

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.09.2018
CORAM
THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P.No.39738 of 2004
and
W.M.P.No.47373 of 2004

Pillappa

... Petitioner

Vs

1. Government of Tamil Nadu,
rep. by the Secretary to the Government,
Revenue Department, Fort. St.George,
Chennai - 600 009.
2. The Special Commissioner and
Commissioner of Land Administration,
Chepauk, Chennai 600 005.
3. The District Revenue Officer,
Dharmapuri,
Dharmapuri District.
4. The Tahsildar, Hosur,
Krishnagiri District

.... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari to call for the records relating to the impugned order of the first respondent in G.O.Ms.No.284, Revenue (Ni.Mu.3(2)) Department dated 10.06.2004 confirming the order passed by the second respondent in proceedings No.G-1/3108/2000 dated 25.09.2001 and quash the same.

For Petitioners : Mr.P.Rajendran

For Respondents : Mr. M.Elumalai,
Government Advocate.

ORDER

This writ petition has been filed challenging the order passed by the first respondent dismissing the appeal filed by the petitioner.

2. The case of the petitioner , in brief, is as follows:

An extent of 1.97 acres in S.No.810/2 in Onnalvadi Village,

Hosur Taluk, was assigned to the petitioner's paternal grandfather Mr.Muniappa by the fourth respondent by an order dated 11.10.1981 in R.O.C.No.16570/4/B-3 . Even before the assignment , the said land was under the occupation of the petitioner's grandfather and he was cultivating the land. After 6 years of the assignment , the Sub-collector, Hosur, by an order dated 20.08.1987 cancelled the assignment on the ground that the lands assignment to his grandfather was entered in Prohibitory Orders Book as per the order passed by the Sub-Collector, Hosur in and by his proceedings in D.Dis.No.8625 dated 25.12.1925. According to the petitioner, before cancelling the assignment, no opportunity was given. The original assignee Muniyappa died on 29.07.1983 and during his life time, he executed a Will on 23.06.1983 bequeathing the property in favour of the petitioner and two of his brothers. Thereafter, the petitioner and his brothers filed an appeal before the third respondent, challenging the order of cancelling the assignment. The third respondent/District Revenue Officer, by an order dated 29.11.1988 set aside the order passed by the Sub-Collector on the ground that no sufficient opportunity was given before cancelling the assignment. Against the said order, one Mr.Sonnappa, a resident of the above village, preferred an appeal before the Second respondent, and the second respondent in and by his proceedings in D.Dis.No.(G)/11471/90, dated 01.02.1994, set aside the order passed by the third respondent/District Revenue Officer, and cancelled the assignment on the ground that the legal heirs of the deceased Muniappa are having lands more than the extent prescribed for free assignment. Challenging the order passed by the second respondent , the petitioner and his brother filed a writ petition in W.P.No.16282 of 1994 and this Court allowed the writ petition and set aside the order passed by the second respondent on the ground that the order has been passed without issuing any notice to the petitioner. However liberty was granted to the respondents to proceed afresh after issuing notice to the petitioner. Thereafter, the second respondent issued notice to the parties and after hearing the parties , the second respondent passed an order dated 25.09.2001 in G-1/3108/2000 setting aside the order passed by the third respondent, thereby confirming the earlier order dated 01.02.1994 . Against which, the petitioner filed an appeal before the first respondent /Government and the first respondent by an impugned order dated 10.06.2004 rejected the revision petition. Challenging the above said order, the present writ petition has been filed.

3. The respondents have filed their counter stating that an extent of 1.79.0 Hectare of Onnalavadi Village, Hosur Taluk, Krishnagiri District was classified as Assessed Waste Dry in Government records, and there were four encroachments in the said survey numbers, out of which, the petitioner's grand father

Muniappa, was one of the encroacher to an extent of 1.97 acres. Thereafter, the said Muniappa applied for assignment of the land and the then Tahsildar, Hosur , granted assignment to an extent of 1.97 acres in his favour, whereas, the land was entered into the Prohibitory Order Book, as per the order passed by the Sub-collector, Hosur in and by his proceedings in D.Dis.8625/25 dated 25.12.1925. While assigning the land in favour of the said Muniappa, the Tahsildar, Hosur , has inadvertently failed to note the entry made in the prohibitory order book as "Reserved from Assignment". The Sub-collector, Hosur, during the Jamabandhi has noticed the irregular assignment made in favour of the Muniappa and initiated action for cancellation of the assignment, and after giving ample opportunity to the writ petitioner, he has passed an order cancelling the assignment. Then the petitioner has filed an appeal against the order of cancellation before the third respondent and the third respondent, District Revenue Officer, in and by his proceedings in Roc.111035/87 Z2 dated 29.11.1988, allowed the appeal and set aside the order passed by the Sub-collector. Challenging, the above said order, one Sonnappa, preferred an appeal before the Commissioner of Revenue Administration, Chennai and the same was allowed by an order dated 01.02.1994 and thereby cancelled the order passed by the third respondent Revenue Officer. Against the order passed by the Commissioner of Land and Administration, the petitioner and his brother filed a writ petition before this Court in W.P.No.16282/1994 and this Court by an order dated 18.04.2001 allowed the writ petition with liberty to the second respondent to proceed afresh after giving opportunity to the writ petitioner. Thereafter, after giving appropriate opportunity to the petitioner, the Commissioner of Revenue Administration once again passed an order dated 18.04.2001, thereby confirming the order passed by the Commissioner of Revenue Administration dated 01.02.1994. Against the said orders, the petitioner filed a revision petition before the first respondent Government and the first respondent by the impugned order dated 10.06.2004 confirming the order passed by the Commissioner of revenue Administration. He further stated that the land has been entered into a prohibitory order book and necessary entries were made in the revenue records to that effect stating "reserved from assignment", in the year 1925 itself. The Tahsildar, Hosur, without verifying the records properly has inadvertently assigned the land. Subsequently, the Sub-Collector on the inspection during the Jamabandhi, find out the irregularity and cancelled the assignment. It is further submitted that the disputed land is required for public purpose. It was being used by the villagers for celebrating festivals and worshipping the God . Moreover the assignee Muniappa's family has got 3.57 acres, of patta lands in Onnalavadi Village, at the time of assignment and as per the rules, the said Muniappa is not entitled for assignment of lands as his family members owned

3.57 acres, of patta land in Onnalavadi village. Considering all those facts, the authorities has cancelled the patta and there is no legality in the order.

4. I have heard the submissions made on either side and perused the materials available on record.

5. The main grievance of the petitioner is that the while passing the impugned order, the first respondent, mechanically, accepted the recommendation of the second respondent and the reason stated by the authorities that the Muniappa family is owning an extent of 3.57 acres at the assignment is not correct. The original assignee did not own any patta land at the time of assignment. So far as the other ground, namely, the land has been entered into in the Prohibitory Order Book is concerned the land is classified as assessed dry, and the land is eligible for assignment, and they are in possession and enjoyment from the year 1967.

6. All the above contention of the petitioner cannot be countenanced for the reason that, now all the authorities have clearly held that the land, which was assignment to the petitioner's grandfather Muniappa, was entered into the Prohibitory Order Book in the year 1925, itself and the land cannot be assigned. The land also required is for public purpose for celebrating festival. It is a factual finding and the petitioner was not able to disprove the same. If any land is entered into the Prohibitory Order Book, that the land will not available for assignment. According to the respondents, the Tahsildar, has inadvertently assigned the land in favour of the petitioner's grandfather, so the very assignment is invalid. That apart, eventhough the petitioner has contended that at the time of assigning the land in favour of his grandfather, he has no land stands in in his name, whereas the authorities verified the revenue records, came to a conclusion that the family of the petitioner owned an extent of 3.57 acres. and the said Muniappa, is also not entitled to get assignment. Now all the authorities have concurrently have come to a conclusion that the assignment is not valid. I have carefully considered entire materials and I find no illegality or irregularity in the order passed by the respondents and there is no merit in the writ petition.

6. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

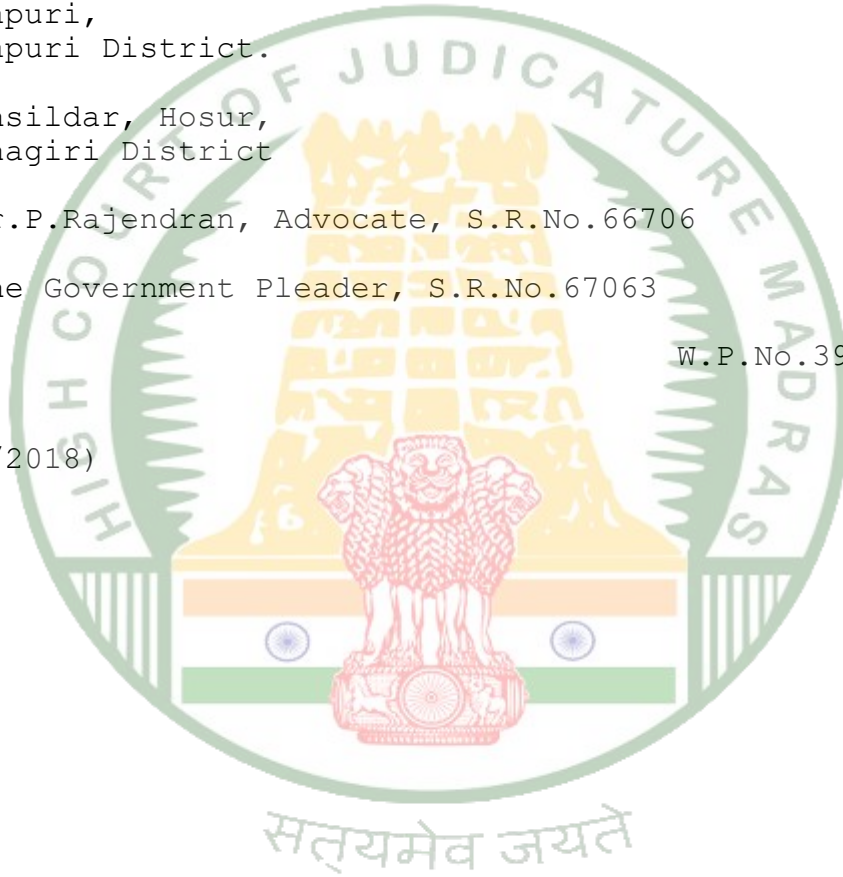
1. The Secretary to the Government,
Revenue Department, Fort. St.George,
Chennai - 600 009.
2. The Special Commissioner and
Commissioner of Land Administration,
Chepauk, Chennai 600 005.
3. The District Revenue Officer,
Dharmapuri,
Dharmapuri District.
4. The Tahsildar, Hosur,
Krishnagiri District

+1cc to Mr.P.Rajendran, Advocate, S.R.No.66706

+1cc to the Government Pleader, S.R.No.67063

W.P.No.39738 of 2004

CP(CO)
GSP(29/11/2018)



WEB COPY