IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.11.2016

Pronounced on : 18-01-2017

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 34535 of 2015

and

M.P. Nos. 1 and 2 of 2015

1. M/s. Saraswathi Mills Limited
   represented by its Director N. Shanmugasundaram
   having office at No.45, First Main Road
   Raja Annamalaipuram
   Chennai - 600 028

2. Munirathinam .. Petitioners

Versus

The Tahsildar
Arakkonam Taluk
Arakkonam
Vellore District .. Respondent

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the respondent passed in Ni.Mu./P4/18978/2015 dated 23.09.2015 and quash the same, consequently direct the respondent to remove the entries in "DC Land" maintained in the Village Accounts in S.Nos. 672/1, 672/2, 672/3 and 673 situated at Thanigaipolur Village, Arakkonam Taluk.

For Petitioners : Mr. Ar.L. Sundaresan, Senior Advocate for Mr. P. Krishnan

For Respondent : Mr. A. Kumar Special Government Pleader

ORDER

The petitioner calls in question the legality and validity of the order passed by the respondent on 23.09.2015 by which the respondent refused to issue patta in favour of the petitioners on the ground that the lands comprised in Survey Nos. 672/1, 672/2, 672/3 and 673 situate in Thanigaipolour Village, ARakkonam Taluk, Vellore District are recorded as "Panchami lands" (DC).

2. The petitioners would contend that the first petitioner had purchased the lands comprised in Survey No.672/1 measuring 6.48 acres by a registered sale deed dated 25.08.1961 from Balasubramania Reddy and others. As per the sale deed dated 25.08.1961, the said Balasubramania Reddy and others have partitioned the ancestors property based on the Decree dated 23.12.1947 passed by the Sub Court, Chitoor in O.P. No. 25 of 1947 and from the date of such partition, the vendor of the first petitioner was in absolute possession and enjoyment of the said lands. After such purchase, the first petitioner, with an intention to establish a cotton spinning mill at Thiruthani applied to the Government on 06.09.1961 for grant of licence and to assign the lands in their favour in (i1) Survey No.310/1, 310/3, 310/4 measuring a total extent of 12.84 acres in Karthikeyapuram Village, Thiruthani Taluk (2) lands in Survey Nos. 602/1, 603/3 and 584 measuring a total extent of 25.62 acres in Ichiputhur Village and (3) lands in Survey No.672/2, 672/3, 673 and 67/1 measuring a total extent of 3.57 acres. On the basis of such application, the District Revenue Officer, North Arcot recommended to the Government to assign the above said lands in favour of the first petitioner. The Government also, accepting such recommendation assigned the lands comprised in Survey No.672/1, 672/2, 672/3 and 673 situate in Polur Village and also some lands in Ichiputhur Village in favour of the first petitioner by passing GO Ms. No.3219 dated 04.11.1963 on payment of the market value of those lands. On the basis of the same, upon collecting the market value, the respondent, in his proceedings dated 22.06.1967 assigned the lands which are the subject matter of this writ petition, in favour of the first petitioner and handed over the lands comprised in Survey Nos. 672/1, 672/2, 672/3 and 673 measuring an extent of 3.57 acres in favour of the first petitioner. According to the petitioners, on the basis of the above assignment, the District Revenue Officer, North Arcot, Vellore District passed an order dated 04.08.1980 classifying the above said lands assigned to the first petitioner into one of "Assessed Waste Dry". Thereafter, the name of the first petitioner was entered into in the revenue records and patta was issued to the first petitioner. Subsequently, on 31.08.2007, the Deputy Tahsildar, Arakkonam issued computer patta to the first petitioner.

3. While the facts are so as stated above, the first petitioner company sustained loss in the business and eventually their case was referred to the Board of Industries and Financial Reconstruction (BIFR) in case No. 73 of 2003 to explore the possibility of rehabilitation. On 14.02.2006, the Board adjudicated the first petitioner company as a sick industry and constituted an Assets Sale Committee for sale of surplus lands measuring 58 acres assigned to the first petitioner company. On 17.06.2009, the Assets Sale Committee invited tenders to sell the lands measuring 58 acres to meet the dues incurred by the first petitioner. In such auction, M/s. Sriji Foundations Private Limited was declared as successful tenderer and it was also confirmed by this Court on 19.06.2009 in WP No. 6382 of 2009.

4. It is stated by the petitioner that for non-payment of the dues to the Employees Provident Fund, the Recovery Officer attached to Regional Provident Fund Commissioner-II also attached the lands comprised in Survey N.673 measuring 0.17 acres; 672/1 part measuring 1.04 acres; 672/1 measuring 1.66 acres and 672/3 measuring 0.42 acres measuring a total extent of 3.28 acres. At this juncture, the first petitioner company proposed to enter into a private sale to raise funds by sale of the lands measuring 3.28 acres and entered into an agreement with the second petitioner and others. Out of such private sale, the petitioner remitted the amount payable to the Employees Provident Fund Commission. As the payment was made to the Regional Provident Fund Commissionerate, the attachment order was lifted. After the attachment was raised, the first petitioner executed a sale deed dated 06.08.2010 in favour of the second petitioner in respect of the lands measuring 3.28 acres. Subsequently, as per the directions issued by the Asset Sale Committee, the first petitioner also executed a sale deed dated 27.01.2011 in favour of the second respondent in respect of the lands comprised in Survey No.672/1 measuring 11 cents; 672/2 to an extent of 1.24 acres; 672/3 measuring 0.40 cents and 673 measuring 0.17 cents totalling 2.41 acres in Thanigaipolour Village, Arakkonam Taluk. Similarly, the first petitioner also executed a sale deed daved 27.01.2011 in favour of the second petitioner in respect of the lands assigned to them in Itchiputhur Village, Arakkonam Taluk.

5. The grievance of the first petitioner is the lands which were sold in favour of the second petitioner are patta lands for which patta was already issued in favour of the first petitioner. However, after such sale, when the second petitioner and others intended to get layout approval and for that purpose submitted an application to get the patta transferred in his name, the respondent rejected the application on 23.09.2015 on the ground that the lands for which transfer of patta is sought for is classified as "Panjami lands" in the revenue records and therefore the request of the second petitioner is not feasible of consideration. Challenging the order dated 23.09.2015 of the respondent, the petitioners have come forward with this writ petition.

6. The learned Senior Counsel appearing for the petitioners would vehemently contend that the Head Quarters Deputy Tahsildar, Arakkonam Taluk issued Sagupadi Adangal for Fasli year 1416 (corresponding to the year 2006) in which in column No.6, the name of the first petitioner is found, however for the next fasli year 1417 (corresponding to the year 2007) the name of the first petitioner is not indicated, rather in column No.18 thereof, it was indicated as "D.C." The very same entries were erroneously carried on till the year 1424 (corresponding to the year 2011). According to the learned Senior counsel for the petitioners, patta was already issued to the first petitioner and in all the Village Registers, the name of the first petitioner is prominently indicated in respect of the lands in question. In fact, the entries presently inserted

in the revenue records is contrary to the proceedings dated 04.08.1980 of the District Revenue Officer, Vellore whereby the lands in question were classified as "Assessed Waste Dry". When the District Revenue Officer has classified the nature of the lands in question, the respondent has no jurisdiction to reject the application submitted by the second petitioner on the ground that the lands are classified as "D.C." in the revenue records. Such a classification made, according to the leanred Senior counsel for the petitioners, is erroneous and it was a mistake. Even other wise, the first petitioner has purchased the lands comprised in Survey No.672/1 measuring 6.48 acre by registered sale deeds and if really the lands are "D.C." in nature, the registering authority would not have registered the sale deed in favour of the first petitioner. It is further stated that the in the register maintained by the respondent with respect to D.C. lands, the lands in question were not listed and that itself would indicate that the impugned order has been passed on an erroneous entry which was inserted subsequently. In any event, the impugned order has been passed without properly scrutinising the patta issued to the first petitioner after classifying the lands in question as "Assessed Waste Dry" and without notice and therefore the impugned order of rejection deserves to be set aside.

7. Per contra, the learned Additional Government Pleader appearing for the respondent, by placing reliance on the counter affidavit, would contend that the lands comprised in Survey Nos. 671, 672/2, 673 of Polur Village, Arakkonam Taluk have been purchased by the petitioner from depressed class with a breach of condition stipulated for alienating such lands which are classified as "D.C." in the revenue records. Therefore, the District Collector, Vellore has cancelled the assignment of the land measuring 3.57 acres in favour of the petitioner. Therefore, according to the respondent, the sale of D.C. lands in favour of the first petitioner mill itself is a violation of the condition stipulated for assignment of such lands. As per the existing condition, particularly Revenue Standing Order No.15, such lands have to be transferred or sole to any person other than the Schedule Caste before expiry of ten years from the date of grant. Thus, when the violation have been brought to the notice of the District Collector, the assignment made in favour of the first petitioner was cancelled and those lands resumed to the Government for disposal for a public purpose. Therefore, when the lands vested with the Government, the Government is the paramount title holder for such lands and it cannot be questioned by the petitioner. Therefore, according to the respondent, the lands in question are earmarked for a public purpose in future and it cannot be asserted as an exclusive land assigned to the petitioner. It is further stated that the lands in question was originally classified as Meikkal Poromboke and it was allotted to landless poor. In the counter affidavit the respondent placed reliance on the order passed by the Honourable Supreme Court in Civil Appeal Nos. 6741 to 6742 of 2012 (arising out of SLP (Civil) Nos. 33006 to 33007 of 2010) in the case of (State of Rajasthan and others vs. Aanjaney Organic Herbal Limited) wherein it was

held that transfer of a land by a Member of Scheduled Caste to a jurisdic person other than Scheduled Caste is void in view of Section 42 (b) of the Rajasthan Tenancy Act, 1955.

8. The respondent has also filed an additional counter affidavit wherein while reiterating the earlier stand, it was stated that the District Collector, Vellore by proceedings dated 01.10.2004 cancelled the assignments of the lands made in favour of the petitioner in Itchiputhur Village comprised in Survey Nos. 556/A3, 557/A2, 557/A3 and 557/A4 measuringa total extent of 4.87 acres as they were sold in violation of the depressed class conditions. An appeal preferred by the petitioner to the Commissioner of Land Administration was dismissed on 03.03.2006. However, the offer made by the petitioner for providing alternative lands in lieu of depressed class lands namely the lands comprised in Survey No. 41/3B, 41/3C, 41/3E, 393/1 and 768/2B totalling an extent of 6.62 acres in Paranchi Village in Arakonam Taluk was accepted by the Government by passing an order in GO (Ms) No.57, Revenue Department. Therefore, according to the learned Additional Government Pleader for the respondent, in lieu of the acceptance of the offer by the Government for providing alternative lands, the present claim of the petitioners for grant of patta in favour of the second respondent in respect of the lands in question in Polur Village is not feasible of consideration.

9. I heard the learned Senior counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent. I had perused the material records placed for consideration. In this writ petition, the petitioners question the order passed by the respondent in respect of the lands comprised in Survey Nos. 672/1, 672/2, 672/3 and 673 situated at Thanigaipolur Village, Arakkonam Taluk. In the counter affidavit, even though the respondent has dealt with the assignment of the lands situated in Ichiputhur Village and Paranchi Village, they are not the subject matter of this writ petition for consideration.

10. As regards the lands in question, by an order dated the first petitioner purchased the lands comprised in Survey No.672/1 measuring 6.48 acres by a registered sale deed dated 25.08.1961 from Balasubramania Reddy and others. After such purchase, the first petitioner, with an intention to establish a cotton spinning mill at Thiruthani applied to the Government on 06.09.1961 for grant of licence and to assign various lands in their favour. On the basis of such application, the District Revenue Officer, North Arcot recommended to the Government to assign the lands in favour of the petitioner. The Government also, accepting such recommendation assigned the lands comprised in Survey No.672/1, 672/2, 672/3 and 673 situate in Polur Village and also some lands in Ichiputhur Village in favour of the petitioner by passing GO Ms. No.3219 dated 04.11.1963 on payment of the market value of those lands. Admittedly, the petitioner also remitted the market value determined by the revenue department. On the basis of the

same, the respondent in the proceedings dated 22.06.1967 assigned the lands which are the subject matter of this writ petition, in favour of the petitioner and handed over the lands comprised in Survey Nos. 672/1, 672/2, 672/3 and 673 measuring an extent of 3.57 acres in favour of the petitioner. Thereafter, the District Revenue Officer, North Arcot, Vellore District passed an order dated 04.08.1980 classifying the above said lands assigned to the petitioner into one of "Assessed Waste Dry". Thus, even on 04.08.1980, the subject matter of the lands have been classified as "Assessed Dry Waste" and on the basis of the same, patta was also issued to the first petitioner. Subsequently, on 31.08.2007, the Deputy Tahsildar, Arakkonam issued computer patta to the first petitioner. Thus, it is evident that the lands in question are patta lands for which patta has been assigned by none other than the respondent. Further, in order to settle the debts payable by the first petitioner company, as per the adjudication order passed by the Board of Industries and Financial Reconstruction (BIFR) declaring the first petitioner company as a sick industry an Assets Sale Committee was constituted for sale of surplus lands measuring 58 acres assigned to the first petitioner company. On 17.06.2009, the Assets Sale Committee invited tenders to sell the lands measuring 58 acres to meet the dues incurred by the first petitioner in which M/s. Sriji Foundations Private Limited was declared as successful tenderer and it was also confirmed by this Court on 19.06.2009 in WP No. 6382 of 2009. Further, the Recovery Officer attached to Regional Provident Fund Commissioner-II attached the lands in question and such attachment was raised after the petitioner enter into a private sale and remitted the amount to the Provident Fund Commissionerate. Thereafter, the first petitioner executed the sale deed dated 06.08.2010 and 27.01.2011 in favour of the second petitioner in respect of the lands measuring 3.28 acresand 2.41 acres respectively. When that be so, the respondent has passed the impugned order refusing to transfer the patta in favour of the second petitioner, being the subsequent purchaser of the land.

11. Now, the question remains to be considered is whether the lands in question are classified as Panchami lands, as stated in the impugned order. To establish that the lands in question are classified as Panchami lands, the respondent has not produced any documents before this Court. Whereas, in the counter affidavit as well as additional counter affidavit, it was merely stated that the lands are classified as Panchami lands and therefore, the purchase made by the petitioner is in violation of the conditions attached for alienation of such lands.

12. In this context, useful reference can be made to the order passed by the Government in GO Ms. No.57, Revenue (LD-III) Department dated 10.02.2010 wherein it was stated as follows:-

> "3. In the instant case, an extent of 4.37 acres of depressed class and assigned to depressed class persons was found in the hands of Thiru.

Shanmugasundaram, the Director of Sree Saraswathy Mills Limited, who is a non-depressed class person and that the lands are being under the use of the Mill. Therefore, the grant made to the depressed class persons was cancelled. But during the enquiry on appeal, it was stated that resumption of land will lead to closure of Mill which is already under reference to B.I.F.R. and under rehabilitation scheme and thereby loss of employment to more than 800 labourers and that a precedent case was also pointed out. In a similar case of sale of DC land to MRF Limited, the Government in their G.O. Ms. No.863, Revenue dated 26.10.1988 have allowed the exchange of depressed class land in lieu of patta land offered by the MRF Limited and therefore pleaded for orders accordingly. Since there is a justification in allowing the request of the appellant giving alternative lands in lieu of patta land, the Collector was directed to send proposal for exchange of depressed class land. Accordingly, the proposal for exchange of depressed class land measuring 4.87 acres in lieu of patta land measuring 6.62 acres which is more beneficial to Government has been sent to Government for orders and also, in this case, the aim of Government in protecting and reserving the welfare of depressed class land is no way affected in allowing the exchange of land as more extent of land fit for cultivation is given in alternative of Depressed Class land and that the interest of depressed class land is preserved.

4. The Government, after careful examination, accept the proposal of the District Collector, Vellore District as recommended by the Principal Secetary and Commissioner of Land Administration for exchange of depressed class land measuring 4.87 acres in Survey No.556/A3, 557/A2, 557/A3 and 557/A4 in Ichiputhur Village, ARakonam Taluk to Sree Saraswathi Mills Ltd., in lieu of their patta lands measuring 6.32 acres of land in Survey No.41/3B, 41/3C, 41/3E and 766/2B of Paranchi Village, Arakkonam Taluk offered by the said Mills under the provisions of RSO-26-A. The Government accordingly order for the said exchange of lands.

5. The Principal Secretary and Commissioner of Land Administration and the District Collector, Vellore are directed to take appropriate action to dereserve the depressed class land measuring 4.87 acres in Survey No.556/A3, 557/A2, 557/A3 and 557/A4 in Itchiputhur Village, ARakkonam Taluk and to reserve and notify 6.62 acres of patta land in Survey No.41/3B, 41/3E, 393/1 and 768/2B in Paranchi Village, Arakonam Taluk in the District Gazzette as depressed lands and to take action to assign the land to the eligible depressed class persons.

13. Thus, it could be evident that the lands which are classified as depressed class lands and the lands offered by the petitioner in lieu of those lands have nothing to do with the lands which are the subject matter of this writ petition. Even otherwise, as pointed out by the learned Senior counsel for the petitioners, till the year 2006 in the Adangal Extract maintained by the revenue department relating to Fasli year 1416, the name of the first petitioner was indicated therein, however, from the next fasli year namely fasli year 1417 (corresponding to the year 2007) the name of the first petitioner is not indicated, rather in column NO.18 thereof, it was indicated as "D.C." Such a classification is not only erroneous but also it is contrary to the order of re-classification made by the District Revenue Officer dated 04.08.1980 wherein it has been clearly stated that the lands in question are classified as "Assessed Waste Dry". When the name of the first petitioner was indicated in the Adangal Extract for the fasli year 1416, it is not known as to how thereafter it could have been classified as "D.C" lands that too without notice. The respondent has also not given any clarification to this effect in the counter affidavit as well as the additional counter affidavit filed before this Court. The impugned order has been purportedly passed based on an erroneous entry made by the Village Administrative Officer concerned and it will not bind the petitioners in any manner when the District Revenue Officer, who is competent to effect change of classification in the revenue records has clearly stated in the order dated 04.08.1980 that the lands in question are classified as "Assessed Waste Dry" The respondent also not given any clarification regarding the patta and the computerised patta issued in favour of the first petitioner. Further, in the Adangal extract maintained by the revenue department, the name of the first petitioner was indicated until the Fasli year 1416 and from the subsequent fasli year, the name of the petitioner was excluded and instead it was indicated as though the lands in question are classified as "D.C." lands. While so, it has to be held that the impugned order has been passed without application of mind to the nature of the lands in question. It is needless to mention that the order dated 04.08.1980 of the District Revenue Officer will prevail over any order passed by the respondent herein, who is his subordinate. In such circumstance, I have no hesitation in holding that the impugned order has been passed by the respondent without proper scrutiny of the records and therefore it has to be set aside.

14. In the result, the impugned order passed by the respondent is set aside. The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed. The respondent is directed to remove the entries namely "DC Land" maintained in the Village Accounts in respect of the lands in S.Nos. 672/1, 672/2, 672/3 and 673 situated at

Thanigaipolur Village, Arakkonam Taluk and to proceed further in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To
The Tahsildar
Arakkonam Taluk
Arakkonam
Vellore District

+1 cc to Govt.Pleader,sr.3854

+1 cc to Mr.P.krishnan,advocate,sr.3697.

nrjk(co)
krd 1/2

WP No. 34535 of 2015