



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.06.2016

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THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Writ Petition No.9957 of 2013
and M.P.(MD).No.1 of 2013

T.Pitchaikani

... Petitioner

Vs.

The Special Tahsildar,
(Adi Dravida Welfare)
Aruppukottai,
Virudhunagar District.

... Respondent

Prayer:-Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records relating to the proceedings of the respondent in Na.Ka.No.A1/1213/1983 dated Nil-05-2013 and quash the same as illegal.

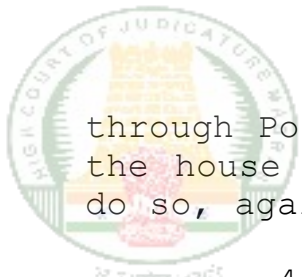
For Petitioner :Mr.K.Gokul for
Mr.R.Govindaraj
For Respondents :Mr.J.Gunaseelan Muthiah
Government Advocate

O R D E R

Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent.

2. The Petitioner has focussed the instant writ petition before this court seeking to call for the records relating to the proceedings of the respondent in Na.Ka.No. A1/1213/1983 dated Nil - 05-2013 and to quash the same as an illegal one.

3. The Learned counsel for the Petitioner submits that the petitioner was served with the impugned memorandum order in Na.Ka.No. A1/1213/1983 dated Nil- 05-2013, passed by the respondent/Special Tahsildar (Adhi Diravidar Welfare), Aruppukottai, Virudhunagar District, whereby and whereunder, the petitioner was informed that he is in occupation of the house and land in S.Nos.30/9, 10, 12, B2, 13 of Kariapatti Village, which was owned by deceased Tmt.Pappa and the same was to be taken over by the Government and therefore, no construction activities should be carried out in the said house and in case of violation, he was also informed that steps would be taken immediately to arrest him



through Police Department and therefore, he was directed to vacate the house within a period of one month and in case of failure to do so, again, proceedings would be initiated against him.

4. According to the Learned counsel for the Petitioner, the petitioner is not in possession of any own house and in fact, the respondent had committed an error in arriving at a conclusion that the Legal Heirs of the assignee are not in possession of the assigned land.

5. Advancing his arguments, the Learned counsel for the petitioner takes a stand that the respondent had passed the impugned order in question without taking note of a primordial fact that the assignee viz., Tmt.Pappa (deceased) had executed a Will in favour of the petitioner, on 12.06.2001, as regards the subject matter of the property in question.

6. The Learned counsel for the Petitioner strenuously projects an argument that the deceased Tmt.Pappa was married and she had no child through the marriage with one Sundarraaj and in fact, she divorced her Husband Sundarraaj, after living together for a period of 10 years. Subsequently, the said Sundarraaj married another woman.

7. The Learned counsel for the Petitioner emphatically takes a plea that the property in question was assessed to property tax in petitioner's name and indeed, he is living in that house together with his family, which consists of his wife, his mother, his widowed sister and three minor children.

8. Lastly, while winding up the argument, the Learned counsel for the Petitioner contends that the petitioner was not provided with an opportunity of hearing and in this regard, the petitioner had not followed the principles of Natural Justice, either by hearing him or receiving his objections, as the case may be. Per contra, the Learned counsel for the Petitioner, invites the attention of this Court that the impugned order dated Nil-05-2013 was passed by the respondent without prior notice to the petitioner and in short, the impugned order simply directs the petitioner not to put up any further constructions in the house and also to vacate from the house and the land that too within a period of one month etc., which is per se not correct in the eye of Law.

9. In response, the Learned Government Advocate appearing for the Respondent, contends that the writ petitioner is the brother's son of the deceased Tmt.Pappa and in fact, he has no salable title in respect of the subject matter of the property in question. The original assignee Tmt.Pappa was issued with the order of original allotment.



10. On behalf of the Respondent, the Learned Government Advocate submits that the writ petitioner was provided with due opportunity and he had given a statement before the respondent on 30.05.2013 and as a matter of fact, he agreed to obey/comply with the proposed action to be initiated by the concerned Government authority.

11. Continuing further, the Learned Government Advocate contends that only with the malafide intention to gain title over the land freely assigned in favour of Tmt.Pappa, the petitioner filed the instant writ petition before this Court. Therefore, the prayer of the petitioner deserves no consideration in the hands of this Court.

12. It is not in dispute that the Original Assignee of the land was one Tmt.Pappa and she expired on 25.01.2002 (as seen from the Death Certificate, issued by the Certified Officer of the Office of the Kariapatti Town Panchayat). On behalf of the respondent, it is not disputed that the original assignee of the land Tmt.Pappa (since deceased) had executed a Will dated 12.06.2001 to and in favour of the writ petitioner.

13. Although in the counter filed by the respondent/Special Tahsildar, (Adhi Dravidar Welfare), Aruppukkottai, at paragraph No.4, it is mentioned that 'Tmt.V.Chandralekha, W/o.Veerabadhran of Aruppukkottai, who has sold the property is also not genuine seller', it is not clear before this Court as to who is this Tmt.V.Chandralekha and what is her relationship either with the deceased Pappa or with the writ petitioner as the case may be.

14. At this stage, a mere running of the eye over the contents of the impugned order dated Nil - 05-2013 passed by the respondent latently and patently indicates that the deceased Tmt.Pappa had no male or female issues and therefore, the government land and the group house would revert back to the Government as owner.

15. Apart from the above, a cursory glance of the averments made in paragraph No.4 of the counter affidavit filed by the respondent shows that late Tmt.Pappa had not obtained any permission from the competent/appropriate authorities and as per the Revenue Standing Order Rule 15(1) (A) (i), the 'Assignee' has no salable interest. Moreover, the assignee had no salable tittle (since the assignment order issued against the assignee in respect of the government land, being a not registered document) in terms of the ingredients of Transfer of Property Act, 1882.

<https://hcservices.ecourts.gov.in/hcsevtce> 16. The sum and substance of the stand taken on behalf of the respondent (as seen from the paragraph No.6 of the counter filed by the Respondent) unerringly point out that the



transactions made by the original assignee and the subsequent transactions in respect of the subject matter in issue on the freely assigned land were purely done with a mala fide intent to cheat the government and therefore the lands assigned at free of cost with structures may be ordered to be resumed to and in favour of the government and in this regard the Court has to pass necessary orders.

17. In this connection, it is not out of place for this Court to make a significant mention of the Standing Orders of the Board of Revenue viz., RSO Rule 15(1) (A) (i), which enjoins as follows:

"Grant of land by the Government in the form of assignment, alienation, lease etc., is governed by the provisions of the Government Grants Act (Central Act). According to the provisions in the Government Grant Act, grant of Government land will not be governed by the provisions of the Transfer of Property Act, unless specific provisions are made in the order of grant by the Government that title to the property will pass on to the assignee subject to complying with the conditions of grant or after the expiry of a certain period. The grantee of the land, therefore, does not acquire title, simply under the orders of grant of land by the Government."

Also, RSO 21 (7) (i) (ii) speaks as under:

"7(i) That the land shall not be alienated to a person other than a citizen of India;

(ii) Any alienation in violation of condition of grant shall invalidate the grant."

(vide G.O.Ms.No.117, Rev.dt. 5-7-1982)

18. Be that as it may, on a careful consideration of the respective contentions and in view of the fact that the impugned order dated Nil-05-13 mentions that the petitioner should vacate from the house and the land within one month from the date of receipt of memo and also that the petitioner should not carry out any house building improvement construction activities, this court is of the considered opinion that the impugned order dated Nil - 05-2013 passed by the respondent, simpliciter/straight away informs the petitioner that he should vacate from the land and house and further he should not carry out any building improvement construction activities and the same is negation of principles of Nature Justice, as opined by this Court.

19. It cannot be forgotten that even a squatter or an encroacher is entitled to be issued with a notice and reasonable <https://hdservices.muttsd.gov.in/hdservices/> objections and to provide the personal hearing if he so desires/advised.



20. It is to be borne in mind that from the perusal of the contents of the impugned order dated Nil - 05-2013, it is not quite clear whether the petitioner was required to submit his written objections or to express his opinion in the subject matter by way of his personal appearance/requiring to appear before the concerned authority and to explain his stand/position in the subject matter in issue. However, there is a reference at paragraph No.3 of the counter of the respondent, wherein, it was mentioned at the end of the said paragraph that an enquiry was made on 30.05.2015 by the Special Tahsildar (ADW) Aruppukkottai. Really speaking whether an enquiry made on 30.05.2015 by the Special Tahsildar (ADW) Aruppukkottai was pursuant to the issuance of notice is also not made quite clear.

21. In the upshot of detailed qualitative and quantitative discussions and on a careful consideration of the facts and circumstances of the present case in integral fashion, this court comes to an irresistible and inevitable conclusion that the impugned order dated Nil - 05-2013, passed by the respondent, is in breach of principles of Natural Justice. As such, this Court is left with no option, but to interfere with the said order, to prevent an aberration of Justice. Viewed in that perspective, this Court, in the interest of Justice and Fair Play, interferes with the said impugned order dated Nil-05-2013, passed by the Respondent and sets aside the same. Consequently, the writ petition succeeds.

22. In the result, the writ petition is allowed. The impugned order in Na.Ka.No. A1/1213/1983 dated Nil-05-2013, passed by the respondent/ Special Tahsildar (Adhi Dravidar Welfare), Aruppukkottai, Virudhunagar District is set aside by this Court for the reasons assigned in this writ petition. Before parting with the case, this Court pertinently and abundantly makes it quite clear that allowing of the present writ petition would not preclude the respondent/ Special Tahsildar (ADW) Aruppukkottai, Virudhunagar District to issue a fresh memorandum/order in the subject matter in issue, of-course by following the principles of Natural Justice, in true letter and spirit, without any deviation whatsoever. It is also open to the petitioner to submit his objections before the Respondent/Concerned Authority, projecting his version and to place all documentary evidence before the respondent, if he so desires/advised and the Respondent shall take into account consideration of the same with utmost care, caution and diligence and to pass a reasoned, speaking order on merits in an unbiased manner within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected M.P.(MD).No.1 of 2013 is closed.

Sd/-

Assistant Registrar(AS)

/True copy/



To

The Special Tahsildar,
(Adi Dravida Welfare)
Aruppukottai,
Virudhunagar District.

+1cc to special Government Pleader SR.No.27387/16 dt.2.6.2016

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and MP(MD).No.1 of 2013
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