

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 29/07/2015

DATED: 12/01/2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.8264 of 2013 &
M.P.No.1 of 2013

1.Kittan
2.Palani
3.Kumaran
4.Raghupathi
5.Ganesan

... Petitioners

Vs.

1.The Land Commissioner,
Chepauk,
Chennai-600 005.

2.The Assistant Commissioner, (Land Reforms),
Erode Jawan Bhavan Building,
Gandhiji Road,
Erode.

3.Santhosh Kumar
4.Soundararajan
5.N.Selvaraj

... Respondents

(R3, R4 and R5 impleaded as per order
dated 23.07.2014 in M.P.No.2 of 2013 and
M.P.No.1 of 2014 in W.P.No.8264 of 2013)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus to direct the respondents to consider the representation dated 14.03.2013 for restoration of assignment of land in S.No.73/1, 74, 75/2, Appanaickenpatti Village, Suler Taluk, Coimbatore District under the provisions of Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, in favour of the petitioners within the time frame to be fixed by this Court.

For Petitioners : Mr.G.Sankaran

For Respondents : Mr.M.S.Ramesh
Addl. Govt. Pleader for R1 and R2

Mr.V.Manohar for R3 and R4
Mr.N.Umapathi for R5

O R D E R

The petitioners herein belong Hindu Adi Dravidar Community and they are hailing from poor family. The petitioners 1 to 3 and the fathers of the petitioners 4 and 5 have been given assignment of land in S.Nos.73/1, 74, 75/2 and 75/3 to an extent of 7.04 acres under the provisions of Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, as per the proceedings of the Assistant Commissioner Land Reforms, Coimbatore dated 25.04.1986 along with other persons. Since the original landowners of surplus land and the subsequent purchasers filed writ petitions, challenging the Land Ceiling Proceedings, the petitioners have not been handed over possession of the land in spite of assignment of land entered in 1986. Subsequent to the disposal of the writ petitions, Assistant Commissioner, Land Reforms, Coimbatore, issued order of assignment in favour of the petitioners in the year 1996 in Form F and Rule 8(6) of Tamil Nadu Land Reforms (Disposal of Surplus Land), 1965 by which each petitioner has been assigned with 1.39 acres of land except 5th petitioner's father Late Rasiappan who was assigned with 1.48 acres of land, as per the conditions stated therein. The petitioners further submit that as per the conditions of allotment, the land should be cultivated by the assignee and utilized for agricultural purposes. Accordingly, the after the allotment of land by way of assignment, the petitioners have also cultivated the land for the fasli year 1407, 1408, 1409, 1410, 1411 continuously. Further, the petitioners have also made kist payment for the land assigned apart from other land revenues.

2. The petitioners further submit that after the assignment of land, the purchasers of the land from the original surplus landowner by name Perumalsamy and his relatives have caused disturbance to the petitioners. When it was represented by the petitioners to the Assistant Commissioner, Land Reforms, the petitioners were informed to make a complaint to the Police as per the Proceedings dated 12.05.1997. Based on which, the petitioners have also filed a complaint before the police and thereby they could be able to cultivate the land continuously in compliance to the condition of assignment in spite of all

disturbances. The petitioners further submit that while that being so, at the instance of the said Perumalsamy who was constantly making efforts to grab the land assigned to the petitioners, the second respondent issued orders in Na.Ka.No.S.MR No.449/C4, dated 29.04.2002, calling upon the petitioners to show cause as to why the assignment should not be cancelled on the premises that the land assigned was not being cultivated. The notice came to be issued contrary to the facts and records. The petitioners immediately approached the second respondent and handed over the kist receipt and certificate issued by Revenue Authorities as well as copy of the adangal to show that they are cultivating the land continuously right from the date of assignment, however, the second respondent who was then holding the office, though received the records from the petitioners, did not place it on records for the purpose of consideration.

3. The petitioners further submit that the Revenue Authorities have conducted enquiry based on the assignment granted in favour of the petitioners and issued patta in the name of each petitioners to the extent of land they were assigned in June 2002. Thereafter, the petitioners have not received any further order from the second respondent. However, the petitioners subsequently came to know that the assignment of land made in favour of the petitioners came to be cancelled on 02.07.1992 and the order copy was not communicated and later reassignment proceedings were initiated and three persons viz., P.Santhoshkumar, M.Soundararajan and Jayapathy were given assignment on 14.08.2002. The fact remains that the said Perumalsamy who was the reason for cancellation of the assignment by unlawful means, got the assignment of land in favour of his son P.Santhoshkumar and his brother's son M.Soundararajan and Jayapathy. The said assignees were rich pattadars and in fact one of the assignee was employed in USA. The petitioners further submit that having regard to the gross malpractice committed by the officials of the Department in cancelling the assignment granted in favour of the petitioners who are landless poor Adi Dravidars and subsequently reassignment of the land in favour of wealthy persons having properties in large scale, the petition was filed before the Land Commissioner, the first respondent herein. Based on the petition filed by N.Selvaraj, an enquiry was initiated against the assignment made on 14.08.2002 in favour of the re-assignees stated above which was obtained under misrepresentation and fraud, and conducted a detailed enquiry by proving opportunity to all the persons including the re-assignees. The first respondent has passed final orders on suo moto revision in October 2012 cancelling the re-assignment granted on 14.08.2002 by stating that the assignment was made in violation of Rules and the second respondent was directed to initiate fresh

assignment proceedings in respect of the subject land in consonance with provisions contained under the Rules.

4. The petitioners further submit that so far as the petitioners are concerned, they have not been issued with any order of cancellation of assignment. The officials concerned have surreptitiously cancelled the assignment without furnishing a copy of the same to the petitioners and subsequently granted re-assignment of land within a month's time to favour one Perumalsamy who actually purchased the land earlier from the surplus landowner and filed writ petition challenging the Land Ceiling Proceeding that was dismissed. After the dismissal of the above writ petition, he got favourable orders in illegal manner, by getting re-assignment of the land in favour of his son and brother's son. However, at the instance of complaint made against their assignment, the matter was investigated and final orders were passed by the first respondent in October 2012, cancelling the re-assignment. In the above said circumstances, having regard to the fact that the petitioners have been originally granted with assignment of the land in the year 1986 and subsequently after the disposal of the writ petitions, order of assignment was issued in favour of the petitioners in the year 1996, but the said assignment is stated to be cancelled in the year 2002 without any order being communicated, after the disposal of suo moto revision by the first respondent cancelling the re-assignment of land dated 14.08.2002 as per the orders dated 14.12.2012, the petitioners have made representation to the respondents seeking to restore the assignment granted in favour of the petitioners. Subsequently, the petitioners have also made representation to the first respondent on 14.02.2013 for cancellation of the orders dated 02.07.2002 by which the assignment of land granted in favour of the petitioners stated to be cancelled. Therefore, the petitioners have approached the respondent seeking restoration of assignment granted in favour of the petitioners by cancelling the order of cancellation of assignment dated 02.07.2002 that was not communicated to the petitioners at any point of time, in the light of suo moto revision order in the month of October 2012 by which the re-assignment of subject land was cancelled, after due enquiry. However, the representations made by the petitioners neither considered nor any orders passed. Hence, the petitioners have filed the above writ petition.

5. This Court, by an order dated 26.03.2013 in M.P.No.1 of 2013 in W.P.No.8264 of 2013, granted an order of interim injunction. While the case is pending, Santhosh Kumar and Soundararajan have filed M.P.No.2 of 2013 to implead them as respondents in the above writ petition and one N.Selvaraj has filed M.P.No.1 of 2014 to implead him as respondent in the above

writ petition. To vacate the interim injunction granted by this Court and to implead them as respondents in the above writ petition, they have filed an affidavit. The proposed respondent submits that he is the third party to the above said writ petition, however, the property involved in the writ petition subject matter is the land allotted to him and the other proposed respondent viz., Soundararajan. The said allotment in their favour took place in the year 1974 and they were in continuous possession. In the said land, the writ petitioners have suppressed the facts behind the same and the developments to file this writ petition. Under these circumstances, their presence in the writ petition become necessary and they have every legal right to put forth the case pertaining to the subject matter.

6. The proposed respondent further submits that the other respondent has the same and similar issue to be presented before the Court and they have participated in the proceedings taken up before Principal Secretary cum Commissioner of Land Reforms, Chepauk and contested the same. The said proceedings are pending before the Secretary to Government for adjudication. In the meanwhile, in order to circumvent the possible and probable decision in their favour, the ill motive local persons sets up the petitioners herein to file this writ petition. There are many facts are put forth before this Court. Unless, they are allotted to take part in the proceedings, there is every possible to mislead this Court and to take advantage of the same. The proposed respondent further submits that the lands referred in Government Order dated 11.02.1974 vide No.671 was allotted to the eligible persons by following the procedures contemplated under the revenue standing order. At the time of the assignment, the eligibility criteria contemplated for such assignment was duly considered and the said assignments were made in their favour. Thereafter, it was continuously enjoyed as per the terms of assignment without any interference from any quarter.

7. The proposed respondent further submits one ill-motive and ill-disposed person by name Mr.Selvaraj and who happen to be disgruntled partner of his father have falsely submitted a memorandum to the authorities. Taking advantage of his influence in politics have manipulated the situation against themselves. Though the said attitude of the said Selvaraj was against Mr.Perumalsamy, their lands were targeted due to the relationship with the said Perumalsamy. Despite the fact that there is a clear legal embargo to re-open the issue after the period of 5 years from the date of allotments the Commissioner for Land Reforms have confronted the petitioners into the suo moto proceeding to pass adverse order against which

an appeal before the Government was presented as per the procedure. The Government also through its acknowledgment dated 09.05.2013 have acknowledged the pendency of the appeal before the Government. After coming to know of the developments, the petitioners who are nowhere in picture for more than 30 years and legal-heir of some persons who claim the original allotment of the year 1965 have come to this Court on the false pretext. Despite that due cancellation as against these petitioners as early as in the year 1965 itself and the same was not in question all along to allow the revenue authorities to re-assign the lands to the other eligible persons viz., themselves in the year 1974.

8. The proposed respondent further submits that when all these developments were not questioned now at the instance of the above said Selvaraj, the petitioners have approached this Court without disclosing the past history which has adverse effect on their claim before this Court. In this regard, the said writ petition itself is not maintainable for the reason that the said persons have no vested right to claim anything under the writ petition or as per the request made in the writ petition. Further, having not questioned the past developments such as cancellation in the year 1965 reassigned in the year 1974 and that of the developments after that at the instance of themselves now when the matter is pending before the appropriate authority the said parallel proceeding under the writ jurisdiction is not entertainable. Knowing well, the petitioners playing the ignorance of situation and by suppressing the true facts have submitted the above said petition only in order to interfere in the due consideration of the appeal pending before the appropriate authority viz., the Secretary to Government. Under these circumstances, in entertaining of the request of the petitioners will hamper the due process contemplated under the Rules and Regulations governing the issue. More so, when the authorities will have their impediment in deciding the issue of this writ petition is kept pending on the subject matter which is already ceased off by the Government.

9. The proposed respondent further submits that the petitioners are nowhere near who have any right over the property or having any eligibility or they have succeeded any subsisting right or that of there is any rule to confer any right in their favour have come forward through the misrepresentation in this writ petition to obtain the interim stay of the process. The said order will have the effect with regard to the appropriate consideration of the matter pending for the same. Further, the paramount and privileged right vested through the proper assignment and the lawful possession and the rights are likely to be disturbed taking advantage of the order

of injunction. Hence, the said order need to be vacated forthwith to enable the authorities to consider the said pending appeal based on the Rules and Regulations in this regard without being influenced by the pending writ petition.

10. The first petitioner herein has filed a counter affidavit on behalf of him and on behalf of other petitions in the impleading petition. The first petitioner submits that the petitioners herein belong to Hindu Adi Dravidar Community and they were given assignment of land in S.Nos.73/1, 74, 75/2 of Appanaickenpatti Village, Sulur Taluk, Coimbatore District as per the proceedings of the Assistant Commissioner, Land Reforms, Coimbatore dated 25.04.1986 along with other persons under the provisions of Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules 1965. Since the original landowners of surplus land and the subsequent purchasers filed writ petitions challenging the Land Ceiling Proceedings, the writ petitioners were not handed over possession of the land after the dismissal of the writ petitions in the year 1995, they were given assignment of land in Form 'F' in 1996. The first petitioner further submits that while so, one Mr.Perumalsamy stated to have purchased the land subject to ceiling proceedings in the year 1993 (before dismissal of writ petition in the year 1995) stated to give trouble to the writ petitioners' possession over the subject land. In this regard, as per the proceedings of the Assistant Commissioner (Land Reforms), dated 12.05.1997, the writ petitioners have also given a police complaint.

11. The first petitioner further submits that it is found that at the instance of said Perumalsamy, the order of assignment of land granted in favour of writ petitions stated to have been cancelled on 02.07.2002 and within a period of one month, the same was assigned in favour of Santhoshkumar, Soundararajan and Jayapathy, as per the proceedings of Assistant Commissioner, Land Reforms, Erode dated 14.08.2002. The fact remains that the first assignee P.Santhosh Kumar is none other than son of Perumalsamy and the second Assignee M.Soundararajan is brother son of Perumalsamy. The other assignee Jayapathy is own brother of Perumalsamy. Therefore, the land was stated to have been re-assigned to the son, brother and brother's son of Perumalsamy who actually purchased the subject property from the original landowners Varadarajulu in the year 1993 i.e., after the land was taken over by the Government under Land Ceiling Proceedings in the year 1986. In the above stated circumstances, on coming to know that the land was assigned in favour of a rich family economically well off, running an industry, poultry farm and owning number of movable and immovable properties, complaints were made to the Office of the Land Commissioner, Chennai-5. Since the cancellation of assignment and reassignment

was made based on mis-representation and fraud, the Land Commissioner, Chennai initiated suo moto proceedings under Rule 11(3)b of Tamil Nadu Land Reforms (DSL) Rules, 1965 and after conducting a thorough enquiry and after hearing of parties of including the re-assignee, passed final orders in October 2012, cancelling the order of assignment dated 14.08.2012, granted in favour of re-assignee Santhoshkumar, Sundararajan and Jayapathy. The order of Land Commissioner, Chepauk, Chennai-5 came to be passed based on the fact that the re-assignees made application in the year 2002 with false informations regarding their communal status, property details and other particulars by producing concocted documents to avail the assignment of patta and further based on the enquiry conducted by the Revenue Divisional Officer, it is proved that the father of re-assignee Perumalsamy owning innumerable properties and further running industry, poultry farm, and accordingly it was established that assignment was obtained by fraudulent means and hence it was ordered to be cancelled.

12. The first petitioner further submits that owing to the fact that the land was allotted to the writ petitioners in the year 1986 and patta was given in the year 1996 and they were not communicated with any order of cancellation of assignment of land, they made representation to the respondents to restore the assignment of subject land in their favour. Since representations were not being considered, the writ petitioners have filed the above writ petition by setting out of the details seeking for the issuance of writ of mandamus to direct the respondents to consider the representation dated 04.03.2013 for restoration of assignment of land in S.No73/1, 74 and 75/2, Appanaickenpatti Village, Suler Taluk, Coimbatore District under the provisions of Tamil Nadu Reforms (Disposal of Surplus Land) Rules, 1965 in favour of the petitioners. The first petitioner further submits that the above writ petition was admitted and further an interim order of injunction restraining the Official respondents from re-assigning the land without considering the claim of the petitioners, pending disposal of the above writ petition was passed on 26.03.2013. The first petitioner further submits that while so, the petitioners herein filed the M.P.No.2 of 2013 to implead themselves as party respondents. The averments in the affidavit filed in support of the miscellaneous petition are ex-facie false and misleading.

13. The first petitioner further submits that the petitioners herein are neither necessary parties nor proper parties to the writ petition with reference to relief as prayed for in the writ petition. The assignment of land made in favour of the petitioners /proposed respondents came to be cancelled as

per the proceedings of Land Commissioner, Chennai-5, dated October 2012. The writ petition has been filed by the petitioners for restoration of the assignment of land are lady made in favour of the petitioners in the year 1986 and therefore, the relief is not against the petitioners / proposed respondents nor they can stake any claim over the subject property after the orders passed by the Land Commissioner, Chennai. The first petitioner further submits that on reading of the affidavit filed in support of the impleading petition, it is amply clear that the proposed respondents have deliberately and intentionally suppressed the material facts and further made false and misleading averments contrary to the records and therefore, they have not approached this Court with clean hands and filing of such false affidavit. The first petitioner further submits that the proposed respondents stated in the affidavit that the land was assigned in their favour in the year 1974 and at the time of assignment, the eligibility criteria contemplated for such assignment was duly considered. Whereas the proposed respondent Santhoshkumar who is presently aged about 36 years could not have been born in the year 1974. The other proposed respondent Soundararajan can be a minor at the age of 14 in the year 1974. Therefore, on the fact of it, the proposed respondents have filed false affidavit before this Court, resulting in perjury. Hence, first petitioner entreated this Court to dismiss the impleading petition.

14. By an order dated 23.07.2014 in M.P.No.2 of 2013 and M.P.No.1 of 2014 in W.P.No.8264 of 2013, this Court impleaded Santhosh Kumar, Soundararajan and N.Selvaraj as respondents 3, 4 and 5 respectively.

15. After considering the facts and circumstances of the case, the learned counsels made representations on behalf of the respective parties and this Court is of the view that the main prayer of the petitioners is to consider their representation dated 14.03.2013 to the respondents, the said representation is still pending. Hence, this Court directs the respondents 1 and 2 to decide the petitioners' representation on merits, within a period of eight weeks from the date of receipt of this order, after issuing prior notice to the writ petitioners as well as the respondents 3, 4 and 5 and conduct a comprehensive enquiry and pass orders on merits.

16. In the result, the above writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Land Commissioner,
Chepauk,
Chennai-600 005.

2.The Assistant Commissioner, (Land Reforms),
Erode Jawan Bhavan Building,
Gandhiji Road,
Erode.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.2698

+1cc to Mr.V.Manohar, Advocate, S.R.No.2486

W.P.No.8264 of 2013 &
M.P.No.1 of 2013

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