

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.11.2017

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.922 of 2016 &
C.M.P.No.11674 of 2016

Thiru S.K.Sundaram .. Appellant
Vs.

1.The District Revenue Officer,
Erode District,
Office of the Collector of Erode District,
Erode.

2.The Tahsildar,
Bhavani District,
Erode District.

.. Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 25.11.2015 made in W.P.No.24803 of 2009, on the file of this Court.

WP.24803 of 2009 Prayer: Writ petition filed under Article 226 of the Constitution of India for a Writ of certiorarified mandamus to call for the records of the 1st respondent in his proceedings No. Mu.Mu. 75574/88/V2, dt 8.12.1990 and consequential orders in Nos. Mu. Mu. 1675/2008/U4, dt 22.2.2008, Mu.Mu.59104/2008/U4, dt 17.11.2008 and Mu. Mu. 72751/08 U4 dt 31.8.2009 and quash the same and consequently direct the respondents to grant patta in favour of the petitioner in respect of land of an extent of Ac. 2.00 cents in Old Ka. Sa. No. 1123/7, New Ka.Sa. No. 613/9 in Bargur village, Bhavani taluk, Erode district.

For Appellants : Mr.K.Ramu
For Respondents : Mrs.A.Srijayanthi
Special Government Pleader

J U D G M E N T

[Order of the Court was made by P.VELMURUGAN, J.]

The writ appeal is arising out of the judgment dated dated 25.11.2015 made in W.P.No.24803 of 2009.

2. The case of the writ petitioner, before the writ Court, is as follows:-

2.1 According to the appellant / petitioner, originally the land in old Ka.Sa.No.1123/7, New Ka.Sa.No.613/9 of Bargur Village, Bhavani Taluk, Erode District, measuring about 04 Acres 36 Cents, was assigned in favour of one Ramaswamy Gounder, under D.R.No.179/74, dated 30.11.1964. Out of the said 04 Acres 36 Cents, the said Ramaswamy Gounder sold an extent of 02 Acres to the appellant / petitioner, under a Sale Deed, dated 08.08.1974, and registered as document No.891 of 1974, in the S.R.O.Andhiyur and ever since the date of purchase, the appellant / petitioner is in possession and enjoyment of the said property and cultivating the same. In such circumstances, the second respondent initiated proceedings to cancel the assignment made to his vendor Ramaswamy Gounder and to resume the land on the ground that as per the condition of the original assignment made to the said Ramaswamy Gounder, he was prohibited from alienating the same for a period of ten years from the date of assignment i.e. 30.11.1964. Against the said proceedings, the appellant / petitioner preferred an appeal and the first respondent, by order dated 08.12.1990, dismissed the appeal and directed him to pay the value of the land.

2.2. According to the petitioner, the respondents are not entitled to take any action after fourteen years. Infact, the purchase made by him was only six months prior to expiry of the period of ten years fixed as one of the conditions that the original assignee shall not alienate the property. He claims to be a poor agriculturist and he purchased the land without knowledge of the conditions that the same should not be alienated within ten years of assignment, which was originally assigned on 30.11.1964. He has spent huge sums of money for the development of the said land and he does not possess any other agricultural land. Even though the respondents cannot take action belatedly nearly after fourteen years from the date of his purchase, he was ready and willing to pay the then existing market value for 02 Acres as per the orders passed by the second respondent, dated 08.12.1990.

2.3. According to the appellant / petitioner, in spite of his offer to pay the existing market value of the land, the officials who succeeded the then respondents, did not specify the amount payable by him nor informed him the amount to be paid by him. He was making several representations. But, the same fell on deaf ears. The matter was being dragged on. On his representation, dated 04.01.2008, the first respondent, vide proceedings, dated 22.02.2008, rejected his request on the ground of existence of a Government Order regarding ban on assignment of land in hill and forest areas. Against which, he made further representation, dated 23.09.2008. The same was also rejected by the first respondent vide proceedings, dated

17.11.2008, by citing G.O.Ms.No.1168, Revenue Department, dated 25.07.1989, which imposed ban on an assignment of lands in forest and hill areas. Once again, he made a representation, dated 25.07.2009, and the same has also been rejected by the first respondent by Order, dated 31.08.2009. According to the petitioner, the reasons for rejection of his request by the first respondent is erroneous in law and facts. Already the predecessor in office of the first respondent has passed an order, dated 08.12.1990, giving him liberty to retain the land on payment of the existing market value. The land, for which he had been denied the right, had already been assigned in favour of his vendor in 1964 itself. Thus, there is no question of assigning the land afresh and granting a fresh Patta. Thus, the said G.O.Ms.No.1168, Revenue Department, dated 25.07.1989, which come into effect about 25 years after the original assignment of the land, has no application to the facts of his case as the said Government Order refers to only fresh and new assignments or grants. Thus, the impugned order of the first respondent is erroneous and suffers from total non-application of mind to the facts of the case.

2.4. According to the petitioner, in an identical case, the first respondent, vide proceedings, dated 01.12.1993, allowed one Gunatharan to pay the value of the land and he had also purchased the land from the original assignee before expiry of ten years period during which alienation was prohibited under the original assignment made in favour of his vendor James. In an another identical circumstance, even as against a show-cause notice issued by the Revenue Divisional Officer, Gobichettipalayam, Erode District, against one Kunhalavi, for resumption of land for violation of conditions of original assignment, the said Kunhalavi filed W.P.No.6583 of 1988 and this Court by Order, dated 22.04.1997, quashed the proceedings. Similarly, M/s.Sree Venkateswarar Granites also filed W.P.No.6229 of 1988 and this Court has also quashed the proceedings of the first respondent. Therefore, the petitioner has filed the writ petition for issuance of grant of patta.

3. After considering the facts and circumstances of the case, the learned Single Judge has dismissed the Writ Petition.

4. Aggrieved against the order of the learned Single Judge, the appellant / petitioner has filed the present Writ Appeal.

5. The learned counsel for the appellant would submit that the appellant had spent huge sum of monies to develop the land and has already been in possession of the land nearly 43 years since he has purchased in 1974 and the appellant is a poor agriculturist and carrying on agricultural operations

continuously for the last 40 years and the proceedings for the alleged violation of condition with regard to alienation was initiated after a huge delay and laches of 14 years. The original assignment was made in favour of the appellant's predecessor on 30.11.1964, the appellant got registered sale deed in his favour by registered sale deed dated 08.08.1974, registered as Document No.891 of 1974 and the alleged proceedings for cancellation was initiated 15 years thereafter. The delay in initiation of cancellation of assignment is a vital factor, which has not been considered by the learned Single Judge and thus the impugned order is liable to be set-aside. The learned counsel would further submit that the learned Single Judge failed to see that G.O.Ms.No.1168, Revenue, dated 25.07.1989 relied by the respondent in rejecting appellant's request for patta would not be applicable to the case of appellant, as the said G.O. has no application in respect of appellant's case, as no fresh assignment or issue of patta is sought for, as the appellant purchased the land in 1974 in respect of land originally and already assigned in 1964 itself in favour of appellant's vendor. Thus, the impugned order of the learned Judge relying on the G.O. of the year 1989 is liable to be set-aside. The learned counsel would further submit that the learned Single Judge failed to see that the land in question is only 2 acres, where the appellant has been carrying on agricultural activities for the past more than 40 years. The respondent has not taken into account the hardship which would be faced by the appellant in the event of non grant of patta. That apart, the learned Single Judge failed to see that it is not the stand of the respondents that the appellant is not carrying on agricultural activities, on the contrary, the only ground raised to reject grant of patta was the ban order imposed by the Government in G.O.Ms.No.1168, dated 25.07.1989, which order admittedly would not apply to the case of the appellant as the appellant was not seeking for any fresh assignment of lands but only transfer of patta from his vendor in respect of an assignment of land already made in favour of the vendor of the appellant as yearly as in 1964. Further, the learned Single Judge, in a similar case, for issuance of patta, and even in that Writ Petition, the respondent, by citing the ban order in G.O.Ms.No.1168, Revenue Department, dated 25.07.1989, the petitioner will not be entitled to receive patta, quashed the order passed by the respondents therein and directed the respondents to grant patta within a period of three weeks from the date of receipt of a copy of that order, on its own order dated 23.04.2014 in W.P.No.34277 of 2002, however, for the same relief, the learned Single Judge failed to consider the case of the appellant, viz., for grant of patta. Hence, the learned counsel prays for allowing the Writ Appeal.

6. The learned Additional Government Pleader appearing for the respondents would submit that the respondents had assigned the land, measuring about 04 acres 36 cents to and in favour of one Ramaswamy Gounder during 1964 after imposing certain conditions and one of the conditions was that the assignee shall not alienate the assigned land within ten years from the date of assignment, however, the assignee alienated a portion of the assigned land to the appellant / petitioner during 1974, as such, the assignee had violated the prime condition. Further, though the appellant has made a representation to the respondents for recognizing of title, by stating that he is ready and willing to pay the market value of the land, the same could not be considered, in view of G.O.Ms.No.1168, Revenue Department, dated 25.07.1989. Therefore, the learned Single Judge after assigning valid reasons, has rightly dismissed the Writ Petition and hence, the learned Special Government Pleader prays for dismissal of Writ Appeal.

7. Heard Mr.K.Ramu, learned counsel appearing for the appellant and Mrs.A.Srijayanthi, learned Special Government Pleader appearing for the respondents and perused the materials placed on record.

8. It is not in dispute that originally the land in old Ka.Sa.No.1123/7, New Ka.Sa.No.613/9 of Bargur Village, Bhavani Taluk, Erode District, measuring about 04 Acres 36 Cents, was assigned in favour of one Ramaswamy Gounder, under D.R.No.179/74, dated 30.11.1964. Out of the said 04 Acres 36 Cents, the said Ramaswamy Gounder sold an extent of 02 Acres to the appellant / petitioner, under a Sale Deed, dated 08.08.1974, and registered as document No.891 of 1974, in the S.R.O.Andhiyur and ever since the date of purchase, the appellant / petitioner is in possession and enjoyment of the said property and cultivating the same. It is also not in dispute that as per the condition of the original assignment made to the said Ramaswamy Gounder, he was prohibited from alienating the same for a period of ten years from the date of assignment i.e. 30.11.1964. However, the assignee alienated a portion of the assigned land to the appellant / petitioner on 09.05.1974, as such, the assignee had violated the prime condition. However, when a similarly placed person approached this Court by filing a Writ Petition in W.P.No.34277 of 2002, the learned Single Judge, by its own order, dated 23.04.2014, allowed the Writ Petition and directed the respondents to grant patta in favour of the petitioner therein. But unfortunately, the learned Single Judge, does not consider the similar claim of the appellant / petitioner, though similarly placed person has been granted relief in W.P.No.34277 of 2002, dated 23.04.2014.

9. It is not in dispute that the Government in G.O.Ms.No.1168, Revenue, dated 25.07.1989, has imposed an order prohibiting from assigning cultivable land and regularizing encroachment in hill areas. Though the learned Single Judge held in W.P.No.34277 of 2002, dated 23.04.2014, that:-

"(iii) The third respondent in his counter statement categorically admitted that G.O.Ms.No.1168, dated 25.07.1989, Revenue Department will operate with prospective effect. As such, the earlier decision taken by the third respondent for issuing patta against the payment of land value, tree value and other charges, has not been followed. The said payment was made on 18.08.1982 and as such, the G.O.Ms.No.1168, dated 25.07.1989 i.e., ban order for the issuance of patta is not covered in the petitioner's case since the agreement stands abiding (in accordance) as the offer and acceptance was concluded in the year 1982 itself. The same was accepted by both parties."

this Court could not acquiesce the view of the learned Single Judge, because, the Government, in G.O.Ms.No.1168, Revenue, dated 25.07.1989, has imposed an order prohibiting from assigning cultivable land and regularizing encroachment in hill areas, which is paramount importance. Therefore, we are of the considered view that in view of the ban in Government Order in G.O.Ms.No.1168, Revenue Department, dated 25.07.1989, the Government cannot recognize the title and issue the patta to the appellant / petitioner. Therefore, in view of the earlier order passed by this Court in W.P.No.34277 of 2002, dated 23.04.2014, the sale can be ratified, but at the same time, in view of the Government Order in G.O.Ms.No.1168, Revenue Department, dated 25.07.1989, this Court cannot give any direction to the respondents to issue patta in favour of the appellant / petitioner.

10. With the above observations, the Writ Appeal is partly allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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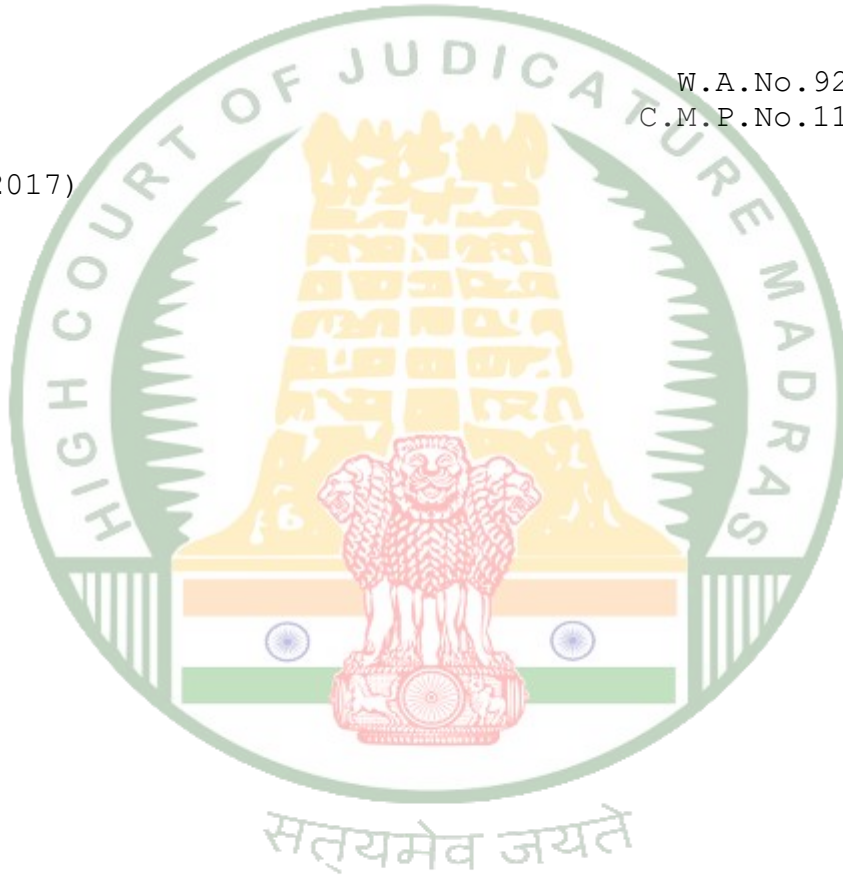
1.The District Revenue Officer,
Erode District,
Office of the Collector of Erode District,
Erode.

2.The Tahsildar,
Bhavani District,
Erode District.

+lcc to Government Pleader SR.No.84755

W.A.No.922 of 2016 &
C.M.P.No.11674 of 2016

GN(27/12/2017)



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