

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.6.2016

CORAM

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

Writ Appeal No.653 of 2016

Avudai Ammal (Deceased)

1. Subbulakshmi
2. Venkataraman
3. Balasaraswathi
4. Bagyalakshmi
5. Gopalakrishnan

... Appellants/Petitioners 2 to 6

Vs.

1. The Tahsildar
Srivaigundam
Tuticorin District.
2. The State of Tamil Nadu
rep. by its Secretary
Revenue Department
Secretariat
Chennai 600 009.
3. The District Collector
Tuticorin District
Tuticorin.

... Respondents/Respondents

Appeal under Clause 15 of the Letters Patent filed against the order dated 09.9.2015 made in W.P.No.25415 of 2001 on the file of this Court.

WP.No.25415 of 2001:Writ of Certiorarified Mandamus to call for the distrained order issued by the Ist Respondent in his proceedings in A-1/1305/2001 dated 10/09/2001, quash the same and Consequently, forbear the Respondents from in any way interfering with the Petitioner's Occupation of the land in S.No.397 in Vallanadu Villlage, Sivaikuntam Taluk till the disposal of the representation made by the Petitioner dated 22/2/2000 to the District Collector Tuticorin.

For Appellants : Mr.V.Subramanian
For M/s. Mc. Gan Law Firm

For Respondents : Mrs.A.Srijayanthi
Special Government Pleader

J U D G M E N T

(Delivered by Huluvadi G.Ramesh,J)

This is an appeal filed against the order of dismissal passed by a learned single Judge dated 09.9.2015 made in W.P.No.25415 of 2001.

2. The facts of the case which led to the filing of the writ petition are as follows:

By the proceedings of the first respondent dated 30.6.1944, the appellant's husband Venkata Subbiah Thevar was granted dry lands of an extent of 0.53 cents in Plot 1 in S.No.397/1, Vallanad Cusba Village, Srivaikundam Taluk, under the scheme of grow more food for cultivation on the basis of lease. Thereafter, some adjacent lands were also allotted to him and from then on, he was in possession of the said lands. After his death in the year 1987, his wife, the writ petitioner, was in possession of the lands. By proceedings dated 27.11.1998, the first respondent directed the writ petitioner to vacate the lands and also rejected her request for the grant of patta for the said lands. Therefore, the writ petitioner preferred a writ petition in W.P.No.1543 of 2000 and the same was dismissed. As against the same, a writ appeal was filed in W.A.No.578 of 2000. When the writ petition came up for admission, it was submitted that a representation was made to the District Collector for allotment of land to the writ petitioner, on 22.02.2000. Therefore, the writ appeal was disposed of directing the District Collector to consider the representation of the writ petition and to pass orders within a reasonable time. But, no order was passed on the said representation. Therefore, the petitioner made several representations on 3.8.2000, 23.8.2000 and 19.11.2001. However, the first respondent herein passed a distraint order dated 10.9.2001. Hence, the writ petition was filed. During the pendency of the writ petition, the writ petitioner died and therefore, her legal heirs were brought on record.

3. The learned single Judge, by order dated 09.9.2015, holding that the writ petitioner had not paid the lease amount, that the pendency of her representation cannot be a ground for not paying the arrears of lease amount, that she owned some

other lands and that she also had sufficient means to pay the lease amount, but failed to pay the outstanding amount, dismissed the writ petition.

4. A perusal of the documents would show that the land in question was given to the Venkata Subbiah Thevar, writ petitioner's husband, in the form of licence, only for a period two years. The licensee cannot have any preferential claim of assignment on expiry of the licence period. Since the Venkata Subbiah Thevar was in possession of the said lands, even after the expiry of the lease period, it was treated as an encroachment and therefore, eviction proceedings was initiated. When he applied for assignment of the said lands, the Government, by letter dated 17.7.1985 issued instruction to take steps for assignment of 1.03 acres of land, out of 3.71 acres, after collecting two times of the market value and to evict him from the remaining area. But, Venkata Subbiah Thevar made a representation to assign the land in exchange of his patta land of an extent of 3.75 acres in S.No.504. However, the same was rejected. But, the Government leased out the said lands at the rate of 7% of the market value by an order dated 15.11.1990 to the writ petitioner, for a period of three years and renewable thereafter. A sum of Rs.70,041/- has to be paid for a period of three years from 15.11.1990. However, the writ petitioner failed to remit the same till 2001, which forced the first respondent to issue distraint order to remit the outstanding amount, failing which the property would be put to public auction.

5. The learned counsel for the appellants submits that the appellants were in continuous possession of the land from the year 1944 and that they had put in lot of efforts to make the lands fertile and therefore, they should be considered for assignment of the lands, by paying the market rate prevailing as on today.

6. Admittedly, Venkata Subbiah Thevar was given an option to get the land assigned in his favour in the year 1985, by paying two times of the market value prevailing then. However, he had not chosen to pay the same, but wanted to exchange his patta lands. Further, when the respondents were given time to pay the outstanding lease amount, they had not chosen to pay the same till 2001. Moreover, they owned some more lands and also had sufficient means to pay the lease amount. In spite of it, they did not pay the outstanding amount.

7. However, since the learned counsel for the respondents states that the respondents are willing to pay the market value prevailing today and in view of the fact that they were in possession of the land since 1944, we are of the view that the respondents shall be given an opportunity to make a representation to the District Collector. Accordingly, this writ

appeal is disposed of, modifying the order of the learned single Judge, to the effect that the respondents shall pay the arrears of lease amount within a period of three weeks from the date of receipt of a copy of this order and only after making payment of the outstanding amount, they shall make a representation to the District Collector for assignment of lands, who shall consider the same and pass appropriate orders within a period of three months from the date of such representation in accordance with law. No costs. Consequently, CMP Nos.8385 and 8386 of 2016 are closed.

-s/d-

Assistant Registrar

True copy

Sub-Assistant Registrar

To

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+1 cc to Mr.MC.Gan Law Firm sr.31640/16
+1 cc to Government Pleader High Court Madras
sr 31540/16

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W.A.No.653 of 2016.

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