

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.10.2016

Pronounced on : 16-11-2016

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 30809 of 2013

and

M.P. No. 1 of 2013

S. Shiva

.. Petitioner

Versus

The Tahsildar
Yerkadu Taluk
Salem District

.. Respondent

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the respondent to issue patta to the agricultural land comprised in S.F. No.7/1, R.S. No.7/1, measuring 1.80.50 hectares, 4.46 acres bearing patta No.14 in Kakkampadi Village, Yerkadu Taluk, Salem District as per the application dated 21.03.2012 within a time limit to be fixed by this Court.

For Petitioner : Mr. A. Saravanan

For Respondent : Mr. A. Kumar
Special Government Pleader

ORDER

The petitioner seeks for issuing a Mandamus to direct the respondent herein to grant patta in his favour in respect of the agricultural land comprised in S.F. No.7/1, R.S. No.7/1, measuring 1.80.50 hectares, 4.46 acres bearing patta No.14 in Kakkampadi Village, Yerkadu Taluk, Salem District as per his application dated 21.03.2012 within a time limit to be fixed by this Court.

2. According to the petitioner, he purchased the above said land together with trees and plants thereon with a right to use the passage from Mr. K. Pakkirisamy, Son of K.R. Karuppaiya; Mrs. Rathinam, Wife of Pakkirisamy and their children Srikanth, Shanthi and Sumathi by way of a registered sale deed dated 07.02.2011 registered as document No. 124 of 2011 on the file of Sub-Registrar, yerkadu. It is further stated that the petitioner's vendor namely Mr. Pakkirisamy has purchased the land in question in a public auction conducted by the respondent vide proceedings in file No.Pa.Mu.34983/70 dated 14.12.1970, which was confirmed in the proceedings in LoC

No.756/70(D) and a sale certificate was also issued to the vendor of the petitioner. The vendor of the petitioner was also put in possession of the land where he has been cultivating coffee plantation. On purchase, the petitioner's vendor mutated the revenue records and obtained patta in his name in Patta No.14 in the year 1983. Thereafter, during the year 2011, computer generated patta was also issued in the name of the vendor of the petitioner. The petitioner's vendor has also paid kist in his name in respect of the land till the date of sale of the land in favour of the petitioner. It is further stated that originally, the land in question was owned by Mr. A. Kandhasamy Pillai Maistry, son of Arya Pillai. As the said Kandhasamy Pillai Maistry was in arrears of land revenue, in order to recover the same, Revenue Recovery proceedings were initiated and a public auction was conducted by the respondent during the year 1970 for sale of the land in question in which the vendor of the petitioner has purchased it.

3. According to the petitioner, after he purchased the land in question by means of a registered sale deed dated 07.02.2011, he has submitted an application dated 21.03.2012 seeking to transfer the patta in respect of the above lands in his name. As there was no response, the petitioner approached the respondent in his office. The petitioner was informed that in the "A" register there is an entry which states that the land in question is meant to be alienated only in favour of a Malayali inasmuch as the land is situated in a hilly area and a condition is attached that such land has to be assigned only in favour of tribal people. According to the petitioner, when once the land was purchased by his vendor in a public auction conducted by the respondent for and on behalf of the Government, then such a condition that the land has to be sold only in favour of a Malayali does not arise. When once the property purchased in public auction, even assuming that the assignment of the property is subject to certain condition, such condition no longer exists or can be put against the purchaser in the public auction. If the Government still intended that the land has to be sold in public auction to 'Malayali' commune, the same would have been specified in the notification for public auction, but no such condition has been specified in the notification for public auction in which the vendor of the petitioner purchased the land in question. Therefore, according to the petitioner, the respondent is not justified in refusing to transfer the patta in favour of the petitioner by removing the entries in the 'A' register with reference to ownership of the land by a Malayali commune. The purchase of the land by the vendor of the petitioner is free from any specific condition in the public auction and the revenue records also have been mutated in favour of the vendor of the petitioner, while so, refusing to transfer the patta in favour of the petitioner, who is the subsequent purchaser, is illegal and unsustainable. In any event, the petitioner has submitted an application dated 21.03.2012 seeking to transfer the patta in his name, but no order has been passed thereof by the respondent till date. Therefore, the petitioner has come forward with this writ petition praying for issuance of patta

in his favour after removing the entries relating to ownership of the land by Malayali commune in the 'A' register maintained by the respondent.

4. The learned counsel for the petitioner would vehemently contend that the petitioner is the subsequent purchaser of the property by means of a registered sale deed dated 07.02.2011 from his vendor K. Pakkirisamy and others. The said property was purchased by the vendor of the petitioner in a public auction conducted by the respondent during the year 1970 and sale certificate was also issued in favour of the vendor of the petitioner. On purchase, patta was issued to the petitioner's vendor in the year 1983 and subsequently, computer generated patta was also issued to him during the year 2011. To assert an ownership over the land, the vendor of the petitioner also paid kist and kist receipts issued in his name. While so, when the petitioner seeks for transfer of patta in his name, as a subsequent purchaser, the respondent refused to issue patta to the petitioner which necessitated him to file the present writ petition. In the writ petition, for the first time, it was indicated that the refusal to issue patta to the petitioner is justified inasmuch as in the "A" register relating to the land in question, there is an entry viz., 'Malayali condition' to the effect that the land in question is to be assigned for Malayali community people. Such a condition cannot be put against the petitioner inasmuch as he has purchased the land in question by a registered sale deed for a valuable consideration. Further, the vendor of the petitioner purchased the land in question in a public auction conducted by none other than the respondent herein for recovering the revenue arrears payable by the original owner Mr. A. Kanthasamy Pillai Maistry, son of Arya Pillai. Thus, it is evident that the land was not possessed and owned by any Malayali at any point of time and such an entry has been erroneously made in the "A" register. Even in the auction conducted by the respondent, there is no condition imposed that the property has to be purchased only by person belonging to Malayali commune and therefore, the refusal on the part of the respondent to issue patta in favour of the petitioner is unjustified.

5. In order to fortify his submissions, the learned counsel for the petitioner placed reliance on the decision rendered by this Court in (Ayi Gounder vs. Gabriel) AIR 1974 (77) Law Weekly 291 = 1965 1 MLJ 358 wherein it was held that though the grant was subject to prohibition against alienation in a particular manner, the grant certainly vested the ownership of the property in the grantee. Further, the restraint against alienation merely applied to a transaction between parties and not to a sale in Invitum. In any case, a Court sale contrary to the prohibition against alienation cannot be said to be opposed to a public policy. By placing reliance on the above decision, the learned counsel for the petitioner would contend that in the present case, the land in question was purchased by the vendor of the petitioner in a public auction conducted by the then Tahsildar and therefore, even if there was a condition attached to the alienation of the

land in question, such a condition ceased to exist when once the land was sold in public auction by the respondent for and on behalf of the Government for recovery of the land arrears by the original owner. Further, such a condition, if at all, will only bind a transaction between two private parties and not the instant transaction between the Government and the petitioner's vendor.

6. The learned counsel for the petitioner also relied on the order passed by the Andhra Pradesh High Court in the case of (S. Usha Rani vs. Government of Andhra Pradesh) 2014 CJ (AP) 1247 wherein the Andhra Pradesh High Court, placing reliance on the Division Bench decision of that Court in the case of Sub-Registrar and another vs. K. Guruvaiah (2009 (3) ALT 85 (DB) (Writ Appeal No. 950 of 2007) dated 30.12.2008 held that when the petitioner therein was a purchaser of the land in an open auction conducted by the Bank on account of default of the borrowers, who were assignees, the original status of the land as assigned land loses the character. It becomes private patta land and petitioner is entitled to deal with the land as deemed fit by her. By pointing out the above decision of the Andhra Pradesh High Court, the learned counsel for the petitioner would submit that the so-called condition said to have been incorporated in the 'A' register cannot be put against the petitioner, who is a subsequent purchaser especially when his vendor has purchased the land in question in an open auction conducted by the respondent herein. Therefore, the learned counsel for the petitioner prayed for issuing appropriate direction to the respondent to issue patta in favour of the petitioner after removing the erroneous entries incorporated in the 'A' register against the land in question.

7. The learned Special Government Pleader appearing for the respondent opposed the writ petition by placing reliance on the counter affidavit. According to the learned Special Government Pleader, as per the "A" register maintained by the respondent, the name of K. Pakkirisamy alone is found. However, the learned Special Government Pleader admitted that the land in question was purchased by the vendor of the petitioner in a public auction conducted by the respondent for recovery of the land arrears due and payable by the original owner namely Mr. A. Kanthasamy Pillai Maistry, Son of Arya Pillai. The learned Special Government Pleader also admitted that the patta in respect of the land in question stood transferred in the name of the vendor of the petitioner. However, he would contend that the land in question has already been assigned to Tribals residing in the hills and therefore it is attached with a condition to the effect that 'Malayali condition' meaning thereby the land has to be alienated in favour of a Malayali commune. According to the petitioner, since the petitioner is a non-malayali his claim for transfer of patta in his name cannot be considered. In support of his contention, the learned Special Government Pleader has also produced the original 'A' register maintained by the respondent, two in number, one having entries upto 17.03.1944 and the other having entries upto the year 29.09.1983. By placing reliance on the

entries made in the "A" registers maintained by the respondent, the learned Special Government Pleader would contend that the petitioner is not entitled for the relief prayed for in this writ petition. Thus, according to the learned Special Government Pleader, the non-consideration of the application submitted by the petitioner for transfer of patta in his name by the respondent is justifiable and he prays for dismissal of the writ petition.

8. I heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondent. I had gone through the original "A" register produced by the learned Special Government Pleader for perusal of this Court. The first 'A' register produced by the learned Special Government Pleader contains entries relating to the land in question namely the land comprised in Survey No.7/1. In this 'A' register the name of Mr. Kandasamy Pillai Maistri, Son of Arya Pillai is prominently mentioned thereof as owner of the land in Survey No.7/1 measuring an extent of 4 acres and 46 cents. As against this entry, an asterisk mark has been indicated wherein it was written as "Malayali condition". I also found several entries made thereof relating to change of owner of the land and this "A" register has been updated with entries till 17.03.1944. The other "A" register submitted for my perusal also contain several entries upto 29.11.1983. In this register, the owner of the land in Survey No.7/1 is prominently mentioned as "K. Pakkirisamy". Here again an asterisk mark has been made as "Malayali condition". Except this asterisk mark, there is nothing indicated to say that the land in question has to be assigned only in favour of a Malayali commune. It is on the basis of this entry, the learned Special Government Pleader would contend that the assignment of the land in question is subject to the condition that it has to be alienated only in favour of a Malayali commune especially when the land is situated in a hilly areas where Tribal peoples are living.

9. With this background, let me analyse the grievance putforth on behalf of the petitioner. According to the petitioner, he is a subsequent purchaser of the land in question, having purchased the same by means of a registered sale deed dated 07.02.2011 from Mr. K. Pakkirisamy and others. After purchase, he intended to mutate the revenue records and to transfer patta in his name. It is the specific contention of the petitioner that his vendor has purchased the land in a public auction conducted by the respondent herein in order to recover the arrears of land revenue by initiating proceedings under the Revenue Recovery Act. Thus, it is not in dispute that originally, the property was owned and possessed by Mr. Kandasamy Pillai Maistri, Son of Arya Pillai, who has committed default in payment of the land revenue to the Government and in order to recover the same, the land in question was brought in public auction. In the notification for public auction, there was no condition imposed that the land has to be sold only in favour of a Malayali commune and non-Malayalis are excluded from the purview of public auction. In the absence of such

condition, the vendor of the petitioner Mr. K. Pakkirisamy participated in the public auction and he is admittedly a non-malayali. After purchase, the petitioner's vendor also mutated the revenue records, transferred the patta in his name and also paid kist to the Government from time to time. However, when the petitioner, who is the subsequent purchaser seek for transfer of patta in his name, the respondent refused to accept his claim on the ground that in the 'A' register, there is an entry to the effect 'Malayali condition' meaning thereby the land has to be alienated only to a Malayali commune. When the vendor of the petitioner is a non-malayali, the petitioner cannot be refused to get the patta transferred in his name especially on the ground that there is a condition incorporated in the 'A' register. Thus, this Court is of the view that the entry against the land in question i.e., 'Malayali condition' could have been erroneously incorporated against the land in question or such a condition cannot be put against the petitioner especially when his vendor has purchased the land in question in an open auction conducted by the Government itself.

10. The petitioner has submitted an application dated 21.03.2012 seeking to transfer patta in his name. Admittedly, the respondent has not considered the said application or rejected the same by passing an order of rejection. As rightly pointed out by the learned counsel for the petitioner, only for the first time, in the counter affidavit of the respondent, it was stated that there is an entry in the 'A' register viz., 'Malayali condition' against the land in question meaning thereby the land has to be alienated only in favour of a Malayali commune and consequently the petitioner's claim for transfer of patta cannot be granted. Such a statement made by the respondent in the counter affidavit is not legally sustainable for the simple reason that the original owner of the land Mr. Kandasamy Pillai Maistri, Son of Arya Pillai is not a Malayali who owned the land for quite a long time. This is evident from the 'A' register produced before this Court wherein there were entries relating to the ownership of Mr. Kandasamy Pillai Maistry even in the year 1938. As he was in arrears of payment towards land revenue, proceedings under the Revenue Recovery Act have been initiated and the land in question was sold in public auction in favour of the vendor of the Petitioner by the respondent. Even vendor of the petitioner was not a Malayali. Even assuming without admitting that such a condition is incorporated in the 'A' register way back in the year 1938, the land in question was purchased by the vendor of the petitioner in the year 1970 in a public auction conducted by the respondent. If really the intention of the Government was to alienate the land in question only in favour of a Malayali commune, the land would not have been sold in favour of the vendor of the petitioner in a public auction conducted by the respondent, who is a non-malayali. In any event, when the land in question has been brought in to public auction and it was sold in favour of the vendor of the petitioner, such a condition that the land has to be alienated only in favour of a Malayali commune on the basis of the entry made in the 'A' register cannot be put against the vendor of the petitioner or

the vendor as such condition loses it's significance or purpose.

11. The learned counsel for the petitioner relied on the decision rendered by this Court in (Ayi Gounder vs. Gabriel) AIR 1974 (77) Law Weekly 291 = 1965 1 MLJ 358 wherein this Court considered an identical facts of the case. In that case, the plaintiff purchased the property from his vendor, who has purchased the said property in the execution proceedings before the Civil Court. The defendant therein disturbed the possession of the plaintiff on the ground that the grant contained a provision restraining alienation of the property in favour of persons who are not Adi-dravidars. This has necessiated the plaintiff to file the suit for declaration of his title. This Court held that though the grant was subject to prohibition against alienation in a particular manner, the grant certainly vested the ownership of the property in the grantee. Further, the restraint against alienation merely applied to a transaction between parties and not to a sale in Invitum. In any case, a Court sale contrary to the prohibition against alienation cannot be said to be opposed to a public policy. Ultimately, this Court held as follows:-

"But the point is that the property in question is not an Inam at all. It was granted, as I said, by the Government under the provisions of the Crown (Government) Grants Act. Though the grant was subject to prohibition against alienation in a particular manner, the grant certainly vested the ownership of the property in the grantee. The restraint against alienation merely applied to a transaction between the parties and not to a sale in invitum. In any case, a Court-sale contrary to the prohibition against alienation cannot be said to be opposed to public policy.

Both on the ground that the restriction as to alienation will not prevail against a Court sale and on the ground that the objection had not been raised at the stage of execution, I hold that the sale cannot be assailed as invalid, or not binding on the second defendant."

12. In this case, admittedly, the vendor of the petitioner purchased the land in question in a public auction conducted by the respondent in the year 1970 and sale certificate was also issued to the vendor of the petitioner. Further, the petitioner's vendor mutated the revenue records, obtained patta in his name and also paid kist in his name to the Government. Therefore, even assuming that there was a condition attached to the land in question which prohibits alienation in favour of a non-malayali, such condition no longer exist when the land in quesiton was sold in a public auction by the respondent.

13. The learned counsel for the petitioner also relied on the decision of the Andhra Pradesh High Court in (S. Usha Rani vs. Government of Andhra Pradesh) 2014 CJ (AP) 1247 wherein the

Andhra Pradesh High Court, placing reliance on the Division Bench decision of that Court in the case of Sub-Registrar and another vs. K. Guruvaiah (2009 (3) ALT 85 (DB) (Writ Appeal No. 950 of 2007) dated 30.12.2008 held that when the petitioner therein was a purchaser of the land in an open auction conducted by the Bank on account of default of the borrowers, who were assignees, the original status of the land as assigned land loses the character. It becomes private patta land and petitioner is entitled to deal with the land as deemed fit by her. In Para No.4 of the order, it was held as follows:-

"4. With reference to the status of the land, which was originally classified as assigned land, as a consequence to the assignees becoming defaulters and the land having been purchased in an open auction conducted by the Bank is no more res integra. This issue was considered by Division Bench of this Court in the case of Sub-Registrar and another vs. K. Guruvaiah (2009 (3) ALT 85 (DB) (Writ Appeal No. 950 of 2007) dated 30.12.2008. This Court held as under:-

"19. Let us consider the provisions of Section 5 of the Assigned Lands Act in the light of the facts of the present case. In the present case, as stated hereinabove, it was open to the original assignees of the land to mortgage the land to the bank by virtue of the definition of Section 2 (1), if the mortgage in favour of the bank was not alienation, there was no restriction with regard to mortgaging the assigned land in favour of the bank. Thus, the mortgage was valid. As the mortgage money was not repaid to the bank, the bank sold the land after following due process of law and thereby the petitioner became a lawful owner of the land in question. In view of the above fact, in our opinion, provisions of Section 5 would not operate because the prohibition is on registration of any document relating to transfer or creation of any interest in assigned land. In the instant case, the transaction in pursuance of which the land has been purchased by the petitioner was valid and not contrary to the provisions of the Assigned Lands Act. In such a case, in our opinion, if the concerned party had approached the District Collector for obtaining prior permission, the District Collector was bound to accord necessary permission in favour of the person seeking such permission. At the most, the authorities could have approached the District Collector for seeking permission under Section 5 and in that event, the District Collector was bound to give permission in view of the fact that the bank, admittedly, a co-operative society registered under the provisions of the Co-operative

Societies Act, could have become a mortgagee in respect of the assigned land.

In view of the fact that the petitioner was the purchaser of the land in an open auction conducted by the bank on account of default of the borrowers, who were assignees, the original status of the land as assigned land loses its character. It becomes private patta land and petitioner is entitled to deal with the land as deemed fit by her. Therefore, the action of the Sub-registrar, in refusing to grant the market value of the above said lands is held as illegal. The writ petition is accordingly allowed.....

14. In this case, the vendor of the petitioner purchased the land in question in a public auction conducted by the respondent. Upon such purchase, the condition regarding alienation of the land namely 'malayali condition' and that the land has to be alienated only in favour of a Malayali loses its significance and it becomes a private property of the vendor of the petitioner. Consequently, the sale in favour of the petitioner by the petitioner's vendor is valid and proper. Even if there is any restriction, such restriction will bind only the transactions between two private parties and not between the respondent-Government and the vendor of the petitioner in any manner.

15. The learned counsel for the petitioner also brought to the notice of this Court Standing Orders of the Board of Revenue (Land Revenue, Settlement and Miscellaneous) relating to conditional assignment. Rule 40 of the Revenue Standing Orders can usefully be extracted hereunder:-

"(40) Hill Tribes:- Conditional Assignment:-
In the following cases the assignment of land to Malayalis or Sholagas, as the case may be, shall be subject to the conditions that the land shall not be transferred by the assignees to any person outside the class to which they belong without the express sanction of the Divisional Officer, and that, if the land is transferred without such sanction or is attached and sold by any legal process, it shall be liable for resumption by the Divisional Officer without payment of any compensation whatsoever.

(ii) Land Assigned to Malayalis:- (1) The Tanmalai hills in the Tiruvannamalai District

(2) the Jarugumalai hills in the Salem Taluk, Salem District

(3) the Chiteri Hills in the Uttangarai Taluk, Dharmapuri District excluding the Villages of Ammapalayam and Kullampatti

(4) the Arunuttumalai hills in the Salem taluk and Bodimalai hills in Salem and Rasipuram Taluk, Namakkal District

(5) The Village Kil Avarai on the Peria Kalrayans in the Attur Taluk, Salem District

(6) The undermentioned villages on and near the Panchamalais and the Kollimalais in the Attur Taluk, Salem District.

16. By inviting the attention of this Court to the above clause 40 in the Revenue Standing Orders, the learned counsel for the petitioner would contend that the land in question is situate in Yercaud Taluk in Salem District and it is not included in the Revenue Standing Orders. Thus, the land in question does not come within the purview of land assigned to Malayalis. Further, he would also point out that the conditions imposed will only prevent any private sale by the assignee to third parties or to any other individual without permission, but not in respect of sale that too by the Government itself in a public auction for recovery of the land revenue arrears. In such case, the land loses such condition attached thereto on sale by the government. There is no restriction for sale by the government itself. Above all, now, the land in that Village is not covered by that condition also as per the Revenue Standing Orders quoted above.

17. In the light of the above, this Court takes note of the fact that the land in question was bought through public auction by the predecessor of the respondent in the proceedings initiated the Revenue Recovery Act by the Government itself to recover the arrears of land revenue from the original owner Mr. A. Kanthasamy Pillai Maistry, son of Arya Pillai. In the notification for public auction, there is no indication relating to the so-called prohibition attached to the property that it has to be sold only in favour of Malayali commune. In the said auction, the vendor of the petitioner, who is a non-Malayali has purchased the land in question in the year 1970 from whom the petitioner has purchased it for a valuable sale consideration by means of a registered sale deed dated 07.02.2011 registered as document No. 124 of 2011 on the file of Sub-Registrar, yerkadu. In those circumstances, the refusal on the part of the respondent to transfer the patta in respect of the land in question to the petitioner is arbitrary and unjustifiable. In such view of the matter, I am inclined to issue a Mandamus to the respondent to issue patta on the basis of the application dated 21.03.2012 of the petitioner dehors the alleged entry 'Malayali condition' made in the 'A' register.

18. In the result, the writ petition is allowed and a Mandamus is issued to the respondent to pass appropriate orders on the application dated 21.03.2012 of the petitioner for grant of Patta in his favour in respect of the land in question after

removing/deleting the entry 'Malayali condition' made in the 'A' Register on merits and in accordance with law within a period of fifteen days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

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Sub Asst. Registrar

To

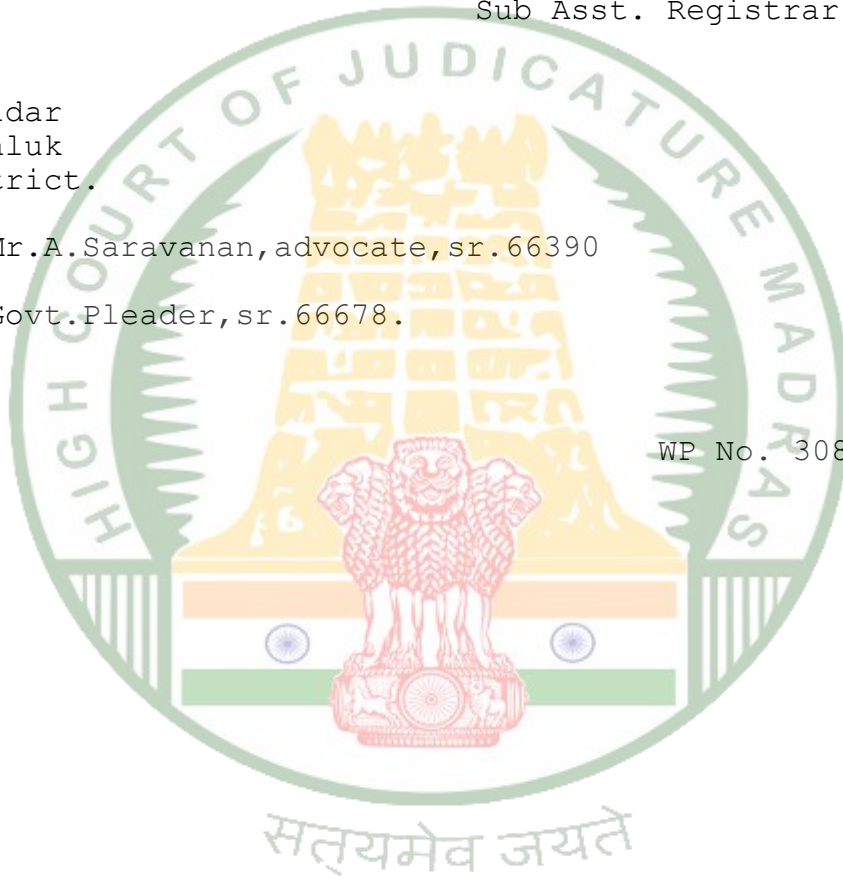
The Tahsildar
Yerkadu Taluk
Salem District.

+1 cc to Mr.A.Saravanan,advocate,sr.66390

+1 cc to Govt.Pleader,sr.66678.

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