

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 21.11.2016
PRONOUNCED ON : 22.12.2016

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE V.PARTHIBAN

Writ Appeal No.1201 of 2016

R.Perumalswamy .. Appellant/6th Respondent

Vs.

1. W.S. Industries (India) Ltd.
No.108, Mount-Poonamallee Road
Porur, Chennai 116.
 2. District Revenue Officer
Office of the District Collector
Tiruvellore 602 001.
 3. Revenue Divisional Officer
Tiruvellore Division, Tiruvellore 602 001.
 4. The Tahsildar
Tiruvellore Taluk, Tiruvellore 602 001.
 5. The Revenue Divisional Officer
Ambattur Division, Ambattur.
 6. The Tahsildar, Ambattur Taluk
Ambattur, Chennai 53.
 7. The Authorised Officer
M/s. Edelweiss Asset Construction Co. Ltd.
Edelwiess House, Off CST Road
Kalina, Mumbai 400 098.
 8. K.Govindaraghavan, Authorised Signatory
M/s. Mantri Premier Homes Pvt. Ltd.
Mantra House, No.41, Vittal Mallaya Road, Bengaluru 560 001.
 9. K.Govindaraghavan, Authorised Signatory
M/s. Mantri Developers Pvt. Ltd.
Mantra House, No.41, Vittal Mallaya Road
Bengaluru 560 001.
- .. Respondents

Appeal under Clause 15 of the Letters Patent filed against the order dated 30.8.2016 made in W.P.No.1453 of 2016.

WP.No.1453/16: Petition praying to issue a Writ of Certiorari Calling for the records relating to the order of the 1st Respondent dated 28.12.2015 in proceeding R.C.No. 25496/2015/B.3 and quash the same.

For Appellant : Mr.R.Venkataraman
For Respondent - 1 : Mr.P.S.Raman, Sr. Counsel
For M/s. Ojas Law Firm

For Respondents
2 to 6 : Mr.P.S.Sivashanmughasundaram
Spl. Govt. Pleader
For Respondent - 7 : Mr.Vikram Trivedi, Sr. Counsel
For M/s.S.Ramasubramaniam &
Associates
For Respondents
8 & 9 : Mr.R.Parthasarathy

J U D G M E N T

HULUVADI G.RAMESH, J

This writ appeal has been directed against the order dated 30.8.2016 made in W.P.No.1453 of 2016.

2. The appellant herein is the sixth respondent in the writ petition. The first respondent herein is the writ petitioner. The first respondent Company was incorporated under the Companies Act as W.S. Insulators of India Ltd, to manufacture Porcelain Insulators for application in Electrical High Voltage Transmission and Distribution in the year 1961. In 1962, the Government acquired 46.06 acres of land in S.Nos.25/5A, 4F, 4A, 4D, 27, 25/2, 5B, 4G, 26, 25/4H, 70/1A1, 70/1A2, 73/2, 77, 25/4I, 28/2, 25/3A, 25/4E and 25/4C2 at Porur Village, Saidapet Taluk, the then Chengalpattu District, under the Land Acquisition after following due procedure under the Land Acquisition Central Act, 1894 and assigned it in favour of the first respondent by way of Assignment Deed dated 26.02.1964. On 17.4.1964, the company was issued patta for the lands assigned to them, by the Tahsildar. During August 1964, the company availed loan from ICICI Bank, by depositing title deeds of the lands assigned to it. In 1987, the name of the company was

changed to W.S.Industries (India) Ltd. On 12.9.2015, the appellant sent a legal notice to the first respondent claiming right over the property of an extent of 13.65 acres in ***S.Nos.70/1, 73/2, 77** at Porur Village, said to have been purchased by his father and devolved on him after his father's demise, which was given to the first respondent on leave and license for a period of fifty years and calling upon the first respondent to hand over vacant possession of the same, since the lease period expired. But, the first respondent sent his reply dated 15.10.2015, denying the claim of the appellant. In the interregnum, the appellant submitted an application to the second respondent to rectify the mistakes in the revenue records, pursuant to which, the second respondent passed an order cancelling patta issued in favour of the first respondent in respect of the lands said to have been purchased by the appellant's father and directing to transfer it in the name of the appellant. Aggrieved by the said order of the second respondent, the first respondent filed a writ petition in W.P.No.1453 of 2016.

3. Before the learned single Judge, the first respondent/writ petitioner contended that from the date on which the lands were assigned to them by the then Government in the year 1964, they were in possession of the land and they also obtained loan by mortgaging the properties and that the order of the second respondent, rectifying the alleged mistakes crept in and cancelling the sub-divisions in S.No.70 and ordering sub-divisions in S.No.70 and directing to register the same in the name of the sixth respondent and classifying the remaining extent of 0.02.5 hectares of lands in S.No.70 as burial ground, based on the report of the Revenue Divisional Officer, was bad in law and sought to set aside the said order.

4. The appellant/sixth respondent contended that the property in question devolved on him after his father's demise and that he was in possession of the property and therefore, the second respondent, on the application submitted by him, passed the impugned order, after obtaining a report from the third respondent. It is also contended that though the first respondent claimed that they were assigned the lands by the Government, they did not produce the original deed and therefore, sought to reject the claim of the first respondent.

5. The learned Government Advocate contended that the second respondent was empowered by G.O.Ms.385, Revenue (General III) Department, dated 17.8.2004, to pass the impugned order and that the said order was passed only after dealing with the issue elaborately and therefore, the impugned order was not liable to be set aside.

6. The learned single Judge, after considering the submissions made on both sides, held that the second respondent decided the title to the properties, by exercising the jurisdiction of the civil Court and that the procedure adopted by the second respondent was wholly unsustainable in law and allowed the writ petition.

7. The learned counsel for the appellant contended that the second respondent, being the highest officer of the Revenue, is empowered to rectify the mistakes crept in, in the revenue records and also by virtue of G.O.Ms.No.385, Revenue (General III) Department, dated 17.8.2004.

8. The learned counsel for the appellant further contended that no notice under Section 4(1) of the Land Acquisition Act was served either on the father of the appellant, namely D.Rajagopal or on the predecessor-in-title, namely Singara Mudali nor an award was passed in their name nor compensation was paid to them and therefore, when there was no acquisition proceedings, there cannot be any acquisition of lands or assignment of lands in favour of the first respondent.

9. It is also contended by the learned counsel for the appellant that the father of the appellant was in possession of the lands in question and he leased out the same to the first respondent for a period of 50 years under leave and license agreement and after the said lease got terminated on expiry, the first respondent surrendered the possession to the appellant and that the appellant is in possession of the lands for more than a year.

10. The learned counsel for the appellant further contended that even assuming there was a land acquisition proceedings and the lands were acquired and assigned to the first respondent, since the first respondent had surrendered the land in S.Nos.73/2, 77 & 25/4H3 to the Government vide document No.1727 of 1964 dated 05.6.1964, it is clear that the lands are not in the possession of the first respondent and it is only in the possession of the appellant and therefore, the order of the learned single Judge has to be set aside.

11. In support of his contentions, the learned counsel for the appellant relied upon the following decisions in P.Balamurugan v. District Level Vigilance (Community Verification) Committee [2011 (6) CTC 28] and Kuruvamani v. A.Muthu [2014 (4) CTC 653].

12. Mr.P.S.Raman, learned senior counsel appearing for the first respondent contended that the second respondent has exceeded his powers and questioned the genuineness of the assignment deed executed by the Government in the year 1964 and

also decided the title dispute, by usurping the powers of the civil Court, on the premise that he is empowered by G.O.Ms.No.385, Revenue (General III) Department, dated 17.8.2004 and therefore, the order of the second respondent is wholly erroneous.

13. The learned senior counsel further contended that the lands have been assigned to them in the year 1964 and immediately, in the year 1964 itself, patta was also issued. Further, when the first respondent obtained loan from the Bank by depositing the title deeds, there is no question of re-conveying some of the lands to the Government and even assuming that the lands were re-conveyed to the Government vide document No.1727 of 1964 on 05.6.1964, neither the appellant nor the second respondent produced the same before the Court to prove the genuineness of their statement that there was re-conveyance of lands to the Government.

14. The learned senior counsel also contended that when the Government has assigned the lands in favour of the first respondent, the appellant could not have entered an leave and license agreement with the first respondent for a period of 50 years. Even assuming that there was such an agreement, since the appellant did not produce the said agreement or a copy of the same either before the second respondent or before Court, the said claim of the appellant itself is a concocted one.

15. Thus, the learned senior counsel for the first respondent concluded his contentions by stating that the second respondent had exceeded his powers and decided the title of the property, only based on the report of the Revenue Divisional Officer, without furnishing a copy of such report to the first respondent and without providing an opportunity to the first respondent to put forth his contentions, particularly when the second respondent is not empowered to question the genuineness of the document executed by the Government and therefore, the order of the second respondent is liable to be set aside for non-compliance of principles of natural justice and the order of the learned single Judge has to be confirmed.

16. In support of his contentions, the learned senior counsel relied upon the decision in Vishwas Footwear Company Ltd. v. The District Collector [2011 (5) CTC 94].

17. Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader appearing for the respondents 2 to 6 contended that the second respondent did not decide the title dispute, but only made rectifications of the mistakes crept in in the Updating Registry (for brevity "UDR") and that too, after obtaining report from the third respondent.

18. The learned Special Government Pleader further contended that the second respondent is empowered under G.O.Ms.No.385 to rectify the mistakes committed prior to UDR and therefore, it cannot be blindly stated that the second respondent is not empowered to pass the impugned order.

19. The learned Special Government Pleader also contended that the first respondent had obtained patta only in the year 1985 and not in the year 1964, as claimed by the first respondent and therefore, the contentions of the first respondent have to be rejected in toto.

20. The learned counsel appearing for the seventh respondent, in whose favour security rights have been created by the first respondent with respect to the loan availed by the first respondent, contended that the land absolutely vests in the Government, once it is acquired and that the said land is free from all encumbrances. Further, in the Land Acquisition Act, 1894, there is no provision to revert the acquired land to the owner and therefore, the title of the Government and the subsequent assignees is a valid one and cannot be defeated.

21. It is further contended by the learned counsel that the second respondent has erred in deciding the title without directing the parties to approach the civil Court, when he is not empowered to decide the title. Further, the second respondent ought to have summoned the original title deed before arriving at a conclusion and failure to do so, vitiates the order of the second respondent.

22. The learned counsel also contended that the second respondent had not issued any notice issued to the seventh respondent, ignoring the fact that any order that would be passed by the second respondent would affect the seventh respondent and therefore, the order of the second respondent, which is in contravention of the provisions of law and in violation of principles of natural justice, is liable to be set aside.

23. The following decisions have been relied upon by the learned counsel for the seventh respondent.

- (i) Senjeevanagar Medical & Health Employees Cooperative Housing Society v. Mohd. Abdul Wahab [(1996) 3 SCC 600];
- (ii) Govt. Of A.P. v. Syed Akbar [(2005) 1 SCC 558];
- (iii) May George v. Tahsildar [(2010) 13 SCC 98];
- (iv) Vishwas Footwear Company Ltd. v. The District Collector [2011 (5) CTC 94];
- (v) C.Sabesan Chettiar v. The District Revenue Officer, Coimbatore District [2011 (5) CTC 241];
- (vi) Collector v. D.Narsing Rao [(2015) 3 SCC 695]; and
- (vii) S.Jamuna Devi v. Krishnan [MANU/TN/0566/2016].

24. Mr.R.Parthasarathy, learned counsel appearing for the respondents 8 and 9, contended that even as on 2003, the first respondent was in possession of the lands, including the lands in dispute and that the first respondent approached the respondents 8 and 9 for selling and developing the lands, since the first respondent was in dire need of funds to settle the dues and therefore, it cannot be stated that the appellant was in possession of the lands in dispute.

25. The learned counsel further contended that since the facts are in dispute and also the title of the property, the same have to be adjudicated only before the civil Court by adducing oral and documentary evidence and it cannot be decided by the second respondent and therefore, the order of the second respondent is bad in law and it has to be set aside.

26. To buttress his contention, the learned counsel relied upon the decision of the Apex Court in Gurdwara Sahib v. Gram Panchayat Village Sirthala [(2014) 1 SCC 669].

27. We have given careful consideration to the rival submissions made on behalf of both sides and also perused the materials available on record.

28. The core issue to be decided by this Court is whether the order of the second respondent is tenable or not, for which, it is necessary to look into the brief facts which led to the passing of the order cancelling patta granted in favour of the first respondent and directing to transfer it in appellant's name.

29. According to the appellant, he is the owner of the lands in ***S.Nos.70/1**, 73/2 and 77 and that it was purchased by his father by sale deed No.1712 of 1929 dated 09.10.1929. Thereafter, the said lands were leased out to the first respondent under Leave and License Agreement, for a period of 50 years. Even after the expiry of the lease period on 31.12.2014, since the first respondent did not hand over the lands, the appellant sent a legal notice dated 12.9.2015 terminating the lease by 31.10.2015. In the interregnum, the appellant submitted an application to the second respondent on 07.9.2015 to rectify the mistakes made during UDR Scheme in respect of the owner of the lands in dispute. Consequently, the second respondent, based on the report of the third respondent, passed an order rectifying the errors made in the revenue records, namely deleting the name of the first respondent as the owner of the lands in dispute and directed to incorporate the name of the appellant.

30. From a perusal of the typed set of documents filed before Court, it would be evident that the Government had acquired the land in S.No.70/1 only to the extent of 5.16 acres, whereas the total extent of land in S.No.70/1 was 5.76 acres, of which, 6 cents were classified as burial ground and the said 6 cents were sub-divided as S.No.70/2 and the balance of 54 cents were in possession of the appellant, since the same was neither acquired by the Government nor assigned to the first respondent. It is to be noted that the Government had assigned the lands to the first respondent in S.Nos.70/1A1 and 70/1A2 and not S.No.70/1, which would clearly show that there was a sub-division of S.No.70/1 and leaving an extent of 54 cents, the Government had assigned the rest of the lands by sub-dividing it as S.Nos.70/1A1 and 70/1A2, which were assigned in favour of the first respondent and that 6 cents of burial ground in S.No.70/2 and another 54 cents of lands in S.No.70/1 were not acquired by the Government. It is worth to mention at this juncture that the said sub-divided S.Nos.70/1A1 and 70/1A2 were not found in the revenue records either before the assignment of lands to the first respondent or even after the assignment of lands to the first respondent.

31. As regards the land in S.No.73/2, the entire extent of the land in that survey number was 3.27 acres, out of which, the Government has acquired only 2.27 acres under the land acquisition proceedings and only that 2.27 acres were assigned to the first respondent, as seen from the Gazette notification filed as document Nos.3 and 4 and thus, it is clear that there was a balance of 1 acre of land in S.No.73/2, which was not acquired by the Government and assigned to the first respondent and it was only in possession of the appellant.

32. The land in S.No.77 is of an extent of 5.68 acres. Though it was acquired by the Government and thereafter, it was assigned to the first respondent, within a period of four months from the date of assignment, namely on 05.6.1964, the said lands were re-conveyed to the Government vide document No.1727 of 1964.

33. In the light of the above, it would be apt to refer to the tabular column found in page No.4 of the assignment deed dated 26.02.1964, giving the details of the lands and the survey numbers and accordingly, the tabular column is reproduced hereunder:

Award No.	Survey No.	Extent in Acres	Total
7/62-63 dated 28.11.1962	25/5A	3.93	
	25/4F	3.08	

Award No.	Survey No.	Extent in Acres	Total
	25/4A	2.46	
	25/4D	0.91	
	27	0.86	11.24
8/62-63 dated 28.11.1962	25/2	1.48	
	25/5B	2.67	
	25/4G	3.27	
	26	2.00	
	25/4H	5.97	15.39
13/62-63 dated 28.03.1963	70/1A1	1.50	1.50
15/62-63 dated 28.03.1963	70/1A2	3.66	
6/63 dated 25.10.1963	73/2	2.27	
7/63 dated 7.11.1963	77	5.68	11.61
13/63-64 dated 05.02.1964	25/4I	1.31	
	28/2	0.76	
	25/3A	2.46	
	25/4E	0.92	
	25/4C2	0.85	6.30
	Total		46.04

34. A bare look at the above tabular column would clearly indicate that the lands acquired and assigned to the first respondent in S.Nos.70/1A1 is 1.50 acres and 70/1A2 is 3.66 acres, totalling to 5.16 acres, out of the total extent of 5.76 acres and that in S.No.73/2, the land acquired and assigned was only 2.27 acres out of the total extent of 3.27 acres, leaving the land of an extent of 1 acre and that in S.No.77, the total extent of 5.68 acres were acquired and assigned to the first respondent.

35. The father of the appellant, Rajagopal, who was said to have purchased the lands in dispute, along with his father Duraisamy Naicker, from one Singara Mudaliar, in the year 1929 vide document ***No.1712** of 1929 dated 09.10.1929, died in the year 2004 and thereafter, the property in question devolved on the appellant. When the appellant attempted to mutate in the revenue records, it was found that some errors were crept in, in the revenue records in respect of his properties and the name of the first respondent was found in the revenue records and therefore, as per the procedure contemplated under law, he applied to the second respondent to rectify the errors in the revenue records.

36. According to the appellant, though the Government acquired the lands in dispute and assigned it in favour of the first respondent on 26.02.1964, the first respondent re-conveyed the lands in dispute to the Government in the year 1964 itself, by document No.1727 of 1964 dated 05.6.1974. It is not in dispute that the assignment deed contains a clause that the Government shall have the right to resume the land if the whole or part of the land is not used by the Company for the purpose for which it was required within a period of one year or such further extended period as may be permitted by the Government to be reckoned from the date on which the company was placed in possession of the land.

37. A plain reading of the above paragraph would make it clear that the Government may resume the land if the said land is not used for the purpose for which it was assigned within a period of one year or extended period, namely from the date on which the company was placed in possession of the land.

38. In this regard, the appellant relied upon document No.17, namely the application for obtaining certified copy, in support of his contention that the first respondent re-conveyed the land to the Government and also the endorsement made by the Joint Sub Registrar II, Saidapet..

39. Document No.17, relied upon by the appellant, is a copy of the application filed by one Jayapal, for the issue of certified copy of document No.1727 of 1964 dated 05.6.1964, with respect to the lands in S.No.73/2 and 77 stated to be executed by the first respondent in favour of the Government. On the reverse of the said application, the Joint Sub Registrar II, Saidapet, has made an endorsement stating that document No.1727 of 1964 was brittle and therefore, he could not take a copy of the same.

40. In the above circumstances, on receipt of the application of the appellant dated 07.9.2015, the second

respondent called for a report from the third respondent on 11.9.2015 and the third respondent had submitted his report on 04.11.2015. On 07.11.2015, the second respondent sent notices to the appellant and the first respondent. Since the first respondent did not appear on the date on which it was required to appear for personal hearing, the second respondent again sent a notice to the first respondent to appear for enquiry on 08.12.2015. On 08.12.2015, the first respondent did not choose to appear, but sought an adjournment and accordingly, the second respondent adjourned the enquiry to 22.12.2015. On 22.12.2015, the second respondent heard the appellant as well as the representatives of the first respondent. On 28.12.2015, the second respondent, after considering all the documents submitted by the both parties, held that there were some interpolations in the assignment deed dated 26.02.1964, that the said document itself is a manipulated one and that the encumbrance certificate produced by the appellant did not reflect the entry of assignment deed and consequently, ordered the Registry to correct the mistakes crept in after the UDR Scheme and to cancel the name of the first respondent in respect of the lands in dispute and to register the name of the appellant.

41. At this juncture, it is relevant to note that the Commissioner and Director, Land Survey and Land Tax Scheme only recommended to the Government to revoke the power conferred on the Regional Deputy Tahsildar for rectifying the mistakes committed in the Updating Registry, based on the report of the District Revenue Officer, Erode. Thereafter, a report was called for from the Special Commissioner and the Commissioner of Revenue Administration, who, in his report stated that if any mistake committed in respect of the names of the owners of the lands in the registration, only the District Revenue Officer has the authority to conduct proper enquiry and to issue orders and accordingly, the power conferred on the Regional Deputy Tahsildar to be revoked. Based on the said report, the Government, issued G.O.Ms.No.385, Revenue (General III) Department, dated 17.8.2004, cancelling the power conferred on the Regional Deputy Tahsildar to rectify the mistakes committed in the Updating Registry and empowering the District Revenue Officer, to rectify the defects committed in the Updating Registry under the Registration of Land Possession Development Scheme, as only the District Revenue Officer can conduct intensive enquiry. Hence, there cannot be an iota of doubt as to the power conferred on the second respondent to rectify the mistakes that were crept in, in the Updating Registry.

42. Admittedly, the second respondent, on receipt of the application, called for a report from the third respondent and thereafter, directed both the appellant and the first respondent to appear before him and also heard both the parties. The second respondent, taking into consideration the encumbrance

certificate for the period from 01.01.1900 to 21.4.2015, in which there was no mention about the assignment deed and the Settlement Register, both prior to the UDR Scheme and after the UDR Scheme and finding that the name of the first respondent was mentioned only after the UDR Scheme and holding that some mistakes were crept in, in the Updating Registry, passed the order impugned in the writ petition. But, the second respondent had not decided the title of the property in dispute. Further, it cannot be stated that the second respondent had not given an opportunity of hearing to the first respondent, before passing the order impugned in the writ petition.

43. Moreover, as pointed out by the learned Government Pleader, no assignment was made to the first respondent with respect of 54 cents in S.No.70/1 and 6 cents of burial ground. Further, since the entries were made wrongly in the patta passbook issued in favour of the first respondent in the year 2005, pursuant to the UDR Scheme, the second respondent, only after verification of the documents available on record and after affording an opportunity of hearing to both the parties, in compliance of the principles of natural justice, rectified the errors made in the UDR Scheme. Such an exercise undertaken by the second respondent to rectify the errors in the UDR Scheme cannot be stated that the second respondent exceeded his power. But, the learned single Judge, without examining the power available to the second respondent under G.O.Ms.No.385, proceeded to decide unilaterally that civil Court alone has to decide.

44. That apart, the learned single Judge, by order dated 03.8.2016, while allowing the writ petition filed by the first respondent, set aside the order of the second respondent, holding in paragraph 36 of the order that the second respondent had gone into the issue in detail and virtually decided the title to the properties in question, exercising the jurisdiction of the civil Court. But, a perusal of the order of the second respondent makes it clear that in order to rectify the mistakes, the second respondent had to verify the documents placed before him by both the parties and based on the said documents and the report submitted by the third respondent, the second respondent passed the order. Therefore, the order of the learned single Judge to the extent of holding that the second respondent virtually decided the title to the properties in question, exercising the jurisdiction of the civil Court, is set aside. The order of the second respondent dated 28.12.2015, impugned in the writ petition, insofar as rectifying the errors committed in the UDR Scheme alone is restored.

45. In fine, the writ appeal is allowed in part. It is left open to the parties to approach the revenue authorities for

further rectification of errors, if any, in the revenue records and to approach the civil Court for deciding the title in respect of the properties in dispute, if so advised and thereafter, to approach the revenue authorities for making necessary entries pursuant to the order of the civil Court with respect to title. No costs. Consequently, CMP No.15418 of 2016 is closed.

-s/d-
Assistant Registrar

***Corrected order as per the
order dated 22/12/2016**

-s/d-

**Sub-Assistant Registrar(AD-II)
dt:24/01/2017**

True Copy

Sub-Assistant Registrar

kpl

To

1. District Revenue Officer
Office of the
District Collector
Tiruvellore 602 001. (To be Substituted order
already despatched on 5/1/2017)
2. Revenue Divisional Officer
Tiruvellore Division
Tiruvellore 602 001.
3. The Tahsildar
Tiruvellore Taluk
Tiruvellore 602 001.
4. The Revenue Divisional Officer
Ambattur Division
Ambattur.
5. The Tahsildar
Ambattur Taluk
Ambattur, Chennai 53.

+1 cc to Government Pleader sr 76284

+1 cc to M/s.Sathish Parasaran Advocate sr 74975

+1 cc to M/s.Ojas Law firm sr 75996

+1 cc to M/s.S.Ramasubramaniam & Associates sr 74910

+2 ccs to M/s.R.Venkataraman Advocate sr 74880

W.A.No.1201 of 2016

sal(co)

aa05/01/2017

aa24/01/2017



WEB COPY