

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.35247 of 2016

and

W.M.P.Nos.30363 and 30364 of 2016

R.Amutha

.. Petitioner

-vs-

- 1.The Government of Tamil Nadu,
represented by its Secretary,
Adi Dravida and Tribal Welfare Department,
Fort St.George, Chennai-600 009.
- 2.The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
- 3.The District Revenue Officer,
Thiruvannamalai District,
Thiruvannamalai.
- 4.The Revenue Divisional Officer,
Thiruvannamalai District,
Thiruvannamalai.
- 5.The Tahsildar,
Thandrampattu Taluk,
Thandrampattu,
Thiruvannamalai District.

6.Dhanpal

7.Narayanan

.. Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorari to call for the entire records of the second respondent in Na.Ka.AA2/36896/2016 dated 28.09.2016 and to quash the same.

For Petitioner :: Mr.M.Venkatachalapathy,
Sr.Counsel for
Mr.M.Raja Sekhar

For Respondents :: Mr.A.Kumar,
Special Government Pleader
for R1 to R5

ORDER

This writ petition has been filed to quash the proceedings of the second respondent in Na.Ka.AA2/36896/2016 dated 28.09.2016.

2.Originally, landed property was allotted to the seventh respondent by the second respondent as per the proceedings dated 15.01.1970. The seventh respondent received a sum of Rs.10,000/- from the sixth respondent and executed a promissory note on 03.11.1993. Since the seventh respondent failed to pay the said amount, a money suit was filed by the sixth respondent against him in O.S.No.465 of 1995 on the file of the learned District Munsif, Thiruvannamalai. An application was filed in I.A.No.372 of 1995 and the property in question was attached. After the attachment was made absolute, ex-parte decree was also passed on 12.07.1995. Thereafter, the sixth respondent filed E.P.No.520 of 1995 for executing the decree. The property was brought into public auction for sale. The petitioner's husband, viz. Ramachandran had participated in the Court auction sale held on 24.04.1996 and he was the successful bidder and the sale was confirmed on 27.04.1996 by the Court. On 18.12.1996, the possession of the property was handed over to the husband of the petitioner in REA No.59/1996 and EP was terminated after recording full satisfaction. Thereafter, the petitioner's husband was running a business in the name of 'Chezhian Blue Metal' in that premises. The petitioner's husband, on 21.10.2004, executed a settlement deed in favour of the petitioner and that document has been registered in Doc.No.2018 of 2004 dated 21.12.2004. Patta, which was issued in the name of the petitioner's husband, was transferred in the name of the petitioner. However, all of a sudden, by notice dated 28.09.2016, the second and third respondents had issued the impugned show-cause notice calling upon the petitioner to appear for enquiry on 30.09.2016, which was served on the petitioner on 28.09.2016, which is the subject matter in the present writ petition.

3.The main ground of attack made by the learned senior counsel appearing for the petitioner is that once the property has been auctioned through Court, any other condition even if it is vested in the original document and even if it is a common

grant, will not have any effect, unless in the Court auction itself it is specifically stated that such a person can only hold the property. He relied on a judgment of this Court in *Ayi Gounder vs. Gabriel*, reported in 1964 77 LW 291 in support of his proposition that even if the property is granted by the Government in pursuance of any condition, when it is sold by public auction or by Court auction, then that condition will not survive. In such view of the matter, he would contend that notice calling upon the petitioner to appear for enquiry does not arise.

4.The learned senior counsel appearing for the petitioner also relied upon the judgment of the High Court of Andhra Pradesh in *S.Usha Rani v. Government of A.P.*, reported in 2014 CJ(AP) 1247, in which the petitioner therein was the purchaser of the land in an open auction conducted by the bank on account of default of the borrowers, who were assignees. By relying upon an earlier Division Bench judgment of the High Court of Andhra Pradesh in the case of *Sub-Registrar and another v. K.Guravaiah*, reported in 2009(3) ALT 85 (D.B.), it was held that when the purchaser has purchased the property through open auction on default of the borrowers who were earlier assignees, the original status of the land as assigned land, loses its character, and accordingly the sale was confirmed.

5.The learned Special Government Pleader would only contend that the impugned proceedings is only a show-cause notice and the petitioner need not apprehend anything and she has to give proper explanation to the show-cause notice.

6.Heard the learned counsel on either side and perused the materials available on record carefully.

7.It is seen from the show-cause notice impugned in this writ petition that it was issued only with regard to the condition made in the original allotment. The condition in the original allotment goes once the property has been sold in public auction. In the judgment of this Court in the case of *Ayi Gounder vs. Gabriel* (supra), which has been relied upon by the learned senior counsel appearing for the petitioner, it has been 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; that the restraint against alienation merely applied to a transaction between parties and not to a sale in invitum; that in any case, a Court sale contrary to the prohibition against alienation cannot be said to be opposed to public policy.

8.Similarly, in the second judgment relied upon by the learned senior counsel appearing for the petitioner in *Sub-Registrar and another v. K.Guravaiah* (supra), the Division Bench

of the Andhra Pradesh High Court has categorically held that the condition is given a go-by once it is a Court auction sale and there is no embargo for the purchaser of the property through Court auction to deal with it as deemed fit by him/her and it will not in any way restrain the purchaser from obtaining bank loans for the property. The relevant paragraph of the said judgment is extracted hereunder:

"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 the Sub-Registrar and another v. K.Guravaiah S/o.Chalamaiah and another (1) 2009(3) ALT 85 (D.B.): 2009 (2) ALD 250 (D.B.) (W.A.No.950 of 2007 dt.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 had 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." (emphasis supplied)

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 on the above said lands is held as illegal. The Writ Petition is accordingly allowed. The Sub-Registrar, Srikalahasti, Chittoor District (3rd respondent), is directed to issue valuation certificates for the purpose of registering the transactions and to obtain Bank loans for the land to an extent of Ac.5.00 cents in Sy.No.38 ½ and Ac.1.90 cents in Sy.No.380/3 of Urandur Village of Srikalahasti Mandal, Chittoor District, within a period of three weeks from the date of receipt of a copy of this order. No costs."

9. In view of the above legal position, the writ petition is allowed and the impugned show-cause notice of the second respondent in Na.Ka.AA2/36896/2016 dated 28.09.2016 is quashed. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

KM

To

1. The Secretary to Government,
Government of Tamil Nadu,
Adi Dravida and Tribal Welfare Department,
Fort St. George, Chennai-600 009.

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2.The District Collector,
Thiruvannamalai District,
Thiruvannamalai.

3.The District Revenue Officer,
Thiruvannamalai District,
Thiruvannamalai.

4.The Revenue Divisional Officer,
Thiruvannamalai District,
Thiruvannamalai.

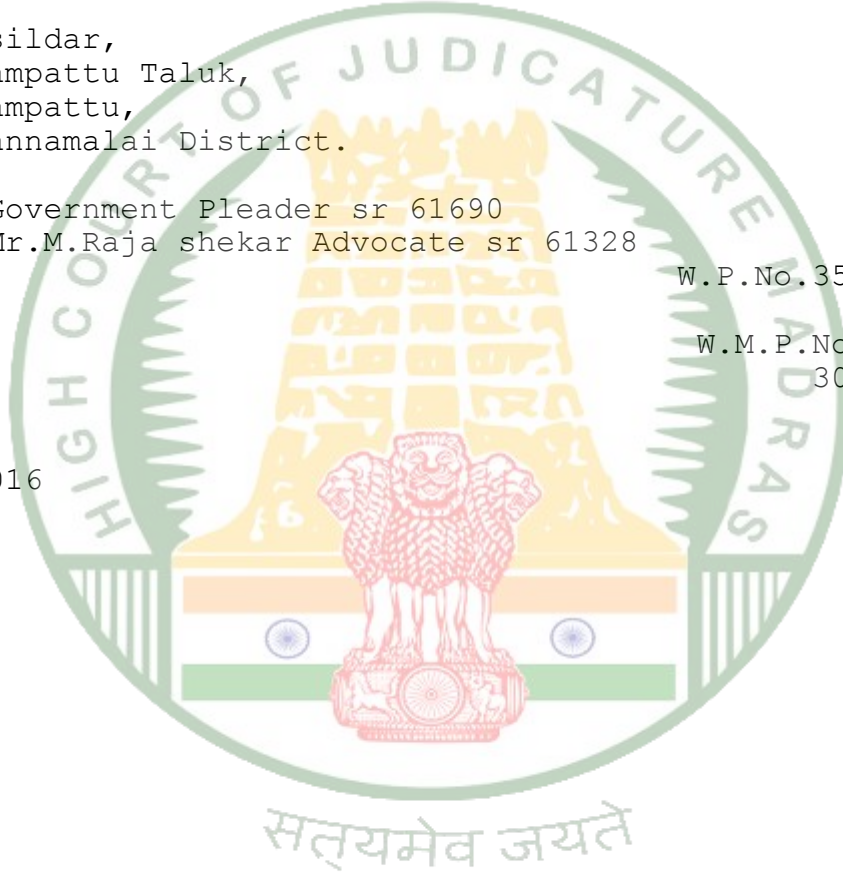
5.The Tahsildar,
Thandrampattu Taluk,
Thandrampattu,
Thiruvannamalai District.

+1 cc to Government Pleader sr 61690

+1 cc to Mr.M.Raja shekar Advocate sr 61328

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aa26/12/2016



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