

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.07.2018

DATE OF DECISION : 27.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.2346 of 2018

Dr.D.S.Ramaiah

... Petitioner

-vs-

1. The Additional Chief Secretary/
Commissioner of Land Administration
Ezhilagam, Chepauk
Chennai 600 005

2. The Government of Tamil Nadu
represented by the Secretary to Governemnt
Revenue Department
Secretariat
Chennai

3. The District Collector
Villupuram

4. The District Revenue officer
Villupuram

5. The Revenue Divisional officer
Tirukkivilur
Villupuram District

6. The Tahsildar
Ulundurpet
Villupuram District

7. N. Jayagopi

... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in proceedings No.G/1198/2017 dated 16.10.2017 and quash the same and consequently direct the respondents to cancel the assignment order issued in favour of the seventh respondent in respect of 3 cents of land in S.No.92/51B of Keeranur Village, Ulundurpet Taluk, Villupuram District in G.O.Ms.No.814, Revenue dated 05.12.1994 issued by second respondent and consequential proceedings of assignment patta issued by the sixth respondent in No.86/1410 dated 13.03.2001.

For Petitioner:: Dr.D.S.Ramaiah
Petitioner-in-Person

For Respondents:: Mr.V.Jayaprakash Narayanan
Special Government Pleader for
R1 to 6
Mr.R.Neelakandan for
Mr.T.Gandhi for R7

ORDER

Dr.D.S.Ramaiah, S/o late Doraisamy Reddiar, a State Bank executive, appearing in person, assailing the impugned order dated 16.10.2017, rejecting his request to cancel the house site assignment made in favour of Mr.N.Jayagopi, the seventh respondent herein to an extent of 0.03 acre (0.01.0 are) in Survey No.92/51B (New No.511/25) at U.Keeranur Village, Ulundurpet Taluk, Villupuram District, on various grounds that the seventh respondent owns an ancestral house next to his house and his western main hall belongs to him, while so, (a) that the seventh respondent wrongly declared him as a homeless person to get the 3 cents of house site from Government; (b) that as per condition no.1 in the conditional assignment order, the seventh respondent Mr.N.Jayagopi should construct one house only for his residence, whereas he has deliberately and illegally contravened and constructed three shops for commercial use and is also enjoying the monthly rents therefrom while living in his own ancestral house; (c) that three electricity service connection nos.203, 204 and 205 under commercial tariff to the said three shops were obtained; (d) that the seventh respondent also has assessed the property tax in Ulundurpet Town Panchayat office for Door Nos.25 and 25-A under commercial tariff. These

material facts establish the true fact that the seventh respondent had violated the terms and conditions of the assignment order that he should construct one house only for his residence, which he has not done. On these grounds, when the petitioner had sought for cancellation of the assignment order erroneously issued in respect of the said land, without properly considering two cancellation orders already passed against the seventh respondent, one by the District Revenue Officer, South Arcot District in his proceedings No.Ref.VI.22763/80 dated 19.9.81 and another confirmation order passed by the Government of Tamil Nadu in the year 1991 vide G.O.Ms.No.1023, Revenue Department dated 11.7.91, on the appeal preferred by the seventh respondent, once again, the seventh respondent has been granted with the assignment order. Therefore, the impugned order is liable to be cancelled.

2. The petitioner further submitted that the small piece of land having 3 cents bearing R.S.No.92/51B (New No.511/25) at U.Keeranur Village, Ulundurpet Taluk, Villupuram District was under the enjoyment of the petitioner's family for four generations since 1929 without protest from any quarter. His grandfather Mr.Balu Reddiar, his father Mr.Doraisamy Reddiar, the petitioner and his son Kasthuri Raman were enjoying the said piece of 3 cents of Government poramboke land since 14.9.1929, which is exactly opposite to the petitioner's Door Nos.9 & 10, Old Post Office Street, by using it as their cart shed upto 1967. Admitting the usage of the said property, 'B' memo charges were also claimed and the petitioner's family was paying the same regularly. While so, in the year 1966, after his father's demise, considering his philanthropical social service and gandhian principles, the then three Ministers declared open his father's bust size statue with a mandapam like structure at the same place on 3.4.1967 i.e., the date of his first death anniversary. Thereafter, that street was also named after him as Singapore Doraisamy Street. The petitioner being the only son and serving as State Bank executive, was always out of station on duty. Hence, he chose his neighbour the seventh respondent, who is living next door owning a house at Door No.11 on the same street, namely Mr.N.Jayagopi, S/o Natesan Pillai, who was unemployed then as paid part time Clerk, only to look after his father's statue and his house for paying the electricity bills etc., and also to credit the balance amount after deducting his monthly salary in the joint account opened at the local bank. When he was performing his duty for 13 years satisfactorily, in the year 1980, by taking advantage of his absence, with an ulterior motive, conspired to grab this piece of land showing his disloyalty and unfaithfulness to his family members and he also arranged to demolish his father's statue along with the mandapam structure showing breach of trust reposed on him. The

petitioner was not even informed of the said demolition and the seventh respondent erected a thatched mud wall cattle shed and pretended to live there with his wife, although he owned an ancestral house at Door No.11 next to the petitioner's house in the same street. However, a complaint was given by the petitioner's son to the District Collector to depute two subordinate officials for physical verification to find out the demolition and erection of his thatched mud wall cattle shed, who inturn, after physical verification, wrongly submitted a negative report stating that the place was used as a cattle shed pointing out that there was no electrical connection, no marks of smoke on the wall due to cooking, no trace of kolam at the front door, as he is a Hindu, and finally the signs of human inhabitation was also ruled out. Based on the finding given by the Revenue Divisional Officer, Tirukkivilur, the fifth respondent herein, the District Collector, Villupuram, the third respondent herein summoned Mr.N.Jayagopi, the seventh respondent herein along with his wife to his office at Cuddalore and after reprimanding him, allowed him to go. Thereafter, the petitioner filed a civil suit on the file of the Sub Court, Tirukkivilur seeking a decree for recovery of possession. Subsequently, it was withdrawn by him with the permission of the Court to approach the authorities concerned, since the seventh respondent did not appear even once. However, taking advantage of his absence, the seventh respondent started laying foundation to construct a pucca building, which was objected and stopped abruptly by the Ulundurpet Town Panchayat office at his instance and thereafter, the seventh respondent, in the year 1980, being a government servant, suppressing the vital aspect that the land in question was in occupation of the petitioner's family, wrongly obtained patta at free of cost, as if he was in possession. However, the same was questioned and objected by the petitioner at various levels of the Government and finally, the said assignment order was cancelled by the then District Revenue Officer, South Arcot District in his proceedings No.Ref.VI.22763/80 dated 19.9.81 and on an appeal by the seventh respondent, the same was also dismissed, confirming the order dated 19.9.81 by the Government of Tamil Nadu vide G.O.Ms.No.1023, Revenue Department dated 11.7.91. Deliberately suppressing and concealing all these facts, again the seventh respondent, furnishing false information, obtained the conditional assignment order vide G.O.Ms.No.814, Revenue (Z2) Department dated 5.12.94 and thereafter he had paid the cost of the land after the expiry of three years. When the assignment is not valid, on the ground that the payment is made only after a period of six years, which is impermissible under the law of limitation, it was further contended that the seventh respondent, being the owner of an ancestral house next to his own house, had declared himself as a homeless person to get the 3 cents of house site from the Government and the condition no.1

in the conditional assignment order specifically mentions that the seventh respondent should construct one house only for his residence. Breaching the said conditions, he had constructed three shops for commercial use and is enjoying the monthly rents while he is living in his own ancestral house. Therefore, a detailed enquiry should be ordered by cancelling the impugned order, he pleaded. Originally when the assignment order was already cancelled by the District Revenue Officer, South Arcot District in his proceedings dated 19.9.81 and the same was also confirmed by the State Government vide G.O.Ms.No.1023, Revenue dated 11.7.91, the seventh respondent cannot obtain one more assignment suppressing the same. As the petitioner is rendering social service, his last ambition in life is to get back the 3 cents of land under assignment or long term lease to enable him to create a children's recreation cum play park to inculcate and improve yoga, meditation, exercise, sports, indoor games to develop the physical health of the local children with the financial help of Lions Club International, to which he belongs, as there is no park in his town. Therefore, by cancelling the assignment, the same should be allotted to him enabling him to run a yoga centre, indoor sports centre for younger generation.

3. A detailed counter affidavit has been filed by the sixth respondent. The learned Special Government Pleader for the respondents 1 to 6 submitted that the land in question having 3 cents in Survey No.92/51B is classified as natham vacant site in U.Keeranur Village, Ulundurpet Taluk, Villupuram District and that was assigned in the year 1980 to the seventh respondent by the Revenue Divisional Officer, Tirukkivilur. When the said assignment was challenged by one Mr.Kasthuri Raman, who is the son of the petitioner, the District Revenue Officer, South Arcot District set aside the assignment order on 19.9.81, which was also confirmed by the Government of Tamil Nadu by G.O.Ms.No.1023, Revenue dated 11.7.91. Thereafter, the seventh respondent made a petition for assignment of land. After considering his request, the Government in G.O.Ms.No.817, Revenue (Z2) Department dated 5.12.94 passed a conditional assignment order on collection of single market value prevailing at the time of assignment. Accordingly, the seventh respondent also had remitted the land cost of Rs.1,07,802/- on 25.7.2000 and retained the assignment. Only after considering the financial status and eligibility of the seventh respondent, the Government decided to grant assignment on payment of the land cost. The learned Special Government Pleader, relying upon the counter affidavit, also submitted that the assignment was ordered as early as in the year 1994 and the payment of land cost was made in the year 2000 after six years. While issuing the assignment order, the ownership of his ancestral property and other relevant facts were also taken into account.

Therefore, the allegations made by the petitioner contrary thereto do not hold any water and there is no reason for cancellation of the assignment order.

4. A detailed counter affidavit has been filed by the seventh respondent. Mr.R.Neelakandan, learned counsel appearing for the seventh respondent, opposing the prayer, submitted (a) that the petitioner is not an aggrieved party; (b) that he neither claims title over the property nor claims ownership of the said property; (c) that the petitioner is attempting to re-settle the issue after a series of legal battle as early as before 2000 itself, which started from 1980 either at the instance of the petitioner or his son. Hence, the writ petition is liable to be dismissed. Moreover, the allegation made by the petitioner that he does not own a single piece of land is totally untrue, because he has suppressed the fact that he and his family own number of houses and vast extent of land in Ulundurpet. When the land in question is classified as natham originally belonging to the Government, it was assigned to the seventh respondent by an order dated 21.11.80 in R.Dis.No.28857/80 by the Revenue Divisional Officer, Tirukkuvilur. Only then, the seventh respondent has been given physical possession of the land. Subsequently, on the basis of the assignment order, the seventh respondent constructed a house and from the said date, has been residing there for 38 years. When the petitioner has not even placed on record any piece of evidence to prove that his family was in possession of the said property, even assuming without admitting that the said property was in the alleged possession of the petitioner's family, he cannot claim title over the said property. Moreover, when the Government was the owner of the property, the power to dispose of the said property vests only with the Government in terms of the Revenue Standing Orders. Later on, the value equal to the said property has also been received from the seventh respondent. In addition thereto, it was the admitted case of the petitioner that the seventh respondent was not employed during the relevant period. When the assignment was given in the year 1980 and the seventh respondent got married in the year 1986, the petitioner cannot make a wrong statement that the seventh respondent erected a thatched mud wall cattle shed and living with his family. Even the petitioner's son Mr.Kasthuri Raman, claiming title over the subject property, filed a suit in O.S.No.357 of 1982 on the file of the District Munsif Court, Tirukkuvilur seeking a decree for declaration of title with a consequential summary eviction against the seventh respondent. But the said suit was dismissed as withdrawn by the judgment dated 23.12.88.

5. Similarly, the allegation made against the seventh respondent that he obtained the assignment order suppressing his appointment as Junior Clerk in Chengalvarayan Cooperative Sugar Mills Ltd., Periyasevalai, Villupuram District, is wholly misconceived, because he was issued with the assignment order on 21.11.80 by the Revenue Divisional Officer, Tirukkivilur in his proceedings R.Dis.28857/80, whereas the seventh respondent joined as Junior Clerk only on 22.12.80 in Chengalvarayan Cooperative Sugar Mills Ltd., Periyasevalai, Villupuram District. The second allegation alleging the status of his wife D.Meenakumari also as a government teacher drawing a monthly salary of Rs.45,220/- at Government Girls Higher Secondary School, Ulundurpet is also incorrect, because, on the date of assignment, the seventh respondent's wife was not even employed, as he got married only in the year 1986. Although the suit was withdrawn with liberty to file a fresh suit, the petitioner did not choose to file any fresh suit against the seventh respondent. When the seventh respondent has been using the subject property for his personal use and even assuming that the subject property is used for commercial purpose, there is no such prohibition in the assignment order. Hence, there is no violation of any condition. Above all, when the seventh respondent had paid the land cost, neither the respondents suffered nor the petitioner can have any grievance, because he was assigned the land after collecting the land cost.

6. Heard both sides.

7. The petitioner, who is appearing in person, is a senior citizen aged about 91 years and also a widower, disabled and cancer patient. He has filed the writ petition seeking to quash the order passed by the first respondent, refusing to cancel the assignment of house site made in favour of the seventh respondent to an extent of 0.03 acre (0.01.0 are) in Survey No.92/51B (New No.511/25) of U.Keeranur Village, Ulundurpet Taluk, Villupuram District. It is seen from the records that the seventh respondent was initially issued with the assignment of the said property by the Revenue Divisional Officer, Tirukkivilur in his proceedings R.Dis.28857/80 dated 21.11.80. However, on a complaint made by the petitioner's son Mr.Kasthuri Raman, the said order of assignment was set aside by the proceedings of the District Revenue Officer, South Arcot District, Cuddalore in his proceedings Ref.VI.227639/80 dated 19.9.81, which order was also confirmed by the Government in

G.O.Ms.No.1023, Revenue dated 11.7.91. Subsequently, on the review petitions filed by the seventh respondent, the Government in G.O.Ms.No.814, Revenue (Z2) dated 5.12.94 issued orders for assignment of 0.03 acre of government land in Survey No.92/51B of U.Keeranur Village, Ulundurpet Taluk, Villupuram District in favour of the seventh respondent on collection of single market value prevailing at the time of assignment. Thereafter, the District Collector, Villupuram in his proceedings in Rc.No.B9/54526/97 dated 25.7.2000 has fixed the land cost at Rs.1,04,803/- and on payment of the land cost by the seventh respondent on 25.10.2000, the Tahsildar, Ulundurpet, in his proceedings in Rc.No.86/1410 dated 13.3.2001, has assigned the subject land to the seventh respondent, inter alia, subject to the following conditions:-

- "1) பிரஸ்தாப மனையின் மேல் ஒரே ஒரு வீடு கட்ட வேண்டும்.
2) முதல் 13).....
14) ஒப்படையின் நிபந்தனைகளில் யாதொன்று மீறப்பட்டு அரசாங்கத்தார் கருதினால், அந்த நிலம் மீண்டும் எடுத்துக் கொள்ளப்படும். ஒப்படையின் நிபந்தனைகள் மீறப்பட்டுள்ளதா இல்லையா என்பதைப்பற்றி யாதொரு பிரச்சனை எழுந்தால் அது அரசாங்கத்தால் ஆலோசிக்கப்படும், அவர்களுடைய தீர்மானம் முடிவானதாகும்."

8. A careful persual of the above conditions clearly would show that the assignee should use the assigned land for building one house, whereas the counter affidavit filed by the Tahsildar, Ulundurpet shows that there are two shops and building constructed in the assigned land by the seventh respondent and he is also residing in a separate building which is located in Survey No.511/23 owned by him. This is a clear violation of the assignment order.

9. Secondly, it is seen that the seventh respondent was appointed as a Junior Clerk on 22.12.80 in Chengalvarayan Cooperative Sugar Mills Ltd., Periyasevalai, Villupuram District on a monthly salary of Rs.19,832/- and after his marriage in the year 1986, his wife Mrs.D.Meenakumari also took up employment as teacher in the Government Girls Higher Secondary School, Ulundurpet and drawing a monthly salary of Rs.45,220/-. The petitioner has also filed the information received under the Right to Information Act from the Headmaster of Government Girls Higher Secondary School, Ulundurpet dated 5.6.2014 and the one received from the Public Information Officer of Chengalvarayan Cooperative Sugar Mills Ltd., Periyasevalai, Villupuram dated 12.8.2014 to prove his claim that the petitioner was in gainful employment at the time of assignment of land, leave alone the

employment of his wife at a later point of time. When the said facts were brought to the notice of the first respondent, inter alia, that the seventh respondent had suppressed these material facts and also the fact that he was owning an ancestral house next to the petitioner's house, but falsely declared himself as homeless to get the said piece of land having 3 cents from the Government by paying a sum of Rs.1,04,803/- towards the land cost pursuant to the order of the Government and the District Collector, Villupuram, the first respondent has rejected the said contentions holding that the allegation of wrong information about the community of the respondent, his economic status, ownership of ancestral properties and other relevant facts have been taken into account while assigning the land at market value, without taking into account the statement of the revenue officials, namely, the Zonal Deputy Tahsildar, Ulundurpet and Village Administrative Officer, Keeranur who had attended the hearing before the first respondent and it is pertinent to extract their statement as follows:-

"The Zonal Deputy Tahsildar, Ulundurpet and Village Administrative Officer, Keeranur have attended the hearing on 17.09.2017 and furnished the inspection notes of the suit land, wherein it has been stated that as per the G.O.Ms.No.814, Revenue (Z2) dated 05.12.1994, the land measuring an extent of 0.03 acre in S.No.92/51B (New S.No.511/25), which is classified as Natham Vacant was assigned in favour of Thiru N.Jayagopi, on collection of single market value and as per the subsequent proceedings of the District Collector, Villupuram dated 25.07.2000, the land value was fixed based on the market value prevailed in the year 1994 and notional increase of 12% per annum has also been included. Accordingly, the assignee has remitted the land cost of Rs.1,04,803/- on 25.10.2000. Based on this, the Tahsildar, Ulundurpet, in his proceedings in H.S.No.86/1410 dated 13.03.2001 has granted House site Assignment in favour of Thiru N.Jayagopi, S/o Natesan. The assigned land has been under the continuous enjoyment and possession of the assignee from the date of assignment.

There are 2 shops and residential building constructed in the assigned land. The assignee residing in separate building which is located in S.No.511/23 and owned by to

him. Based on the enjoyment of the suit land from the year 1980 and on payment of land cost, Thiru N.Jayagopi has obtained House site assignment. The land in question was under the enjoyment of the family of Thiru.Ramaiah, prior to 1980 and a statue of father of Thiru.Ramaiah was also stood in the suit land and subsequently removed."

10. A perusal of the statement made by the revenue officials clearly shows that there are two shops constructed in the assigned land and the assignee is also residing in a separate building which is located in Survey No.511/23 and owned by him. The said statement is also fortified by the information given by the Ulundurpet Town Panchayat Office dated 26.8.2014 showing that Door Nos.25 & 25A stand in the name of the seventh respondent. When the seventh respondent has violated the conditions of assignment by concealing the factum of his employment and also by letting in two shops for commercial purpose, this Court is under compulsion to interfere with the impugned order. Accordingly, the impugned order is set aside and the writ petition stands allowed as prayed for. Consequently, W.M.P.No.2880 of 2018 is closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Chief Secretary/
Commissioner of Land Administration
Ezhilagam
Chepauk
Chennai 600 005.

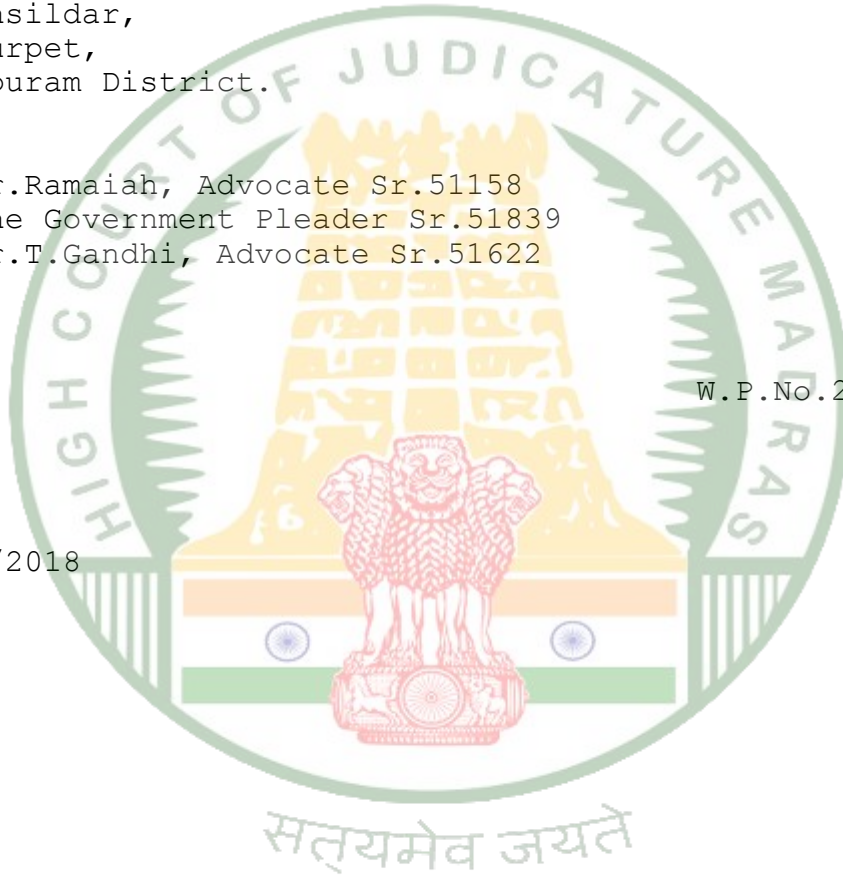
2. The Secretary to Governemnt
Revenue Department
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Chennai 600 009.

3. The District Collector,
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5. The Revenue Divisional officer,
Tirukkivilur,
Villupuram District.
6. The Tahsildar,
Ulundurpet,
Villupuram District.

+lcc to Mr.Ramaiah, Advocate Sr.51158
+lcc to the Government Pleader Sr.51839
+lcc to Mr.T.Gandhi, Advocate Sr.51622

W.P.No.2346 of 2018

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