

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.07.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

WP.No.25790 of 2014

1S.Subbarayan
2.K.Senthil Kumar
3.S.Ramasamy
4.R.Mohanraj

.. Petitioners

Versus

The Collector,
Salem District, Salem.

.. Respondent

Prayer:-

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating the proceedings in Na.Ka.No.40297/2012/K4 dated 05.11.2013 on the file of the respondent by which reclassification was made in respect of the lands of the petitioners in S.Nos.236/5, 236/7, 237/1, 237/2, 236/9, 236/8, 236/4, 237/9, 57/8 and 57/9 of Pattuthurai Village of Attur Taluk, Salem District and quash the same insofar as the petitioners are concerned.

For Petitioners : Mr.Ar.L.Sundaresan, Senior Counsel
for Mrs.Al.Gandhimathi

For Respondent : Mr.R.Udhayakumar, AGP

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

By consent, the writ petition is taken up for final disposal. Mr.R.Udhayakumar, learned Additional Government Pleader appears on behalf of the respondent.

2 The petitioners claim to be the assignees of the lands, the details of which are given below and they have been issued with Form No.D dated 21.02.2001 vide proceedings

No.A.M.50/1410 by the Tahsildar, Attur. It is relevant to extract the details of the holdings:-

1.S.Subbarayan S.Nos.236/5 and 236/7-1.13.0 hectare in Patta No.244, Assignment in A.M.47/1410 dated 21.02.2001

2.K.Senthil Kumar S.Nos.237/1, 237/2, 236/9 & 236/8 - 2.12.0 hectare in Patta No.229, Assignment in A.M.47/1410 dated 21.02.2001.

3.S.Ramasamy S.No.236/4-1.10.5 Hectare in Patta No.262, Assignment in A.M.47/1410 dated 21.02.2001.

4.Late Kuppanna S.no.2237/9, 57/8, 57/9 - 1.16.0 Hectare in Gounder now Chitta No.400 Assignment in A.M.47/1410 occupied by dated 21.02.2001. minor R.Mohanraj

3 The petitioners would claim that based on the said assignments, they have been issued with pattas and they are also paying statutory levies and two of the petitioners, viz., Ramasay and Subbarayan, had also obtained Electricity Service Connection for their wells for the purpose of agricultural operations. The petitioners submitted an application for agricultural loan and they were directed to obtain a fresh patta and when they approached the concerned Revenue Authorities, they became aware of the fact that the respondent vide impugned proceedings dated 05.11.2013, had cancelled the Assignment and challenging the legality of the order, they came forward to file the present writ petition.

4 The writ petition was admitted on 09.10.2014 and interim order was granted and it was made absolute on 03.01.2017.

5 Mr.Ar.L.Sundaresan, learned Senior Counsel assisted by Mrs.Al.Gandhimathi, learned counsel appearing for the petitioners has drawn the attention of this Court to the materials placed in support of this writ petition as well as the additional affidavit of the 1st petitioner dated 02.06.2018 and would submit that the Assignments were given as early as in the year 2001 and the said properties are also subjected to statutory levies and electricity service connections have also been provided to the wells of the two of the petitioners and they are enjoying the properties in their on right for nearly 17 years and all of a sudden, without affording any proper or sufficient opportunity, the impugned order came to be passed by the respondent cancelling the pattas and he would further urge that the respondent has also placed reliance upon the reports of the Revenue officials, the copies of which have not been

furnished to the petitioners and would contend that since the impugned order is in per se violation of the principles of natural justice, it may be quashed and prayed for allowing of this writ petition.

6 Per contra, learned Additional Government Pleader appearing for the respondent has drawn the attention of this Court to the counter affidavit filed by the respondent dated 13.11.2017 and would submit that the petitioners were granted opportunity and their statements were also recorded and the respondent, on going through the records, found that the genuineness of the D-Card Pattas produced by them, are doubtful and lack genuinity and taking into consideration of the fact that the family members have been granted Assignment and pattas on the ground of landless poor, the respondent rightly took a decision to cancel the same and would further submit that since the points urged by the learned Senior Counsel appearing for the petitioners revolve around disputed questions of fact, their remedy is to invoke the Common Law remedy and prays for dismissal of this writ petition.

7 This Court has considered the rival submissions and also perused the materials placed before it.

8 It is not in dispute that the petitioners were granted Assignments on the pretext that they are landless poor. The additional affidavit filed by the 1st petitioner on behalf of himself and petitioners 3 and 4 dated 02.06.2018 would disclose that apart from the lands assigned, they do not possess any other lands. The learned Senior counsel on instructions would submit that the 2nd petitioner also do not possess any other land apart from the lands assigned. The said submission, on instructions, is placed on record.

9 The impugned order proceeds on the footing that as per the revenue records, the assignment of lands and "D" Card pattas appear to be not genuine. The primordial submission of the learned Senior Counsel appearing for the petitioners is that behind the back of the petitioners, the respondent had placed reliance upon some records and reached the conclusion and therefore, the petitioners have been denied of fair opportunity of further representation to refute the same.

10 A further perusal of the impugned order would disclose that the respondent had exhaustively considered the records and reached the conclusion and in the considered opinion of the Court, the veracity of the records at this stage cannot be tested by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

11 In the light of the above facts and circumstances, this Court is of the considered view that the petitioners may be permitted to file a joint appeal before the Commissioner, Land Administration, Chepauk, Chennai-600 005, within a stipulated time with a further direction to the said official to dispose of the same at an early date.

12 Accordingly, the petitioners are granted liberty to file a joint appeal before the Commissioner, Land Administration, Chepauk, Chennai-600 005, by enclosing all relevant and authenticated documents, within a period of two weeks from the date of receipt of a copy of this order and the said official, on receipt of the said appeal, shall entertain the same if the papers are otherwise in order and after affording an opportunity of personal hearing either to the petitioners or to their authorised representatives, shall consider and dispose of the said joint appeal on merits and in accordance with law within a further period of eight weeks thereafter and communicate the decision taken to the petitioners and till such time, the respondent shall defer further decision in terms of the impugned proceedings dated 05.11.2013. It is also made clear that the petitioner, till the disposal of the appeal by the the Commissioner, Land Administration, Chepauk, Chennai-600 005, shall not create any third party rights in respect of the lands and superstructures in question and shall also not alter the physical features of the same.

13 The writ petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions is closed

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

AP
To

1. The Collector, Salem District, Salem.
2. The Commissioner,
Land Administration,
Chepauk, Chennai-600 005.

+1cc to Mrs.Al.Gandhimathi, Advocate, S.R.No.42912
+1cc to the Government Pleader, S.R.No.43602

WP.No.25790/2014

CS/13/07/18