

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.09.2018

Pronounced on : 26.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No. 15386 of 2008

and

M.P. No.1 of 2008

1.Amirtham
2.Manjula
3.Chellammal
4.Muthukrishnan Petitioners

Vs.

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

2.The Sub Collector,
Madurantakam Division.

(R2- amended as per order dated
19.06.2018 in W.M.P. No.30256 of 2017
in W.P.No.15386 of 2008)

3.Rama Gounder
4.Raghavan ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records in pursuant of the order dated 02.04.2008 in D1/R.P.No.24/2007(L.Ref.) on the file of the 1st respondent and to quash the same.

For Petitioners : Mr.V.Chandrakanthan

For Respondents : Mr.N.Manikandan

Government Advocate for R.1 & R.2

: Mrs.P.Kavitha Balakrishnan for R.3
& R.4

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O R D E R

The above writ petition is filed to call for the records in pursuant of the order dated 02.04.2008 in D1/R.P.No.24/2007(L.Ref.) on the file of the 1st respondent and to quash the same.

2.Heard, Mr.V.Chandrakanthan, learned counsel for the petitioners, Mr.N.Manikandan, learned Government Advocate for the 1st and 2nd respondents and Mrs.Kavitha

Balakrishnan, learned counsel for the 3rd and 4th respondents.

3.The petitioners are the subsequent assignees of land to the extent of 2 acres and 27 cents under the order of Assignment dated 03.10.2006 which has been cancelled by the impugned order dated 02.04.2008.

4.The petitioners claimed that they are in possession of the land and have also obtained patta and are paying kist for the land assigned to them since then.

5.It is submitted that the land to the extent of 5.31 acres was originally declared as excess land in the hands of one Mr.KallappaReddiar, the original owner of the land under the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land), Act, 1965.

6.The aforesaid land was originally assigned on 31.01.1983 under the provisions of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 in favour of five different persons.

7.Three of the original assignees however sold the land to an extent of 2 acres and 27 cents in favour of the 3rd and the 4th respondents contrary to the conditions of the order of assignments made to them. There was a lock in period of 20 years before such a land can be transferred by assignees of lands.

8.Under these circumstances, the assignment made to the original assignees in the year 1983 to the extent of land sold to the 3rd and the 4th respondents was cancelled by an order dated 20.04.1999.

9.Thereafter, fresh applications for assignment under Rule 4 of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 were invited.

10. In response to the same, the petitioners applied for assignment. The 3rd and the 4th respondents did not apply for assignment of the lands when the fresh applications were called for assignment of the aforesaid lands. They have stated that they were not aware of the proceedings initiated for cancelling the assignment of the lands made to their predecessors.

11. In the impugned order dated 02.04.2008, it has been mentioned that notice in Form "B" dated 16.11.1999 was invited. However, there was no response and therefore again afresh notice dated 22.03.2000 was issued.

12. In response to the above notice, seven applications were received. However, no action was taken. Again notice was issued on 20.07.2000 and eight applications were received in response to it.

13. All the applications received pursuant to notice dated 22.03.2000 and 20.07.2000 were taken up for consideration for re-assignment. The Petitioners' application were considered and accepted.

14. Under the circumstances, petitioners remitted money. Thereafter, by a Deed in Form "F" dated 11.7.2006 the lands were assigned to the petitioners and necessary changes were affected in the revenue records.

15. Immediately thereafter, the 3rd and the 4th respondents preferred an appeal against the said order of re-assignment of impugned properties and requested that the lands be assigned in their favour.

16. There was no reply from the 2nd respondent. Hence, the 3rd and the 4th respondents made representation to all the officials concerned. By virtue of the impugned revision order dated 02.04.2008, the assignment made to the petitioners were suo-moto cancelled in the exercise of the revisionary powers vested with the 1st respondent under Rule 11 (3) (b) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965.

17. Thus, the order of re-assignment passed by the then Assistant Commissioner (Land Reforms) on 11.7.2006 was set aside with the direction to publish afresh notice in Form "B" as is contemplated under Rule 4 of the aforesaid rules in accordance with the provisions of the said rules.

18. The impugned order is assailed on the following grounds:-

"That the 1st respondent erred in not appreciating the fact that under the Rule 8(6) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965. Any alienation is liable for cancellation of the assignment and

that the 1st respondent erred in not appreciating the fact that the earlier assignees sold the land in the year 1986 in favour of 3rd and 4th respondents.

It is submitted on behalf of the petitioner that they have obtained patta. It was further stated that under Rule 5 of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, the petitioners are entitled priority for assignment and that the petitioners belong to Scheduled Caste who contribute their own physical labour and their family members in the cultivating land. They finally said that the 3rd and the 4th respondents cannot claim title contrary to the deed of assignment and that the lands cannot be sold contrary to the terms of the deed of assignment and therefore the respondent No. 3 and 4 had no locus standi to either file appeal or revision."

19.The 3rd and the 4th respondents have filed their detailed counter and have reiterated the content of the same.

20.The 3rd and the 4th respondents have given their representations dated 21.01.2008 before the 1st respondent stating that they purchased the land in the year 1986 and was unaware of the lock-in period.

21.The learned counsel for the 3rd and 4th respondents submitted that as per the Board Standing Orders of the Board of Revenue the person involved in direct cultivation, cultivating tenant should be given preference in case of assignment of the land under Section 94 (2) (a) T.N. Act 59 of 1961.

22.It was submitted that the 3rd and 4th respondents are cultivating tenant in actual possession and enjoyment of the land for more than 12 years. Hence the land should have been assigned to them. However, the petitioners were given the assignment of lands in favour of the petitioners by the 2nd respondent was irregular.

23.It was further submitted that the 3rd and 4th respondents preferred an appeal before the 1st respondent against the order of the 2nd respondent making assignment of the land (Disputed property) in favour of the petitioners herein.

24. It was further submitted that the 1st respondent exercising the Suo Moto Reversionary powers vested under Rule 11(3)(b) of the Tamil Nadu Reforms (Disposal of Surplus Lands) Rules, 1965 conducted the enquiry and they were issued with proper notice. The petitioners and the 3rd and the 4th respondents were present and represented by their counsels. After hearing the arguments order on merits came to be passed cancelling the re-assignment made by the 2nd respondent in favour of the petitioners herein.

25. Under these circumstances, the 3rd and the 4th respondents requested for re-assignment of the land as they were poor agriculturists and that they have been in possession of the land for the past 22 years and have been cultivating on the aforesaid land.

26. They further averred that the patta was also issued to them and they did not suspect any irregularity in the title to the land and they were regularly paying land revenue to the Government.

27. It was further argued before the 1st respondent that the Assistant Commissioner (Land Reforms), Villipuram ought to have verified before assigning the lands in favour of the petitioners herein.

28. The 3rd and the 4th respondents further submitted that innumerable representations were not considered by the 2nd respondent as a result of which they could not perfect the title.

29. It was further submitted that in fact, that the 3rd and the 4th respondents were also eligible to participate in the re-assignment and the fact that they had paid amounts way back in 1983 was good reason to cancel the assignments made in 2006 in favour of the petitioners herein.

30. Learned counsel for the 3rd and the 4th respondents has submitted that pursuant to the impugned order, the Joint Commissioner (Land Reforms) Villupuram has directed the Sub-Inspector of Survey (Land Reforms) to make necessary change by restoring the land records as "Land-Reforms Surplus Lands".

31.Further, notice in Form "D" dated 07.08.2008 has been issued. The 3rd respondent has also obtained an order of ex-parte permanent injunction dated 17.03.2011 in O.S.No.25 of 2011 to restrain the 1st and 2nd petitioners from interfering with their peaceful possession and enjoyment of the suit property.

32.It was further submitted that this court by an order dated 05.04.2013 in W.P No.8009 of 2013 filed by the 3rd respondent has directed the 2nd respondent therein to consider the representation made by the 3rd respondent herein and pass orders on merits in accordance with law after affording an opportunity to the petitioners who were the 3rd to 7th respondents therein.

33.The said order was made in absence of the petitioners herein after recording that no adverse orders were being made against the petitioners while passing the above order.

34.The 3rd respondent was directed to comply with the aforesaid order within a period of three months from the date of receipt of the order in W.P.No.8009 of 2013. Pursuant to the above order of this court in W.P. No.8009 of 2013 notice of hearing also has been issued to the parties herein.

35.However, during the interregnum, the land was re-assigned by the 2nd respondent on 08.11.2013 in favour of Krishnaveni, Chitravel, Rajamanickam and Ragavan. Since the said re-assignment was contrary to the directions contained in W.P. No.8009 of 2013 and the observing the mistake and with a view to set right the irregularity in the re-assignment order dated 08.11.2013, the 1st respondent has taken up the case on suo-motu revision under rule 11(3) (b) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965.

36.Therefore, notice was ordered on 28.12.2017 fixing the hearing of all the parties concerned herein on 08.01.2018. It appears that no further proceedings have been taken thereafter.

37.I have considered the facts of the case and the rival arguments advanced.

38. The facts narrated above which have come to light during the course of the hearing, it is clear that irregularities have been committed by the office of the 1st and the 2nd respondent as also on the part of the 3rd and the 4th respondents. The petitioners got the benefit of assignment. The assignment in their favour has also been made irregularly. The last assignment made in 2013 also has been cancelled restoring the position to the date of the petition.

39. The 3rd and the 4th respondents have been possession of the land while the assignment of land to the 3rd and the 4th respondents' predecessor was cancelled without notice to them.

40. Though the 3rd and 4th respondents have purchased the land contrary to the order of assignment dated 31.01.1983, they had a right to be heard before the cancellation was made as they were in possession of the land. They also had a right to participate in the fresh assignment.

41. Instead, assignment was cancelled on 20.04.1999 and re-assigned to the petitioners on 03.10.2006 which assignment was also made contrary to the Rules. During all these period, the 3rd and the 4th respondents continued to be in possession of land unaware of the cancellation in 1999. Though there were mutations and changes made, the petitioners were never put in possession of the land. The 3rd and the 4th respondents have been possession of the land.

42. Therefore, no prejudice will be caused if the land is assigned afresh by allowing all the parties to participate in the fresh assignment. The 3rd and 4th respondents have also filed petition before the 1st and 2nd respondents and this court by its order dated 05.04.2003 in W.P.No.8009 of 2009 has directed the 2nd respondent to consider their representation. The said order is yet to be complied by the 1st respondent in view of the pendency of the present writ petition.

43. The 1st respondent is therefore directed to take up the hearing of the revision petition filed by the 3rd and the 4th respondents and dispose the same. Needless to state that the 1st respondent shall hear the petitioners and the 3rd and 4th respondents herein and pass

appropriate orders within a period of 12 weeks from the date of receipt of this order after serving notice to all the parties herein. 1st and the 2nd respondents may also explore the possibility of assigning alternate lands to the petitioners in case the 3rd and 4th respondents are assigned the land in question.

44. In view of the above observation, the writ petition is disposed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Ccc)
//True Copy//
Sub Assistant Registrar

ia/kkd

To

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

2. The Sub Collector,
Maduramthakam Division.

+1cc to Mr..V.Chandrakanthan, Advocate SR.No.73424

+1 CC TO GOVERNMENT PLEADER SR.NO. 74442

+1cc to Mr.K.P.Palaniappan, Advocate SR.No. 73423
(19/12/2018)

W.P.No.15386 of 2008

ASK(28/11/2018)

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