

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.11.2018
CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 2662 of 2011
and
M.P No.1 of 2011

C. Arjunan

..Petitioner

Vs.

1. The District Collector,
Namakkal District,
Namakkal.

2. The Revenue Divisional Officer,
Namakkal District,
Namakkal.

3. The Tahsildar
Rasipuram Taluk
Rasipuram,
Namakkal District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 02.09.2009 made in Moo.Mu.No.7716/2009 on the file of the second respondent, to quash the same and consequently direct the respondents to transfer the patta in favour of the petitioner in respect of land measuring to an extent of 1.21 acres comprised in Survey Nos.23/3 and 23/4 of Anantha goundam palayam Village, S. Minnakkal, Rasipuram Taluk, Namakkal District.

For Petitioner : Mr.C. Prabakaran
For Respondents : Mr. M.Karthikeyan,
Addl. Government Pleader

O R D E R

This writ petition is filed seeking to quash the order dated 02.09.2009 made in Moo.Mu.No.7716/2009 on the file of the second respondent and consequently direct the respondents to transfer the patta in favour of the petitioner in respect of land measuring to an extent of 1.21 acres comprised in Survey Nos.23/3 and 23/4 of Anantha goundam palayam Village, S. Minnakkal, Rasipuram Taluk, Namakkal District.

2. Learned counsel for the petitioner would submit that the land measuring an extent of 1.21 acres comprised in Survey Nos.23/3 and 23/4 of Ananthagoundam palayam Village, S. Minnakkal, Rasipuram Taluk, originally belong to one Kondan. The said Kondan acquired title of the land through an assignment order under the Adi Dravidar Assignment Scheme issued by the Settlement Officer of the then Salem District. From the date of assignment, the said Kondan was in possession and enjoyment of the land. Subsequently, patta was issued by the Special Tahsildar, Rasipuram Taluk under the UDR scheme, vide Patta No.89 in favour of said Kondan, S/o. Thiruman. The said Kondan was in continuous possession of the property for more than 50 years. Later, the petitioner along with his wife jointly purchased the said property from Kondan and his legal heirs vide registered sale deed under Document No.728 of 1991 dated 05.09.1991 on the file of the Sub Registrar, Mallasamudram. The petitioner made an application to the 3rd respondent seeking transfer of patta along with the copy of the sale deed. The 3rd respondent referred the matter to the 2nd respondent by proceedings dated 20.07.2009 for clarification with regard to issuance of patta in favour of the petitioner. The 2nd respondent issued the proceedings No.Moo.Nu.7716/2009 dated 02.09.2009 rejecting the claim for transfer of patta on the ground that the subject matter of the land is an assignment land and the same has been assigned to Adi Dravidar community, since the petitioner does not belong to the said community, he is not entitled for grant of patta. Challenging the same, the petitioner has filed the present writ petition before this Court.

3. Learned counsel for the petitioner also raised a ground that the vendor of the petitioner has been in continuous possession for more than 50 years pursuant to the order of the Special Tahsildar, Rasipuram Taluk, Salem District. In spite of continuous possession and joint enjoyment, denial of patta is arbitrary, illegal and unsustainable in law. Hence, the impugned order is liable to be quashed.

4. Learned Additional Government Pleader representing the respondents would submit that the assignment patta has been granted in favour of Kondan to an extent of 1.21 acres. As per the assignment order, such assigned lands shall not be sold to anyone, other than the Depressed Class Persons or Harijans. Therefore, the said purchase by the writ petitioner from the aforesaid Kondan is contrary to the conditions assigned in the Assignment Order and so the order under challenge is valid.

5. Heard the submission of the learned counsel for both parties and perused the materials available on record.

6. The 2nd respondent has passed the impugned order, rejecting the claim of the petitioner, stating that the writ petitioner has purchased the subject matter of the property from the aforesaid Kondan without getting any permission from the authorities concerned. Therefore, sale of the said land to persons other than Harijans is violative of the conditions imposed in the Assignment order and so the sale deed executed in favour of the petitioner is void. The Division Bench of this Court in W.A. Nos.1446 to 1448 of 2008 in the case of V.G.P Prem Nagar Minvariya Kudi Erupor Nala Sangam vs. The State of Tamil Nadu [reported in (1992) 2 MLJ 561], in paragraph 5 has observed as follows:-

" 5. A Division Bench of this Court, in K. Palaniappan @ K.Subramaniam Vs. The Government of Tamil Nadu and others, 1992 (2) M.L.J. 561, referring to Section 3 of the Government Grants Act and the decision in Uttar Pradesh State vs. V. Sagur Ahamed, A.I.R. 1973 S.C. 2520, rejected the contentions raised by the subsequent purchaser who came into possession of the 'panchami land' and turned down the plea raised by them. In paragraph 6 of the judgment, the Division Bench observed as follows:-

"6. Coming now to the second contention raised by the learned counsel for the appellant, suffice it to say that the classification is both rational and has a clear nexus with the object sought to be achieved, that is to prevent alienation by exploitation of the Harijans by persons, other than Harijans.

...

In view of the settlement of law by the Supreme Court which has again been reiterated in Lingappa Pochanna vs. State of Maharashtra, A.I.R. 1985 S.C. 389, the second ground of attack viz., the unconstitutionality of the restrictions contained in Clause (9) of Special Form D, Board Standing Orders 15, paragraph 9 must also fail and holding that Clause (9) is constitutionally valid, we reject the argument raised to the contrary by Mr. Doraiswamy."

The Division Bench also referred to a decision in Sri Manche Gowda vs. State of Karnataka, A.I.R. 1984 S.C. 1151, wherein it

is held that it is not possible to accept that the conditions contained in Form-D are illegal or invalid and dismissed the writ petition. Therefore, with regard to the same subject matter, the Division Bench has held as above and hence, the submission that in the present case, no provision in pari materia as in the Karnataka Act is existing is immaterial since the lands were assigned to persons belonging to the depressed classes subject to the above conditions.

6. ...

7. In *Papaiah Vs. State of Karnataka and others*, (1996) 10 S.C.C. 533, the Supreme Court again dealt with the question of right to economic justice and with reference to Article 46, which casts upon the State a duty to provide economic justice to Scheduled Castes/Scheduled Tribes and other weaker sections of the society in order to prevent their exploitation, observed in paragraph 8 as follows:-

"8. It is seen that Article 46 of the Constitution, in terms of its Preamble, enjoins upon the State to provide economic justice to the Scheduled Castes, Scheduled tribes and other weaker sections of the society and to prevent their exploitation. Under Article 39(b) of the Constitution, the State is enjoined to distribute its largess, land, to subserve the public good. The right to economic justice to the Scheduled Castes, Scheduled Tribes and other weaker sections is a fundamental right to secure equality of status, opportunity and liberty. Economic justice is a facet of liberty without which equality of status and dignity of person are teasing illusions. In rural India, land provides economic status to the owner. The State therefore, is under constitutional obligation to ensure to them opportunity giving its largess to the poor to augment their economic position. Assignment of land having been made in furtherance thereof, any alienation, in its contravention, would be not only in violation of the constitutional policy but also opposed to public policy under Section 23 of the Contract Act, 1872. Thereby, any alienation made in violation

thereof is void and the purchaser does not get any valid right, title or interest thereunder."

8. In *R. Chandevarappa Vs. State of Karnataka*, (1995) 6 S.C.C. 309, while considering the alienation which was in violation of the Scheduled Castes/Scheduled Tribes Prohibition of Transfer of Certain Lands Act, 1978, the Supreme Court held as follows:

"The Prohibition from alienation is to effectuate, the constitutional policy of economic empowerment under Articles 14,21,38,39 and 46 read with the Preamble of the Constitution. Accordingly it was held that refusal to permit alienation is to effectuate the constitutional policy. The alienation was declared to be void under Section 23 of the Contract Act being violative of the constitutional scheme of economic empowerment to accord equality of status, dignity of persons and economic empowerment."

9. In *State of M.P. vs. Ram Kishna Balothia*, A.I.R. 1995 S.C. 1198, the constitutional validity of certain provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 were challenged. The Supreme Court extracted from the Statement of Objects and Reasons, the following:-

"Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons."

The very sad truth is that the conditions recorded in the Statement of Objects and Reasons in the year 1989 have not abated. Therefore, this only underscores the importance of protecting the rights of "those who have been for centuries, denied this right (to live with human dignity) vide A.I.R. 1995 S.C. 1198 (supra).

10.

11. In Consumer Education & Research Centre vs. Union of India, (1995) 3 S.C.C. 42, the Supreme Court while dealing with the right to health and medical aid of workers employed in asbestos industries, observed as follows:-

"In a developing society like ours steeped with unbridgeable and ever-widening gaps of inequality in status and of opportunity, law is catalyst, rubicon to the poor etc. to reach the ladder of social justice. Justice K. Subba Rao, the former Chief Justice of this Court, in his Social Justice and Law at page 2, had stated that "Social justice is one of the disciplines of justice and the discipline of justice relates to the society". What is due cannot be ascertained by absolute standard which keeps changing depending upon the time, place and circumstance. The constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor etc. are languishing and to secure dignity of their person."

6. In view of the above cited decisions of the Hon'ble Supreme Court as well as this Court, we are of the opinion that there is no merits to interfere with the order passed by the 2nd respondent. In fine, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CSviii)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Namakkal District,
Namakkal.

2. The Revenue Divisional Officer,
Namakkal District,
Namakkal.

3. The Tahsildar
Rasipuram Taluk
Rasipuram,
Namakkal District.

+1cc to Mr.C. Prabakaran , Advocate SR.No. 82048

W.P. No. 2662 of 2011
and

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A.SK(05/02/2019)