

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2018

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No.12281 of 2013  
and  
M.P.No.1 of 2013

Bhanumathi

... Petitioner

Vs

1.The Special Commissioner and  
Commissioner of Land Admn.,  
Chepauk, Chennai - 5.

2.The Collector of Nilgiris District,  
Uthagamandalam/Nilgiris.

3.The Revenue Divisional Officer,  
Gudalur, Nilgiris.

4.The Superintendent of Police,  
Nilgiris District,  
Uthagamandalam/Nilgiris.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus forbearing the respondents 1 to 4 from taking any steps to dispossess the petitioner and her family from the property bearing Resurvey No.721/2 (Old Survey No.165/3) at Cherangode Village, Gudallur Taluk, the Nilgiris District, Tamil Nadu, except by the due process of law after affording adequate opportunity to the petitioner.

For Petitioner : Ms.V.Pushpa

For Respondents : Mrs.A.Shrijayanthi  
Special Government Pleader

O R D E R

The relief sought for in the present writ petition is to forbear the respondents 1 to 4 from taking any steps to dispossess the petitioner and her family from the property

bearing Resurvey No.721/2 (Old Survey No.165/3) at Cherangode Village, Gudalur Taluk, The Nilgiris District, Tamil Nadu, except by due process of law.

2.The learned counsel appearing for the petitioner forcibly contended that the writ petitioner is the owner of the property to an extent of 3 acres comprised of Survey No.165/3 (Re-Survey No.721/2) in Cherangode Village, Gudalur Taluk, The Nilgiris District. The writ petitioner purchased the property by way of a registered sale deed for a valuable consideration. The property was originally assigned in favour of one Gopalan and Ramakrishnan, who were brothers. Subsequently, the legal heirs of the original assignees inherited the property and thereafter, the property was sold to the writ petitioner by their legal heirs on 29.05.1986. Pursuant to the assignment, patta was issued in favour of the said Gopalan and Ramakrishnan and subsequently, re-transfer of name has been effected in the patta. Accordingly, the petitioner submits that she is the absolute owner of the property mentioned above.

3.The grievance of the writ petitioner is that the respondents are interfering with the possession and enjoyment of the property, without following the due process of law. Moreover, the respondents have not issued any notice to the writ petitioner for the purpose of initiating action under any statute. The land was initially assigned to the original assignees and subsequently, purchased by the petitioner. In these circumstances, the writ petitioner is constrained to move the present writ petition with the aforesaid prayer.

4.The learned counsel for the petitioner is of an opinion that the village, in which the petitioner resides, is a remote place in the Nilgiris District and the authorities are unnecessarily threatening the writ petitioner for dispossession of her property. They have not issued any notice or opportunity to the writ petitioner to submit her documents to establish her title, ownership and possession. Thus, the writ petitioner has approached this Court with the present writ petition.

5.The learned Special Government Pleader, appearing on behalf of the respondents made a submission that the present writ petition is a clear case of violation of condition No.13 of the Conditional Assignment granted to the assignee, since, he had cut the trees reserved to the Government, without getting any permission from the competent authority. Hence, the conditional assignment granted to the said Gopalan and Ramakrishnan were cancelled, as per the proceedings of the Revenue Divisional Officer, Gudalur Rc.No.B1/11189/87 dated 31.07.1990, after observing necessary formalities. Against this order, Gopalan and Devaki made an appeal to the Collector of the

Nilgiris District and the Special Commissioner and Commissioner of Land Administration, Chennai. The appeals were rejected by the Collector of the Nilgiris District and the Special Commissioner and Commissioner of Land Administration, Chennai.

6. Aggrieved by this order, Gopalan and Devaki, represented by their power agent Gopalan, had filed a writ petition in W.P.No.10964 of 1994 against the orders of the Collector of the Nilgiris District and the Special Commissioner and Commissioner for Land Administration, Chennai. The writ petition was dismissed on 06.07.2001 with an observation that the respondents are entitled to invoke clauses 13 and 27 of the assignment proceedings dated 26.04.1972 to resume and re-enter the lands in question and therefore, the orders of the respondents were well within the powers conferred on the respondents to resume and re-enter the land in question on account of the violation of condition of assignment by cutting and removing the trees from the lands, which is described in the present writ petition. Aggrieved by the order, Gopalan and Devaki, filed a writ appeal in W.A.No.2394 of 2001 before the Hon'ble Division Bench of this Court, which was dismissed on 11.11.2010. Challenging the order passed by the Hon'ble Division Bench of this Court, they filed a Special Leave Appeal (Civil) No.10858 of 2013 before the Hon'ble Supreme Court of India and the same was also dismissed on 04.03.2013 with an observation that "if possession of the assigned land is with the petitioners then the competent authority must immediately retrieve the same and if necessary, by use of force". While the action was under process to evict the legal heirs of the assignee, Bhanumathi, W/o.Sivaraman, has filed a writ petition in W.P.No.12281 of 2013 before this Court against evicting her from the land in Survey Number 721/2 of Cherangode Villae of Pandalur Taluk.

7. It is further submitted that the trees mentioned in the Schedule-II (such as Karuvel, Nagai, Vembu, Tamarind) are reserved as property of the Government and the assignee had no right over the trees and if any of the trees are cut and stolen away, the assignee will be held responsible for that and the land would also be liable to be resumed. The Tahsildar or the independent Deputy Tahsildar, as the case may be, however, may permit the cutting and removal of trees on payment of market value, for reasons to be recorded in writing. Thus, even for cutting the trees, certain procedures are contemplated under the terms and conditions of the assignment.

8. It is contended by the Special Government Pleader that Gopalan had cut 14 ventea trees without any prior permission in the field Survey No.721/2 of Cherangode Village and this offence was compounded as per the proceedings of the Revenue Divisional

Officer dated 18.08.1985. In toto, it is contended that the original assignees themselves had violated the conditions of assignment. Thus, the authorities have taken action against the assignees and the matter went upto the Hon'ble Supreme Court of India and no relief was granted in favour of the assignees. That apart, the Hon'ble Supreme Court has also held that "if possession of the assigned land is with the petitioners then the competent authority must immediately retrieve the same and if necessary, by use of force". When the Hon'ble Supreme Court has passed such an order in the appeal filed by the original assignees, the authorities have initiated action against the writ petitioner, who had purchased the land from the original assignees.

9.This Court is of an opinion that the very purchase by the writ petitioner itself, is disputable. Secondly, the original assignees themselves had committed certain violations of the terms and conditions of assignment. The authorities competent had initiated action against the original assignees and the matter went up to the Supreme Court of India and the order was passed in favour of the department. Therefore, the very genuineness of the sale deed originally executed in favour of the original assignees is a disputable one. However, if the petitioner is of an opinion that the sale deed executed in the favour of the original assignees is a valid one, then it is for the petitioner to approach the competent Civil Court of law and prove the genuineness by producing the original documents and by adducing evidences. However, the respondents are bound to follow the conditions of assignment imposed on the original assignees and proceed against the land in question by following the procedures contemplated under law. It is needless to state that if the writ petitioner is in possession of the property, the authorities competent are bound to follow the procedures contemplated and accordingly, proceed against the persons concerned, for the purpose of restoring the land in favour of the Government.

10.This apart, the relief sought for to forbear the respondents 1 to 4 from taking any steps to dispossess the petitioner and her family from the property, which can be done only by following the due process of law, seems to be an omnibus prayer and the same cannot be granted.

11.This Court is of an opinion that the authorities competent are empowered to follow the procedures contemplated for restoring the land and accordingly, dispossess the petitioner in accordance with the procedures contemplated.

12.Under these circumstances, the writ petitioner has not established any acceptable legal grounds for the purpose of

considering the relief sought for in the present writ petition.  
Hence, the writ petition stands dismissed. No costs.  
Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

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Commissioner of Land Admn.,  
Chepauk, Chennai - 5.

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4.The Superintendent of Police,  
Nilgiris District,  
Uthagamandalam/Nilgiris.

+1cc to Ms.V.Pushpa, Advocate SR.No.75864

+1cc to Government Pleader SR.No.76810

W.P.No.12281 of 2013 and  
M.P.No.1 of 2013

VG II (CO)

GMV (04/12/2018)

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