

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.10.2017

CORAM

THE HON'BLE MR JUSTICE M. SATHYANARYANAN

AND

THE HONOURABLE MR. JUSTICE N SESHASAYEE

W.P.No.29288 of 2004 and WMP No.35554 of 2004

R. Krishnan

... Petitioner

Vs

1. The Commissioner of Land Administration,
Chepauk, Chennai - 600 005

2. The District Collector,
Nilgiris District at Uthagamandalam

3. The Revenue Divisional Officer,
Coonoor, Nilgiris District

4. The Tahsildar, Kundah Taluk,
Kundah, Nilgiris District

Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the Section 6 Notice issued by the 4th respondent under the Land Encroachment Act, dated 30.08.2004 in respect of land at S.No.1125/1 of Balacola Village of Kundah Taluk, Nilgiris District measuring to an extent of 0.46.5 hectares and to quash the same and consequently to direct the 1st respondent to dispose the representations made on 26.4.2002 and 28.9.2004.

For petitioner : Mr.R. Vijayaraj Naren

For respondents: Mr.A.N. Thambidurai
Spl. Government Pleader

ORDER

(Order of the Court was made by M. SATHYANARAYANAN,J.,)

The petitioner has filed the present writ petition praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the Section 6 Notice issued by the 4th respondent under the Land Encroachment Act, dated 30.08.2004 in

respect of land at S.No.1125/1 of Balacola Village of Kundah Taluk, Nilgiris District measuring to an extent of 0.46.5 hectares and to quash the same and consequently to direct the 1st respondent to dispose the representations made on 26.4.2002 and 28.9.2004.

2. The petitioner, in the affidavit, filed in support of the petition, would aver that the land to an extent of 3.15 acres comprising S.No.463/45, 463/46 and 463/47 of Balacola Village, Kundah Taluk, Nilgiris District was assigned to three landless poor persons viz., B. Bojan, G. Sankaran and G.A. Sevana Gowder by the the Proceedings of the Assistant Collector, Coonoor dated 29.01.1983. One of the conditions for assigning the land is that the land should be cultivated only with tea crops and the land is also classified as assessed waste.

3. The petitioner would further aver that the condition of assignment did not bar to transfer the assigned land in the future. The above said three landless persons viz., B. Bojan, G. Sankaran and G.A. Sevana Gowder approached the petitioner and his son R.K. Belly Bhojan and offered to sell the lands, assigned in their favour for valid consideration. Since they offered to sell the lands, an agreement of sale dated 25.03.1984 was entered into between the petitioner and G.A. Sevana Gowder, and two other registered sale deeds dated 14.10.1986 under Document Nos.644/86 and 643/86 were entered into between the petitioner and B. Bhojan and G. Sankaran.

4. The petitioner would further aver that after getting possession of the land, by spending huge money and hard work, he made the land cultivable and was cultivating tea crops. However, to his shock and surprise, during 2002, the petitioner came to know that the Revenue Divisional Officer, Coonoor, vide proceedings dated 27.08.1987, cancelled the assignment, granted to the above three persons, on the ground that they have violated the conditions of assignment and immediately, the petitioner on behalf of himself as well as on behalf of others, made a representation on 26.04.2002 and also made a request that the lands be assigned in their favour.

5. The fourth respondent issued Notice to the petitioner and his son vide proceedings dated 24.5.2004 calling upon them to appear before him to decide whether to let the land on lease to the petitioner and his son or to resume the same to the Government. The petitioner appeared and represented that he is willing to purchase the land on the market value and without taking note of the said submission, the fourth respondent issued notice dated 30.06.2004 under Secs.7 and 6 of the Land Encroachment Act. Challenging the legality of the Notice, the petitioner has come forward with the above writ petition.

6. The learned counsel for the petitioner would submit that the petitioner has been given possession of the land in question as early as in the year 1984 and thereafter, by spending huge money and hard labour, he made the land cultivable and though he has made an offer to purchase the land on market value, it has not been considered favourably.

7. Per contra, Mr.A.N. Thambidurai, learned Special Government Pleader, appearing for the respondents has invited the attention of this Court to the common counter and would submit that the lands admeasuring to the extent of 3.15 acres of land in Balacola village of Kundah Taluk was assigned in favour of B. Bhojan, G. Sankaran and G.A. Sevena Gowder. One of the conditions for assigning the land is that the land should not be sold or altered for a period of ten years and in utter violation of the said condition, the petitioner entered into an agreement of sale dated 25.03.1984 with G.A. Sevana Gowder, which has not been culminated into registered sale deed and since the condition of assignment has been violated, he is not entitled to make any claim for the purpose of land.

8. It is the further submission of the learned Special Government Pleader that as per G.O.1168 dated 25.07.1989, assignment in Nilgiris District has been banned and taking into consideration of the same, the Special Commissioner, vide communication dated 21.11.2001 has made fair offer to enable the petitioner to take the land on lease, however, the petitioner persisted that the land should be sold to him.

9. It is also brought to the notice of this Court that the writ petition was entertained on 11.10.2004 and interim order was granted, however, lands were taken possession on 07.10.2004 itself and as such, the claim made by the petitioner is untenable and prays for dismissal of the writ petition.

10. This Court considered the rival submissions and perused the materials available on record.

11. The land to an extent of 3.15 acres comprising S.No.463/45, 463/46 and 463/47 of Balacola Village, Kundah Taluk, Nilgiris District was assigned to three landless persons viz., B. Bojan, G. Sankaran and G.A. Sevana Gowder by the the Proceedings of the Assistant Collector, Coonoor dated 29.01.1983. One of the conditions for assigning the land is that the land should not be sold or altered for a period of ten years.

12. Admittedly, an agreement of sale dated 25.03.1984 was entered into between the petitioner and G.A. Sevana Gowder measuring 1.15 acres in S.No.463/47 and two other registered

sale deeds dated 14.10.1986 under Document Nos.644/86 and 643/86 came into being between the petitioner and B. Bhojan and G.A. Sankaran, measuring 1 acre each in S.Nos.463/45 and 463/46. The petitioner further claims that after getting possession of the land, by spending huge money and hard work, he made the land cultivable and is cultivating tea crops.

13. As per G.O.No.1168 dated 25.7.1989, there was a ban on land assignment. Therefore, the Special Commissioner and Commissioner of Land Administration, Chennai vide Communication dated 21.11.2001 in E2/E4/S2/51123/99-1, made an offer to the petitioner to take the land on lease, however, the petitioner persisted that the land should be sold to him and he is willing to purchase the same on the market value.

14. It is the stand of the third respondent that the lands in question were taken possession on 07.10.2004, prior to the grant of the interim order dated 11.10.2004.

15. In the considered opinion of the Court, in the light of the said condition, the conveyance of land by G.A. Sevena Gowder, through an agreement of sale dated 25.03.1984 said to be have been executed in favour of the petitioner and the registered sale deed in his favour will not clothe him any right. The above said Government Order also bars the assignment of land in favour of the petitioner. Though a fair offer was given by the Special Commissioner and Commissioner of Land Administration, Chennai dated 21.11.2001 to lease out the land in favour of the petitioner, he is not interested and he was very persistent that the land should be sold at the market value, to him.

16. This Court has also taken note of the submissions made by the third respondent that the lands in question were taken possession on 07.10.2004, prior to the grant of the interim order dated 11.10.2004.

17. In the light of the facts and circumstances of the case, the challenge made to the impugned notice dated 30.06.2004 under Secs.7 and 6 of the Land Encroachment Act is untenable and this Court find no merits in the contentions put forth on behalf of the petitioner.

18. At this juncture, the learned counsel appearing for the petitioner made a plea that since he is in possession and enjoyment of the land right from 1982, he may be permitted to submit a representation for lease of the said land in his favour.

19. On the said submission, the Court had heard the submission of the learned Special Government Pleader.

20. The learned counsel for the petitioner at this juncture made a representation that the petitioner is no more and he has a son by name R.K. Belli Bhojan and he may be permitted to submit a representation for the lease of the land.

21. In the result, the writ petition is dismissed. The interim order already granted is vacated. The petitioner's son Mr.R.K. Belli Bhoan is at liberty to submit a representation to respondents 1 to 4 for lease of the land admeasuring 1.15 acres in S.No.463/47 in Balacola village of Kundah Taluk by enclosing authenticated documents within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, respondents 1 to 4 are directed to consider the same and pass orders on merits and in accordance with law within a period of twelve weeks thereafter and communicate the decision to the petitioner's son. No costs. Consequently, connected WMP is closed.

22. Mr.M.Karthikeyan, Special Deputy Collector (SSS) and Revenue Divisional Officer I/c., Uthagamandalam, is present before this Court to assist and his presence is noted and dispensed with.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Commissioner of Land Administration,
Chepauk, Chennai - 600 005
2. The District Collector,
Nilgiris District at Uthagamandalam
3. The Revenue Divisional Officer,
Coonoor, Nilgiris District
4. The Tahsildar, Kundah Taluk,
Kundah, Nilgiris District

+1cc to Mr.R.G.Narendhiran, Advocate SR.No.77294

+1cc to Government Pleader SR.No.77199

W.P.No.29288 of 2004

GMR(CO)

GN(04/12/2017)