

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.30318 of 2006

Chandrasekar

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Tiruvannamalai.

2.The Tahsildar, Polur,
Tiruvannamalai District.

... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the 1st respondent in its proceedings Na.Ka.No.A4/6961/03 and dated 21.02.2006 and quash the same as illegal incompetent and without jurisdiction.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : Mr.K.Ravi Kumar
Additional Government Pleader

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari to call for the records on the file of the first respondent in

its proceedings in Na.Ka.No.A4/6961/03 dated 21.02.2006 and to quash the same as illegal, incompetent and without jurisdiction.

2.The case of the petitioner is that the property in S.No.172 measuring 2.75.5 Hectares of Sethathurai Village, Polur Taluk is a pachamar land. The said property was originally assigned by the State to one Rathinavel vide proceedings of the Tahsildar in TK No.292/32. The purpose of assignment is to help the landless agriculturist belonging to Scheduled Caste/ Scheduled Tribes. The said Rathinavel sold the property to one Jayaraman, son of Chamundi in the year 1960 for a valuable consideration and the same was registered under document 2552 of 1960. The said land was mortgaged by Jayaraman/ father of the

petitioner, on 25.10.1988 to one Duraisamy Reddiar and again the said land was purchased by the petitioner on 20.11.2003 by way of registered document vide document No.1857 of 2003 on the file of the Sub-Registrar, Polur. The Revenue Officials granted patta in favour of the petitioner's father in patta No.92, however, the respondents without issuing notice to the petitioner took steps to cancel the assignment. When the same was enquired by the petitioner, he was informed that one Joyce Rani daughter of Pushparaj has given a representation seeking cancellation of assignment and action is initiated based on that representation.

3.The petitioner's grievance is that the first respondent without even perusing the documents had come to the conclusion that for the past 30 years the lands were under the occupation of Duraisamy Reddiar's family, whereas, the property is under the petitioner's enjoyment and the petitioner belong to Adi Dravidar community. His further grievance is that the first respondent has cancelled the assignment without even issuing notice to him. Hence, aggrieved by the order of the first respondent dated 21.02.2006, the petitioner has filed this writ petition.

4.The second respondent has filed a counter affidavit stating that an extent of 6.81 acres in S.F.No.172, Chithathrai Village of Polur Taluk was classified as grassing ground poramboke and was re-classified as A.W.D. by the Special Settlement Officer and reserved for depressed class people. The above said land was assigned to one Rathinavelu in Polur Tahsildar's D.K.No.292/32 and was under possession and enjoyment of the assignee. During 1980, the assignee and his sons Chinnakolandai and Micheal sold the land to one Jayaraman, son of Samundi, Christian, resident of Sirumur village of Arani Taluk in contravention to the conditions of the assignments. The land was mortgaged to one Thirumalai Reddiar during 1998 and as he was unable to release the land from mortgage, sold to the daughters of Duraisamy Reddiar of Chithathurai village namely, Vasantha, Kanchana and Anusuya. One Selvi Joyce Ranie had applied for assignment after cancellation of patta in the names of Vasantha, Kanchana and Anusuya and knowing this fact, the petitioner had purchased the entire extent of 6.81 acres from the said Vasantha, Kanchana and Anusuya.

5.The counter affidavit further states that the assignee Rathinavel sold the assigned lands to one Jayaraman who is a Christian by community and thus, the assignee had violated the condition laid down in the patta i.e., D.C. Land should not be alienated to other community. Further, second sale has been made by the purchaser cum petitioner. Hence, action was taken and patta was cancelled by the first respondent vide proceedings

dated 21.02.2006.

6.Heard the arguments advanced on either side and perused the materials available on record.

7.The issue that arise for consideration in the present case is whether the D.K. Patta which was assigned in the year 1932 can be cancelled after 52 years on the ground before completion of the condition whether the assignee can sell the property in favour of other community people.

8.The un-disputed facts are that originally A.D.W lands were assigned in favour of one Rathinavelu in the year 1932 and the said Rathinavelu sold the property in favour of the petitioner's father during 1960. Thereafter, the property was mortgaged to one Duraisamy Reddiar and after the demise of the said Duraisamy Reddiar, the property was sold in favour of the daughters of Duraisamy Reddiar. Thereafter, the petitioner, son of Jayaraman, purchased the property after 42 years.

9.In paragraph no.8 of the counter affidavit, the second respondent has stated that as and when the assignee sold the land to the petitioner during the 8th year instead of 12th year completion, it stands automatically liable for cancellation. Accordingly, the respondents justify the cancellation of the assignment.

10.However, the fact remains that the original assignment was during the year 1932. The first sale in favour of the petitioner's father was during the year 1960. Thereafter, the property was sold in favour of Vasantha, Kanchana and Anusuya/ daughters of Duraisamy Reddiar during the years 1994 and 1998. Again the petitioner purchased the property from the daughters of Duraisamy Reddiar on 20.11.2003. Inbetween there are two sale deeds. It is relevant to note that the claim of the respondents is that the petitioner's father Jayaraman belongs to Christian community. However, no record was produced before this Court to show that the father of the petitioner belong to Christian community.

11.In this background, Mr.V.Lakshminarayanan, learned counsel appearing for the petitioner has drawn the attention of this Court to the decision of this Court reported in (1997) 2 MLJ 406 (R.Ramanathan and others Vs. The State of Tamil Nadu), the relevant portion of which reads as follows:

"16. At this stage, as pointed out by Government Advocate, it is essential to extract the relevant provisions of the Board Standing Order which the assignment has been made in favour of Scheduled Caste/ Scheduled

Tribes. The Board Standing Order 15 provides for reservation of land for assignment to Scheduled Caste. Board Standing Order 15, para. 41(4) (i) reads thus:

Restrictions to be imposed on alienation : Assignments whether of ordinary land or valuable and in these areas will be subject to the condition that the lands shall not be alienated to any person (whether a member of the scheduled caste or not) in any manner before the expiry of ten years from the date of the grant nor even thereafter, except to other members of these caste.

Clause (iii) which is also relevant reads thus:

Power to re-enter in case of violation of conditions : If the condition of non-alienation is violated or if the land ceases to be owned by the assignee or his legal heirs or (after the ten years) other members of their class, owing to sale by process of law or otherwise, or, if default is made in the payment of the Government revenue on the dates prescribed the grant will be liable to be resumed by the Government who will be entitled to re-enter and take possession of the land without payment of any compensation or refund of the purchase money.

18. Board Standing Order 15, para.41, sub-para. (4) was amended by G.O.Ms. No.889, Revenue, dated 1.6.1926. This condition has not been continued till 1966. Clause (iii)(i) of sub-para. (4) of para. 41 of Board Standing Order 15 had been amended during the years 1940 as well as in 1958. Clause (9) of the Special Form D also imposes restrictions with respect to alienation of assigned land by Scheduled Castes. A conjoint reading of the said provision as well as Clause (9), Special Form D makes it clear that a member of Scheduled Castes who had been assigned, shall not alienate to any person (whether a member of the Scheduled Castes or not) in any manner before the expiry of 10 years from the date of grant nor even the re-enter, except to other members of these cases. This amendment has been introduced by G.O. 889,

Revenue, dated 1.6.1926.

23. According to the learned Senior Counsel for the petitioners the respondents are estopped and the earlier orders passed by the Revenue Divisional Officer on 8.9.1956 had reached finality and which factum is not disputed by the respondents and it cannot be reopened after 32 years on the same premises and such action is violative of Articles 14 and 21 besides without jurisdiction. According to the learned Senior Counsel, petitioners have invested huge amounts from time to time which claims have not been disputed. Such being the position, it is contended that the respondents are estopped by their conduct from cancelling the orders of assignment already made once again on the ground of violation of conditions of alienation. The respondents have not established as what was the original condition and what were the conditions that were imposed and they have not even made clear by the respondents. It is obvious that the condition of such assignment of land in favour of Adi Dravidars had been subsequently amended from time to time and the powers to cancel the assignments on the ground of violation of condition of assignment has also been introduced subsequently and not on the date of assignment in question. The dates on which amendments have been issued to various standing orders and special paragraphs had not been set out by the respondents. On the other hand, the respondents have proceeded on the basis that the initial order of assignment itself contained such a restriction and therefore, such assignment could be cancelled at any time and without any limitation. It is incumbent on the part of the respondents to disclose as what is the condition that was imposed at the time of assignment and that has been violated by the assignees. The respondents have not produced the original grant. In the circumstances, the court has to decide the matter on the basis of the available materials and on the basis that the Standing Orders as amended from time to time will have no application."

12. On a perusal of the above decision, the respondent Department has not established any of the what was the original condition and what were the conditions that were imposed and they have not even made clear the original grant. Without production of what was the original grant/ assignment, the Court may not arrive at a conclusion. The persons violated the conditions imposed in the original grant.

13. In the present case also neither the petitioner nor the respondent have produced any original grant to arrive at a conclusion that the petitioner, petitioner's father and the original assignee violated the conditions in the original grant. Though the respondents assigned the land in the year 1932, the first alienation was in the year 1960 and the fact remains that the respondent did not take any steps to cancel the patta at the relevant point of time i.e., 1960 and thereafter, the purchaser of the property sold the land to other parties and the respondent initiated cancellation proceedings only based on the complaint of one Joyce Rani. However, there is no explanation from the Department for not taking steps to cancel the assignment during 1960. After a lapse of 33 years based on third party complaint, the respondents initiated cancellation proceedings and it is un-sustainable one. Moreover the original assignment was not produced before this Court to demonstrate on what condition the petitioner or petitioner's vendor violated the conditions. In the absence of any demonstration before this Court with regard to the violation of the conditions, this Court cannot allow to sustain the impugned order.

14. Though in the year 1932, there was a condition for not to alienate the property, however, the said condition was modified in the year 1948 and thereafter in the year 1957, after only ten years, there was a condition that the land should not be sold for other community people other than Adi Dravidar people.

15. In the present case, the petitioner belong to same community, however, there is a dispute. On one hand, the Revenue says that the father of the petitioner belonged to Dalit Christian Community in the counter and however, no document is produced to show that the petitioner belong to Christian community or Adi Dravidar. Further, in the present case, no notice was issued to the petitioner before cancellation of assignment and it is clear violation of the principles of natural justice.

16. Moreover, the property was assigned in the year 1932 in favour of one Rathinavelu. Thereafter, the said Rathinavelu sold the property in favour of the petitioner's father during

1960. Thereafter, the property was mortgaged to one Duraisamy Reddiar and after the demise of the said Duraisamy Reddiar, the property was sold in favour of the daughters of Duraisamy Reddiar. Thereafter, the petitioner, son of Jayaraman, purchased the property after 42 years. The respondent authorities without following due process of law cancelled the assignment and it is non est in law.

17. In view of the above, the writ petition is allowed and the proceedings of the first respondent dated 21.02.2006 is set aside. Liberty is granted to the petitioner to make appropriate application before the concerned Authority for patta. No costs.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

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To

1. The Revenue Divisional Officer,
Tiruvannamalai.
2. The Tahsildar, Polur,
Tiruvannamalai District.

+1cc to Mr.V.Raghavachari, Advocate SR.No.46752
+1cc to Government Pleader SR.No.47566

W.P.No.30318 of 2006

GJII(CO)
GN(14/08/2018)

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