



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.06.2018

Delivered on:
25.07.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM
S.A.No. 1830 of 2001

K.Nachimuthu

... Appellant/Appellant/Plaintiff

Vs.

The State of Tamil Nadu
Rep. by The District Collector,
Erode District,
Erode-11.

...
Respondent/Respondent/Dependent

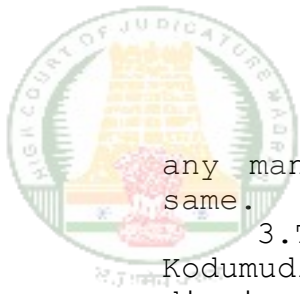
PRAYER:Second Appeal filed under Section 100 of C.P.C, against Judgment and Decree and Judgment dated 11.09.2001 made in A.S.No.19/2001 on the file of the Principal, District Judge I Additional District Judge-Cum-Chief Judicial Magistrate, in Charge Erode, modifying the Judgment and Decree dated 21.8.2000 made in O.S.No.53/97 on the file of the Disrict Munsif cum Judicial Magistrate, Kodumudi.

For Appellant : Mr.N.Manokaran
For Respondent : Mr.S.Jagannathan(CS)
Government Advocate.

JUDGMENT

This second appeal has been filed by the plaintiff against the judgment and decree passed by the First Additional District Judge-Cum-Chief Judicial Magistrate in A.S.No.19 of 2001 dated 11.9.2001.

2.The appellant herein has filed a suit in O.S.No. 53 of 1997 on the file of the District Munsif-Cum-Judicial Magistrate, Kodumudi to declare that the defendant is not entitled to cancel or revoke the assignment issued by the Tahsildar, Erode in Na.Ka.No.21/746/89-A.8 dated 05.06.1990 and even if the assignment is cancelled, the same is void under law and to grant permanent injunction restraining the defendant and his officials from dispossessing him from the suit property or interfering in



any manner with his peaceful possession and enjoyment of the same.

3. The learned District Munsif cum Judicial Magistrate, Kodumudi by the Judgment and decree dated 21.8.2000 has dismissed the suit in respect of the relief for declaration, however, she decreed the suit for permanent injunction. Aggrieved by the same, the plaintiff has filed an appeal in A.S.No.19 of 2001 on the file of the First Additional District Judge-Cum-Judicial Magistrate, Erode. The learned First Additional District Judge-Cum-Judicial Magistrate, Erode by the judgment dated 11.09.2001, has not only dismissed the appeal, but also set aside the judgment and decree passed by the trial Court in respect of granting permanent injunction and dismissed the plaintiff's suit in toto. Feeling aggrieved, the plaintiff has filed the present second appeal. For the sake of convenience, the parties are referred to as described before the trial Court.

4. The averments made in the plaint are in brief as follows:-

a) The plaintiff is an Ex-Service man and in recognition of the meritorious service, he was given patta in respect of the land measuring an extent of 1.21.5 hectares in S.F.No.1570/2 of Sivagiri Village. The plaintiff took possession of the said land, dug a well therein and improved it by spending very huge amount. On the west of the aforesaid land is S.F.No.1570/1 which is classified as assessed waste. The said land consists of rocks and not levelled and unfit for the cultivation. In the said lands the plaintiff had occupied an extent of 0.84.0 hectares. The plaintiff requested the State Government to grant patta for the said land. Considering his requests, the State Government directed the plaintiff to pay value of the aforesaid land and get the same assigned in his favour.

b) The state Government fixed the market value of the suit property at Rs.6,420/-. The plaintiff had paid the aforesaid amount into the Sub-treasury, Erode on 05.06.1990 under Challan No.1191. Thereafter, the Government assigned the suit property to the plaintiff by the order dated 05.06.1990. The suit property therefore absolutely belongs to the plaintiff. After the said assignment, the plaintiff spent nearly Rs.3,00,000/-. He removed the rocks from the suit property and levelled the same and made the suit property fit for cultivation. He takes water from his well in the eastern land. He has grown 26 coconut trees, 65 Mango trees, and 1000 teak trees. The plaintiff has not breached any of the conditions of the assignment and that being so on 19.5.1997, the officers of the defendant attempted to evict him from the suit property stating that the assignment of the suit property in favour of the plaintiff has been cancelled. The plaintiff was not served with any notice nor he



was heard before cancellation of the assignment. The defendant has no right to cancel the said assignment as it was sold to the plaintiff for market value. Hence the suit.

5. The averments made in the written statement are in brief as follows:-

The plaintiff was already given patta for an extent of 1.21.5 hectares in S.F.No.1570/2 in Sivagiri Village free of cost. It is true that patta was granted to the land situated in S.F. 1570/1 measuring about 2 acres on payment of the market value fixed by the Revenue Divisional Officer, Erode. But it is not correct to allege that the suit property absolutely belongs to the plaintiff. The land value fixed by the Revenue Divisional Officer, Erode is not correct and also the said Revenue Divisional Officer is not the Competent Authority to grant assignment in this matter. The Special Commissioner and Commissioner of Land Administration, through his letter No.II/Dis.F2/9817/96 dated 19.06.96 has stated that according to the Revenue Standing Orders 15(22)(ii), the value of land shall be fixed at that rate that existed prior to the improvement made in the land and notional increase at the rate fixed by the Government from time to time has to be added for arriving at the net market value on the date of assignment. He also stated that the value of the suit property as per the Accountant General, Madras is Rs.31,690/- for the 2.00 acres. As per G.O.No.705 Revenue Department, the limit for the Revenue Divisional Officers for granting assignment is Rs.10,000/-. But in this case the Revenue Divisional Officer, Erode exceeded the limit and without authority granted assignment order in favour of the plaintiff and therefore, the order of the Revenue Divisional Officer has to be cancelled. Accordingly the defendant has cancelled the said assignment by the order dated 14.10.1996 and the Tahsildar, Erode in his Letter No.8058/95 dated 07.01.1997 has sent cancellation orders to the suit property on 27.1.1997. Hence the plaintiff is not having any cause of action for filing the above suit. Therefore the defendant prayed to dismiss the above suit based on the aforesaid pleadings.

6. Based on the aforesaid pleadings, the learned District Munsif-Cum- Judicial Magistrate, Kodumudi has framed necessary issues and tried the suit. During trial on the side of the plaintiff, the plaintiff examined himself as P.W.1 and marked Exhibit A1 to A13 as Exhibits. On the side of the defendant, one Mr.Dharmalingam was examined as D.W.1 and also marked Exhibit B1 to B6 as Exhibits. The report and plan filed by the Advocate Commissioner have been marked as Exhibit C1 and C2 respectively.

7. The learned District Munsif cum Judicial Magistrate,



after considering the materials placed before her found that the defendant is having every right to cancel the assignment which was given in favour of the plaintiff. Accordingly she dismissed the suit for the relief of declaration. However, she granted permanent injunction restraining the defendant from dispossessing the plaintiff from the suit property. Aggrieved by the same, the plaintiff has filed an appeal in A.S.No.19/2001 on the file of the First Additional District Judge-Cum-Chief Judicial Magistrate, Erode. By the Judgment dated 11.09.2001, the first Appellate Court has not only dismissed the said appeal, but also set aside the judgment and decree passed by the trial Court and dismissed the suit in toto. Feeling aggrieved, the plaintiff has filed the present second appeal.

8. At the time of admitting this Second Appeal, this Court has formulated the following substantial questions of law:-

"(1) Whether the First Appellate Court has properly appreciated and applied the principles to find out whether the cancellation of assignment after the lapse of 6 years is valid in law, especially when no notice was given to the assignor/plaintiff?

(2) Whether the findings rendered by the First Appellate Court is contrary to the evidence, especially when the evidence of D.W.1 supported the case of the plaintiff?

(3) Whether the First Appellate Court has power to set aside the decree granted in favour of the plaintiff/appellant in the appeal filed by the decree holder, in the absence of any appeal or cross appeal by the defendant?"

9. Heard. Mr.N. Manokaran, learned Counsel for the appellant/plaintiff and Mr.P.Jaganathan, learned Government Advocate (C.S) for the respondent/defendant.

10. Question Nos. 1 to 3:

It is an admitted fact that the plaintiff is an Ex-service man and in recognition of the meritorious service done by him, a patta was given to him for the land measuring about 1.21.05 of hectares situated in S.F.No.1570/2 of Sivagiri Village. It is also an admitted fact that the suit property measuring about 0.84.05 hectares in S.F.No.1570/1 is situated immediately on the west of the plaintiff's patta land and the plaintiff had occupied the same. It is also an admitted fact that, the plaintiff had applied to the Government seeking patta for the suit property and considering his requests, the State Government directed the plaintiff to pay the market value of the



suit property and get the same assigned in his favour.

11. The Revenue Divisional Officer, Erode had fixed the market value of the suit property at Rs. 6420/- and the plaintiff had paid the said amount in the sub-treasury, Erode on 05.06.1990. And thereafter, the Revenue Divisional Officer had assigned the suit property to the plaintiff by the order dated 05.06.1990.

12. According to the defendant, since already assignment was given in respect of 1.21.05 hectares in S.F.No.1570/2 of Sivagiri Village to the plaintiff, he is not an eligible person to get another assignment. His further case is that the market value of the suit property comes to Rs.31,690/-, but the Revenue Divisional Officer, with a view to help the plaintiff, has fixed the market value at Rs.6420/-. His further case is that, as per the G.O.705, Revenue Department, the Revenue Divisional Officers are entitled to grant assignment only for the land having value up to Rs.10,000/-, but in this case the market value of the suit property is Rs.31,690/- and hence the Special Commissioner and Commissioner of Land Administration by his letter dated 19.6.1996 directed the defendant to cancel the assignment which was issued in favour of the plaintiff. His further case is that, in pursuance of the said directions, the defendant has cancelled the patta by his proceedings in Na.Ka.76799/95 E1, dated 14.10.96 and therefore the plaintiff is not entitled to claim any right over the suit property.

13. The learned Counsel for the appellant/plaintiff has submitted that, since the State Government assigned the suit property in favour of the plaintiff only after receiving market value which was fixed by the Revenue Divisional Officer, Erode, the plaintiff has become the absolute owner of the suit property and as such his property can be taken by the Government only in accordance with law. He further submitted that, in this case before cancelling the assignment, the respondent/defendant has not issued any notice to the plaintiff and hence the order passed by the respondent/defendant cancelling the assignment is a nullity and need not be challenged in Court of Law.

14. In support of the said contentions he relied upon the following decisions.

1. R. Sulochana Devi Vs D.M.Sujatha and Others, 2004(5) CTC 108.

2. Malarkodi and 6 others Vs The Secretary to the Government of Tamil Nadu, Adi Dravida and Tribal Welfare Department, Fort St. George, Chennai - 600 009. 2008 (4) CTC 193.

15. In R.Sulochana Devi Vs D.M.Sujatha and Others, (supra) the Hon'ble Supreme Court in paragraph Nos.24 and 25 has



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observed as follows:-

"24.As rightly pointed out by Mr.T.L.V. Iyer that the opinion of the RJD dated 15.02.2000 is an opinion which is non est in law since no notice has been given to parties before passing such an order and, therefore, the subsequent order that was passed by the RJD dated 15.04.2002 after considering all the relevant documents. Mr. Iyer is also right in contending that the order dated 15.02.2000 is a nullity and, therefore, it can be ignored by the appellant and the question of filing a review by the appellant does not arise. When the order passed by an authority is not in accordance with law and no notice was communicated to the party it is a nullity and need not be challenged in a Court of law.

25.We see merit in the submission of Mr.Iyer that an order made in violation of natural justice is void. Mr.T.L.V.Iyer in support of his above contention relied on the judgment of this Court in Krishan Lal v.State of J&K., 1994 (4) SCC 422, to the effect that an order passed in violation of the principles of natural justice renders an order invalid. Likewise, an order made without hearing the party affected is also bad in law. In the instant case, the order made in violation of natural justice is void."

16. In Malarkodi and 6 others Vs The Secretary to the Government of Tamil Nadu, Adi Dravida and Tribal Welfare Department, Fort St. George, Chennai - 600 009. (supra) a Division Bench of this Court in paragraph Nos. 40 and 41 has held as follows:-

"40. So far as the second question is concerned the proceeding dated 15.12.2003 for cancellation of patta also cannot be sustained by this Court. It is an admitted position that the pattas were granted under Revenue Standing Order-90. In RSO-90 paragraph 31-B provides for grant of such pattas, and it provides for the rules and instructions for the acquisition and assignment of house sites for the communities eligible for ameliorative measures by the Harijan Welfare Department and for landless labourers. Those rules and regulations in Appendix-IV contain instructions for the grant of ameliorative measures to the communities eligible for such grant by Harijan Welfare Department. Certain conditions are given in Annexure-II which prescribe the statutory Form of Assignment. Clause-12 of the said Form suggests that in the event of breach by the grantee of any of the conditions or in the event of the grantee leaving the house unoccupied for a period of one year, the State or any officer authorized in that



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behalf may, unless the grantee furnishes valid reasons for such breach or for leaving the house unoccupied, cancel such grant. Therefore, cancellation, from the very nature of Clause-12, suggests a procedure of hearing and a kind of show cause upon the grantee asking him to explain why he has not complied with the conditions of grant. In the instant case, admittedly, the purported cancellation has been made without giving the grantees any chance of recording their say in the matter. This is clear from the cancellation order dated 15.12.2003.

41. It is rather too late in the day to argue that the Revenue Standing Orders do not confer any right on the grantee. In fact, in a Division Bench judgment of the Madras High Court reported in L.Krishnan v.State of Tamil Nadu, rep. by the Commissioner and Secretary to Government., Housing and Urban Development Department, Madras, 1992 WLR 25, it has been held that the status of Revenue Standing Orders is that of quasi law and are enforceable. Therefore, without giving the allottees a hearing, the order of cancellation of patta cannot be passed by the District Adi Dravidar and Tribal Welfare Officer, Namakkal by the impugned order. Therefore, the cancellation order which has been passed in total violation of the principles of natural justice is void and a nullity in the eye of law."

17.From the aforesaid decisions it is clear that an order passed without prior notice to party is not an order in accordance with law and such an order is a nullity and need not be challenged in a Court of law.

18. In this case a copy of the order passed by the respondent cancelling the assignment which was issued in favour of the appellant/plaintiff has been marked as Exhibit B2. A perusal of the said order shows that before cancelling the assignment, the respondent has not issued any notice to the appellant/plaintiff. He has not given any opportunity to the plaintiff to purforth his case, as to why, the assignment should not be cancelled. In this case admittedly the value fixed by the Revenue Divisional Officer for the suit property has been paid by the plaintiff on 05.06.1990. And only thereafter assignment was given in favour of the plaintiff. According to the plaintiff, he has spent about Rs.3,00,000/- for reclamation of the land and he has planted so many trees in the suit property. The Advocate Commissioner's report and plan (Ex. C1 and C2) also would show that the plaintiff has made reclamation in the suit property and planted number of trees. So, valuable rights accrued in favour of the plaintiff. The respondent has



cancelled the said assignment as per Exhibit B2 on 14.10.1996 that is after 6 years without giving any opportunity to the plaintiff to putforth his case.

19. It is not the case of the respondent/defendant that, the plaintiff has obtained assignment to the suit property by playing fraud. In Exhibit B4 also the Special Commissioner and Commissioner of land Administration requested the respondent/defendant to cancel the assignment order after following the usual formalities and then the land value that existed prior to the improvement made may be arrived after giving notional increase as per various GOs and then take action to assign the land, if necessary to the same assignee, if he is otherwise eligible, on collection of market value. But the respondent/defendant has arbitrarily cancelled the assignment order without following the principles of natural of justice.

20. It is also to be pointed out that in Exhibit B4, the Special Commissioner and Commissioner of Land Administration requested the respondent/defendant to initiate disciplinary action against the officers responsible for such irregular assignment. If the Revenue Divisional Officer, Erode has committed any irregularity, the disciplinary proceedings have to be initiated against him. As already pointed out that it is not the case of the respondent/defendant that the plaintiff has committed any fraud for getting assignment in respect of the suit property. He paid the amount fixed by the Revenue Divisional Officer and got the assignment. So, the plaintiff has become absolute owner and thereafter if it is found that the said assignment was given without following the procedure, that can be cancelled only after following the principles of natural justice. In this case the respondent/defendant has violated the principles of natural justice and passed the order cancelling the assignment and hence in view of the aforesaid decisions, the said order is void and non est besides nullity in the eye of law, the same need not be challenged in the Court of law.

21. In Rame Gowda (D) by Lrs.v.M. Varadappa Naidu(D) by Lrs and another, 2004-3-LW 143, a three Judges Bench of the Hon'ble Supreme Court, has held that even if the trespasser is in possession of the property belonging to the rightful owner, the rightful owner shall have to take re-course to law; he cannot take the law in his own hands and evict the tress-passer or interfere with his possession. It has further held that the law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force on taking law in his own hands.



22. In this case, it cannot be said that the plaintiff is a tress-passer. He has paid the market value which was fixed by the Revenue Divisional Officer, Erode and assignment was also given in his favour. So without cancelling the said assignment in the manner known to law, the respondent/defendant cannot disturb, the plaintiff's possession. It is always open to the respondent/defendant to take steps to cancel the assignment which was granted in favour of the plaintiff after following the principles of natural justice and thereafter it is open to the respondent/defendant to evict the plaintiff Till such time, the plaintiff is entitled to protect his possession. Accordingly the substantial questions of law are answered.

23. In the result, the Second Appeal is partly allowed. The Judgments and decrees passed by the Courts below are modified as follows:

(i) that the defendant is restrained by means of permanent injunction from evicting the plaintiff from the suit property except under due process of law and

(ii) that the parties are directed to bear their own costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal District Judge,
(1st Additional District Judge-Cum-
Chief Judicial Magistrate, incharge)
Erode.
- 2.The District Munsif-Cum-Judicial Magistrate,
Kodumudi.
- 3.The District Collector,
The State of Tamil Nadu
Erode District,
Erode-11.



Copy to

The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.50142

+1cc to the Additional Government Pleader, S.R.No.50034

S.A.No. of 1830 of 2001

RSV(CO)
GSP(22/11/2018)