was not assigned to the petitioners under the category of "landless poor" but it was assigned to them as an alternative land by way of compensation or otherwise in lieu of the lands taken from them for construction of hospital. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Secretary
Government of Tamil Nadu
Revenue Department,
Fort St. George,
Chennai - 600 009.
 2. The Principal Secretary and Commissioner
for Land Administration,
Ezhilagam, Chepauk, Chennai - 600 005.
 3. The District Collector of Sivagangai,
Collectorate, Sivagangai.
 4. The District Revenue Officer,
Sivagangai District, Sivagangai.
 5. The Chief Engineer,
(Water Course)
Madurai Division, Madurai - 625 002.
 6. The Tahsildar,
Manamadurai,
Sivagangai District.
 7. The Village Administrative Officer,
Mangkulam Village, Panchayat,
Manamadurai Taluk, Sivagangai District.
- +2 Ccs to Mr.V. Nicholas, Advocate sr 70287
+1 CC to Mr.K. Lavan, sr 70175

W.P. No.9620 of 2010

GJ(CO)
sp/9/5