

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.34109 of 2017

and

W.M.P.Nos.4885 and 37862 of 2017

Blessing Youth Mission
Rep by its Chairman
T.Dickson Daniel Moses
8, Church Colony, Kanlinjur Road,
Vellore-632 006. ... Petitioner

vs

- 1.The State of Tamil Nadu,
Rep by its Secretary,
Revenue Department,
Fort St. George, Chennai-600 009.
- 2.The Special Commissioner and
Commissioner of Land Administration,
Ezhilagam, Chepauk, Chennai-600 005.
- 3.The District Collector,
Collectorate, Salem.
- 4.The Sub Collector,
Mettur Taluk, Salem District.
- 5.The Revenue Divisional Officer,
Mettur Taluk, Salem District.
- 6.The Tahsildar,
Mettur Taluk, Salem District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the connected records and the impugned order in Ni.Mu.407/2017(A) dated 08.12.2017 of the 4th respondent and quash the same as illegal and void.

For Petitioner : M/s.Paul and Paul
For Respondents : Mr.A.Sri Jayanthi
Special Government Pleader

O R D E R

The order dated 08.12.2017, issued by the Sub-Collector, in respect of the cancellation of assignment granted in favour of a tribal person, is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner strenuously contented that the petitioner is an absolute owner of the property in question. The petitioner is a registered religious and charitable society committed to the blessing to all sections of society irrespective of caste or creed by way of challenging the youth for noble leading, teaching men about the responsibility towards their fellow men, spreading the message of love and peace everywhere, relieving the sufferings and uplifting the poor, downtrodden and neglected through conferences, seminars, medical and relief camps, literacy programmes, etc.

3.The petitioner's society is running a centre in Palamalai Village, which comes under Kolathur Union of Mettur Taluk, Salem District. The centre was opened during the year 2006 and serving the people in and around Palamalai. Initially, the centre was commenced in a rented place and subsequently, one Mr.Arapuli, resident of Palamalai Village, voluntarily came forward to sell his piece of land under survey No.105/4 to an extent of 92 cents to the petitioner society to set up a small dental clinic to serve the people in and around Palamalai Village. The above said land stands in the name of Kozhanda Goundar, in the "A" register, who is the father of Mr.Arapuli. The authority competent issued patta No.262 in favour of Kozhanda Goundar, for the above said land. After his demise, Mr.Arapuli, inherited the said land as his legal heir and is enjoying the said property.

4.In these circumstances, Mr.Arapuli, executed a sale deed on 01.08.2006, in favour of the petitioner society and the said sale deed was registered as Doc.No.659 of 2006, before the Sub-Resistrar Office, Kolathur, Mettur Taluk in favour of the writ petitioner. After the execution of the sale deed, the patta was transferred in the name of the petitioner by way of an order dated 27.12.2007, by the Zonal Deputy Tahsildar, in patta No.1305, which was issued in favour of the writ petitioner. After the purchase, the writ petitioner is in peaceful possession and enjoyment of the land and utilized the same for serving the people of that locality. Mr.V.Ponnusamy filed

W.P.No.18901 of 2010, seeking for a Mandamus to direct the District Collector and Revenue Officials to consider his representations dated 03.03.2008 and 29.07.2008. In the said representations, Mr.V.Ponnusamy questioned the sale of the assigned land in favour of the writ petitioner, which is impermissible and further, the said land cannot be sold to a Non-Tribal under the provisions of the Revenue Standing order and accordingly, requested to cancel the assignment of the said land originally granted in favour of one, Mr.Kozhandai Gounder. It is stated that the land assignment granted in favour of the Tribals cannot be sold to a Non-Tribal as per the terms and conditions of the assignment made in G.O.Ms.No.561 dated 14.03.1979 and the Revenue Standing order No.15-40. Thus, the sale of the assigned Tribal land in favour of the writ petitioner is null and void and accordingly, the execution of sale and the patta granted in favour of the writ petitioner is invalid in the eye of law and as per the terms and conditions of the assignment and also as per the Revenue Standing Orders. This Court directed the respondents to consider the representation and pass orders and consequently, the Sub-Collector passed an order dated 08.12.2017.

5.The learned counsel appearing on behalf of the writ petitioner contended that the impugned order has been passed without providing an opportunity to the writ petitioner and therefore, the same is liable to be scrapped. In view of the fact that no opportunity had been provided to the writ petitioner before passing the impugned order, the entire case may be remitted back to the competent authority for reconsideration.

6.The learned Special Government Pleader opposed the contentions raised on behalf of the writ petitioner by stating that the writ petitioner is no way connected with the property, which was assigned originally in favour of the father of Mr.Arapuli, namely, Mr.V.Kozhandai Gounder. The land was allotted to a Tribal on certain terms and conditions and after the demise of the said original assignee Mr.V.Kozhandai Gounder, his Son Mr.Arapuli inherited the same. Later, Mr.Arapuli executed the sale deed illegally in favour of the writ petitioner and therefore, the entire transactions took place between Mr.Arapuli, who is a Tribal and the writ petitioner is invalid as per the terms and conditions of the assignment and as per the Revenue Standing Orders.

7.The learned Special Government Pleader contended that the writ petitioner has no locus standi to question the order passed by the respondents in this regard in view of the fact that the land in question is assigned in favour of the Tribal and the same cannot be sold in favour of the writ petitioner. Since, the

terms and conditions of the assignment is unambiguous that the said land cannot be sold in favour of any other persons for 10 years and even thereafter, the land cannot be sold to a Non-Tribal.

8.The learned counsel for the petitioner objected the contentions raised on behalf of the respondents by stating that the land in question is not at all an assigned land and the details of the assignment has not been furnished to the writ petitioner by the respondents and there is no findings in this regard even in the impugned order. This Court is of an opinion that if at all, the contention is to be accepted, the same cannot be raised in the present writ petition. If the writ petitioner claims absolute ownership in respect of the property described in the present writ petition, then he has to approach the competent Civil Court to establish his title and ownership by producing documents and by adducing evidences.

9.Considering the arguments as advanced by the learned counsel for the petitioner and the learned Special Government Pleader, this Court is of an opinion that the writ petitioner filed the present writ petition only on the ground that he is the absolute owner of the property in question and the petitioner purchased the same by way of a registered sale deed from Mr.Arapuli, who inherited the property from his father Mr.Kozhandai Gounder. Relying on the sale deed dated 01.08.2006, registered in Document No.659 of 2006, the petitioner claims title over the property. The title or ownership in respect of an immovable property can never be adjudicated in a writ proceedings under Article 226 of the Constitution of India. Such adjudication by way of a full fledged Trial can be undertaken only by the competent Civil Court of Law. All such complex and disputed facts in relation to the title, ownership or possession shall be adjudicated before the Civil Court and the parties aggrieved are at liberty to approach the Civil Court of law.

10.The writ petitioner claims title based on the sale deed executed by Mr.Arapuli. The said Mr.Arapuli inherited the property through his father Mr.Kozhandai Gounder, who was the original assignee of the land by the Government. As per the terms and conditions of the assignment, the said land cannot be sold to any other person other than a Tribal, who all are similarly placed like the original assignee. Thus, the legal heir of the original assignee executed the sale deed in favour of the writ petitioner is in violation of the terms and conditions of the assignment. Under these circumstances, if the writ petitioner is of an opinion that he is the owner of the said land, it is left open to them to approach the competent Court of Law. In respect of the cancellation of the assignment, the writ petitioner is not a party to the assignment and the

competent authorities cancelled the original assignment on the ground that the assignee had violated a conditions of the assignment. Therefore, the question of providing any opportunity to any third person would not arise at all. The writ petitioner is not a party to the assignment and he purchased the property from the legal heirs of the original assignee. Therefore, the opportunity of show cause notice has no relevance in respect of the case of the writ petitioner is concerned.

11.As per the counter statement filed by the Revenue Officials, the subject land was assigned in favour of one Mr.Kozhandai Gounder and his name was found in "A" Register, who was a Schedule Tribe. Mr.Arapuli, who executed the sale deed in favour of the writ petitioner is the son of the original assignee Mr.Kozhandai Gounder and he inherited the subject property from his father. Thus, Mr.Arapuli, himself is not a original assignee and his father alone was original assignee. Mr.Arapuli, dealt with the property contrarily to the terms and conditions and somebody filed a petition, seeking to cancel the assignment since the subject property was sold by a tribal to a non-tribal. Then, it is the duty of the competent authority to verify and cancel the assignment, if the terms and conditions of the assignment are violated.

12.It is stated in the counter that enquiry has been conducted and it was found that Mr.Arapuli, who is a Scheduled Tribe has sold the above mentioned land in question in favour of the Jayakumar, who represents the Blessing Youth Mission which violates the Revenue Standing Order 15-40 which states that:

"Hill Tribes:- Conditional Assignment :-
In the following cases the assignment of land to malyalis or sholagas, as the case may be, shall be subject to the conditions that the land shall not be transferred by the assignee to any person outside the class to which they belong without the express sanction of the Divisional Officer, and that if the land is transferred without such sanction or is attached and sold by any legal process, it shall be liable to resumption by the Divisional Officer without payment of any compensation whatever"

The G.O.Ms.No.561 dated 14.03.1979 of Revenue Department has made some villages including Pullampatti area of Palamalai Village in Mettur Taluk to be listed on the above RSO 15-40. So accordingly there comes a ban of sale of land to any Non-tribal in the

above pullampatti area of Palamalai Village.""

13.At the outset, the original assignee namely, Mr.Kozhandai Gounder was in possession and enjoyment of the Government land assigned. However, his Son, Mr.Arapuli executed a sale deed in favour of the writ petitioner, who is not entitled to execute any such sale deed in favour of the writ petitioner as per the terms and conditions of the assignment. The competent authorities on scrutiny, found that the land allotted in favour of a Tribal is now alienated in favour of a Non-Tribal contrary to the Revenue Standing orders and in violation of the terms and conditions of the assignment. Thus, the order passed by the respondent is in accordance with law. If at all, the writ petitioner is aggrieved from and out of the order of cancellation of an assignment, it is left open to the writ petitioner to set out a claim against the executor of the sale deed, Mr.Arapuli, who has no authority to execute such a sale deed in favour of the writ petitioner. Thus, Mr.Arapuli, who committed the illegality and the writ petitioner is also a party to such illegality. The dispute between Mr.Arapuli and the writ petitioner cannot be resolved by way of a writ petition before this Court. Thus, it is left open to the writ petitioner to proceed against Mr.Arapuli in the manner known to law.

14.With the above observation, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

stm/nmm

To

1.The Secretary,
The State of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai-600 009.

2.The Special Commissioner and
Commissioner of Land Administration,
Ezhilagam, Chepauk, Chennai-600 005.

3.The District Collector,
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Mettur Taluk, Salem District.

5.The Revenue Divisional Officer,
Mettur Taluk, Salem District.

6.The Tahsildar,
Mettur Taluk, Salem District.

+1cc to Mr.PAUL & PAUL, Advocate, S.R.No.42812

+1cc to the Government Pleader, S.R.No. 43151

W.P.No.34109 of 2017

TR(31/07/2018)



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