

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.11.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.8194 of 2008

and

MP.No.1 of 2008

M.S.Hameed Sultan

... Petitioner

Versus

1.Government of Tamil Nadu,
Rep.by District Revenue Officer,
Nagapattinam District,
Nagapattinam.

2.Tahsildar,
Nagapattinam Taluk,
Nagapattinam.

3.The Assistant Commissioner,
(Land Reforms),
Mayiladuthurai.

4.Mrs.Anjali Devi
5.Mrs.Kalaiselvi
6.Mrs.Saroja

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the records of respondents 1 and 2 relating to assignment of lands in Athaliyur Village, Nagapattinam Taluk and District under the Government Scheme of assignment of lands to agriculturist or labourers and quash the proceedings of the 2nd respondent in E.No.10(1) (part), dated 04.03.2008 granting pattas to respondents 4 to 6 for the lands bearing R.S.No.24/2 of the extent of 68 ares and R.S.No.53/A of the extent of 9.50 acres in Athaliyur Village, Nagapattinam Taluk and District and further to forbear the respondents 1 and 2, from taking possession of the aforesaid lands from the petitioner for assigning to respondents 4 to 6.

For Petitioner : Mr.A.Muthukumar

For Respondent : Mrs.Thangavadhana Balakrishnan,
(for R1 to R3)
Additional Government Pleader.

: Mr.S.Balasubramanian (for R6)

: No Appearance (for R4 & R5)
Notice Served.

O R D E R

The present Writ Petition has been filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records of respondents 1 & 2 relating to assignment of lands in Athaliyur Village, Nagapattinam Taluk & District, under the Government Scheme of assignment of lands to agriculturist or labourers and quash the proceedings of the 2nd respondent in E.No.10(1) (part), dated 04.03.2008 granting Pattas to respondents 4 to 6 for the lands bearing R.S.No.24/2 measuring to an extent of 0.68 acres and R.S.No.53/A measuring an extent of 9.50 acres in Athaliyur Village, Nagapattinam Taluk & District and further to forbear the respondents 1 & 2 from taking possession of the aforesaid lands from the petitioner for assigning the same to respondents 4 to 6.

2. The case of the petitioner is that his mother Fathima Ammal purchased the lands under the sale deed dated 18.08.1939 measuring to an extent of 1.68 acres in R.S.No.24/2 and an extent of 0.4 cents in R.S.No.53/3, which were sub-divided into R.S.No.53/3A of 0.24 cents and R.S.No.53/3B of 0.16 cents in Athaliyur Village. After purchase of the above said land, the petitioner and his mother Fathima Ammal were in possession and enjoyment of the lands. After the death of his mother Fathima Ammal, the petitioner was in possession of the same as legal heir. While that being so, the petitioner's father Sheik Dawood possessed the lands, which attracted the proceedings under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act. Since the mother of the petitioner is a member of the family, her holdings were held by his legal heirs viz., the petitioner and his father Sheik Dawood. While determining the excess land, in respect of the Survey number in S.No.53/3 (sub-divided into 53/3A and 53/3B), the above said land belonging to the petitioner's mother Fathima Ammal was never demanded by the Government. Though initially the lands were notified, the lands, which the family is entitled to hold within the ceiling limit, were not deleted and the lands continued to remain in Revenue

Records. Hence, the petitioner approached the third respondent / The Assistant Commissioner (Land Reforms) and submitted a petition before him that the above said two lands in R.S.No.24/2 and R.S.No.53/3A be excluded from the surplus holdings under the said Act. After finding that the mistake has been crept in, the third respondent herein, by proceedings in Na.Ka.No.142/07/A6 dated 25.01.2007 held that the lands of the petitioner's mother in Athilyur Village viz., an extent of 1.68 acres in R.S.No.24/2 and an extent of 0.24 cents in R.S.No.53/3A were not declared as surplus lands pursuant to Section 18(1) notification under the said Act, dated 31.10.1979. Hence, he ordered mutation in respect of the change of entry in the Village account in favour of the petitioner's mother Fathima Ammal. This is evident to show that the lands were not acquired by the Government under the said Act and the said Fathima Ammal and his legal heirs continued their possession in the above said lands.

3. On 31.10.2006, the officials of the second respondent had visited Athaliyur Village and started to make measurements of the above said two lands in R.S.No.24/2 (sub-divided into R.S.No.53/3A and R.S.No.53/3B). When enquired by the petitioner, it is stated that the said lands were taken away by the Government. Hence, the petitioner issued a legal notice on 01.11.2006 to the respondents 1 & 2 informing them that the above said lands were not covered under the said Act and the Government has no right over the said lands and the respondents cannot interfere with the possession and enjoyment of the petitioner. But, no reply was sent by the authorities. However, the Deputy Thasildhar, Nagapattinam, pursuant to the proceedings dated 04.03.2008 issued by the 2nd respondent, assigned the lands to respondents 4 to 6 as follows:-

1) land measuring to an extent of 9.50 ares in R.S.No.53/3A was assigned to 4th respondent Anjali Devi.

2) land measuring to an extent of 34 acres in R.S.No.24/2 was assigned to 5th respondent Kalaiselvi

3) land measuring to an extent of 34 acres in R.S.No.24/2 was assigned to 6th respondent Saroja.

The above said lands were assigned to the respondents 4 - 6, as if they are the surplus land available with the Government. Hence, the total land measuring 77.50 acres, which were not declared as surplus lands or taken over by the Government, was wrongly assigned in favour of the respondents 4 to 6 by the official respondents under Government scheme of assigning the lands. According to the petitioner, since the said lands belonging to Fathima Ammal, the Government have no power to

assign the lands of the petitioner to any of the above said three persons. Further, the proceedings are illegal, without authority of law and it amounts to trespass into the petitioner's land and the official respondents have overlooked the fact that lands belong to the petitioner and the Government has no power to assign the lands of the petitioner to any of the above said three persons.

4. The petitioner would also raise the issue that 2 ½ acres of lands were declared as surplus under the said Act and the same was excluded outside the purview of the said Act, even though subsequent changes were not registered, which were maintained by the authorities. The authorities have no right to assign the said lands to the third parties.

5. From the proceedings dated 25.01.2007 of the Land Reforms officers, it could be seen that the lands belong to the petitioner's mother and his family and the lands in R.S.No.24/2 measuring 1.68 cents and R.S.No.53/3A measuring 0.24 cents were not been declared as excess land and the same continued to be in the name of the petitioner's mother Fathima Ammal alone, subject to change in the category of the said lands and the name of Fathima Ammal has to be effected as the owner of the said lands. In the meanwhile, Patta has also been given to the third parties. The possession of the said lands vested with the petitioner and the Government was not in possession and the petitioner has right to the same from the date of purchase till date. It is continuously in possession and enjoyment of the petitioner. Hence, this Writ Petition is filed, for the relief cited supra.

6. By filing counter affidavit of the respondents 1 and 2, the learned Additional Government Pleader contended that it is denied that the lands in Athaliyur Village in R.S.No.24/2 measuring 1.68 acres and in R.S.No.53/3 measuring 40 cents belong to the petitioner's mother and after her demise, the petitioner is in possession; hence, the petitioner is bound to prove the same. He further submitted that the petitioner had approached the third respondent, who passed an order for change of entry in the name of Fathima Ammal and her legal heir by proceedings in R.C.No.142/07/A6 dated 25.01.2007 declaring that the lands were not surplus lands. But, the 2nd respondent was not aware of the order passed by his predecessor. The learned Additional Government Pleader further submitted that the Revenue Records stand in the name of the Government and after careful scrutiny of the relevant Records, the Patta was issued to the respondents 4, 5 and 6, as per order No.115 of 2006, dated 05.11.2006 as per the Government Scheme of granting Patta to the landless poor people. Even before the rectification of notification of property under the Land Reforms Act, the Office

of the Thasildhar, Nagapattinam has granted Patta to the respondents 4 to 6 in accordance with law and they are in possession of the lands.

7. Further, the learned Additional Government Pleader appearing for the respondents 1 to 3 contended that the petitioner has not approached this Court at the earliest point of time and he has come forward belatedly before this Court with this present Writ petition, after completion of the assignment. Even the petitioner/complainant very well knows that his complaint has been filed belatedly. The petitioner did not furnish the details regarding the Revenue notification issued under the said Act, and he did not initiate steps to bring the details to the notice of the Revenue Department and the properties still stand as Government lands. Based on the Revenue Records, the Government had given the lands to the landless poor people under the said Act, and the respondents 1 & 2 and their predecessor in office have no power to interfere in granting Patta to the respondents 4 to 6 and the property covered by the Government notification under the said Act is free from all encumbrances and the Tahisldhar has acted only lawfully.

8. The sixth respondent has filed a counter affidavit, wherein it is stated that the lands were assigned to the respondents 4 to 6 only as per the procedures laid down in accordance with law and the grievance is only in respect of the land in R.S.Nos.24/2 and 53/3 and the sub-divided lands in R.S.Nos.53/3A and 53/3B, in which the land assigned to the sixth respondent herein by the Government lies in Re-Survey No.24/8 and not in R.S.No.24/2. Further, she submitted that the petitioner has also admitted and produced Patta No.824 for the above said land, which shows that instead of Saroja, D/o Venkatachalam, there was a typographical error showing as W/o Venkatachalam and she is an unmarried woman and she also seeks to direct the authorities to rectify the same.

9. Heard both sides and perused the materials available on record.

10. The petitioner has filed an additional typed set of papers, which shows that the petitioner's mother Fathima Ammal purchased the land in the year 1939 and this is clear on perusing the sale deed produced before this Court. It could be seen from the records that the land in R.S.No.24/2 is Nanja land measuring to an extent of 1.68 acres and R.S.No.53/3A is also Nanja land measuring to an extent of 0.24 acres and these lands were in the possession of the petitioner's mother Fathima Ammal. Under Section 18(1), notification was issued on 12.04.1972, after which mutation has also been done. The petitioner's mother

filed an application for a direction that the entire surplus lands should be taken from the Villages Thirukkandeeswaram and Panangudi and not from Athaliyur Village in the above said lands in R.S.No.24/2 and R.S.No.53/3A, which were removed from the category of excess lands and it has been notified in the Tamil Nadu Government Gazette published on 31.10.1979. Even though the compensation amount was also paid to the land owners, the changes carried out in the village accounts of Athalaiyur Village, at the time of declaring surplus, still show that the land stands as "Tharisu lands".

11. The writ petition has been admitted on 03.04.2008 and there was an interim stay granted by this Court. As per the proceedings in Na.Ka.142/07/A6, dated 25.01.2007, issued by the Assistant Commissioner (Land Reforms), the lands were ordered to be changed in the name of Fathima Ammal. A copy of the proceedings dated 02.03.2010 issued by the Assistant Commissioner (Land Reforms) sent to the District Collector, Nagapattinam has been produced before this Court and it is seen from the said proceedings that the extent of land measuring 13.67 ordinary acres is equivalent to 11.19 standard acres. Initially, the petitioner's family lands were declared as surplus lands, which are situated in Athaliyur Village, then Nannilam Taluk and now Nagapattinam District, by notification under Section 18(i) of the Tamil Nadu Land Ceiling Act, dated 12.04.1972 vide proceedings No. M.R.I./109(S)58-61/NNL and the above said lands and the other lands were declared as "wet waste" and "dry waste" by including the Villages viz., Thirukkandeeswaram, Panangudi. Pursuant to the same, the land owners went to the Court and obtained a direction that the surplus lands should not be taken from Athalaiyur Village. Hence, an order under Section 10(5) of the Act has been passed deleting the lands in the Athalaiyur village from the surplus lands. Subsequently, the petitioner has approached the 3rd respondent seeking to change the accounts in respect of RS.No.24/2 and R.S.No.53/3A of Athalaiyur Village in the name of his mother Pathima Ammal and the 3rd respondent has also passed an order to give effect to the change of accounts in respect of the said lands. Accordingly, the changes have been carried out by the Sub-Inspector of Survey in the village Account of Athalaiyur Village, during March, 2007.

12. In the meantime, the Tahsildar, Nagapattinam assigned the said lands i.e., 1.68 acres in R.S.No.24/2 and 0.24 acres and R.S.No.53/3A in the Athalaiyur Village to the respondents 4 to 6 as per the Government Scheme during November 2006. Even though the Assistant Commissioner (Land Reforms), Mayiladuthurai changed the mutation and the changes were made by the Sub-Inspector of Survey in the office of the third respondent, the said changes in the village accounts were not brought to the

notice of the Tahsildhar. Hence, the officials of the 2nd respondent visited Athaliyur Village and tried to survey the land, which is in possession of the petitioner. The petitioner sent a legal notice on 01.11.2006 to the respondents 1 and 2. The 3rd respondent is not aware of the fact of assignment of lands to the respondents 4 to 6 under the Government Scheme of assigning lands, since the 2nd respondent neither approached the third respondent and got permission nor obtained No Objection Certificate from the 3rd respondent in this regard. The 3rd respondent was not aware of the orders issued by the 2nd respondent.

13. When there was a mistake committed by the officials of the Revenue Department, the petitioner cannot be found fault with. Till date, the petitioner is in possession of the said lands. The petitioner being the owner of the said lands cannot be penalised for the act of the respondents herein. As per the directions of this Court, the lands were taken away from the two villages viz., Thirukkandeeswaram and Panangudi and the lands in Athaliyur were left out from the said scheme. Hence, the entire excess lands were taken from the above said two villages and the lands in Athaliyur village were left out and were in possession of the petitioner's mother Fathima Ammal. Before assigning the lands in favour of the respondents 4 to 6, the Tahsildhar has not enquired about the fact and there are no lands taken away under the said Act from the Athalaiyur Village and no opportunity has been given to any one regarding this issue before passing the order. Before assigning the land, there should have been an investigation on the said property, as to who is in possession of the land and to whom it belongs to. The Tahsildhar published the order of assignment and issued Patta to them. When the lands were not vested with the Government, the respondents 1 to 3 have no authority to give the land to third parties without giving an opportunity of hearing to the petitioner. The petitioner sent a legal notice and the Village accounts have been changed and it is in the name of Fathima Ammal. But, in spite of the same, the third respondent negligently passed an order in favour of the respondents 4 to 6, without ascertaining the fact as to whether the lands were vested with the Government and without giving opportunity to the landowner who has been in possession from the year 1939. Hence, the official respondents have no authority to assign the same in favour of the third parties.

14. In view of the above facts that the lands only vested with the petitioner, the impugned orders are liable to be quashed. Accordingly, the impugned orders are quashed and the respondents 1 to 3 are directed to pass orders marking the entire in the name of the petitioner herein, showing as legal heir of Fathima Ammal, who is the original owner and assigning

of lands in favour of the respondents 4 to 6 are set aside.

15. With the above observations, the writ petition is allowed. No costs, Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

klt

To

1. Government of Tamil Nadu,
Rep.by District Revenue Officer,
Nagapattinam District,
Nagapattinam.
 2. Tahsildar,
Nagapattinam Taluk,
Nagapattinam.
 3. The Assistant Commissioner,
(Land Reforms),
Mayiladuthurai.
- +1 cc to The Government Pleader, SR.No.447
+1 cc to Mr.A.Muthukumar, Advocate SR.No.76278

SV(CO)
CSL/19.02.2019

W.P.No.8194 of 2008

सत्यमेव जयते

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