

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-07-2018

CORAM:

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

W.P.No.3628 of 2013
and
M.P.Nos.1 & 2 of 2013

P.Dhandapani

..Petitioner

vs.

1.The Principal Secretary and Commissioner,
Land Administration,
Chepauk,
Chennai - 5.

2.The District Revenue Officer,
Collectorate Office,
Thiruvannamalai,
Thiruvannamalai District.

3.The Revenue Divisional Officer,
Revenue Divisional Office, ,
Thiruvannamalai,
Thiruvannamalai District.

4.The Thasildhar,
Tiruvannamalai,
Thiruvannamalai District.

...Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of a Writ of Certiorari, calling for the records of the 1st respondent dated 22.01.2013 in RC.No.G2/5870/2012 and quash the same.

For petitioner : Mr.G.Rajan

For Respondents : M/s.A.Srijayanthi, Spl GP

O R D E R

The order dated 22.01.2013 issued by the 1st respondent in respect of the cancellation of the assigned land is under challenge in this writ petition.

2.The claim of the writ petitioner to confirm the assignment before the first respondent has been negatived. Challenging the same, the present writ petition has been filed.

3.The writ petitioner states that the property admeasuring 1.72 acre comprised in S.No.14/1, Sorandai Village, Tiruvannamalai Taluk and District originally belonged to one Puduran and from whom one Muthu purchased by virtue of registered sale deed dated 05.09.1975. The said Mr.Muthu executed a settlement deed dated 05.07.1985 in favour of his Son Kannan. The petitioner purchased 1.72 acre from the said Kannan by sale deed dated 22.01.2008. The balance 1 acre was settled by the said Kannan in the name of his grandson NaveenKumar and who sold the said portion of the land to one Mr.Raveendran and from whom the petitioner purchased the said land by way of a sale deed dated 25.06.2008. With these documents, the writ petitioner claims that he is the sole and absolute owner of the property measuring 2.72 acres in Survey No.41/1 and the revenue records for the past 40 years are showing the property as patta lands. The property also continued to be patta land under the UDR scheme. The petitioner claims that he is in continuous possession and enjoyment of the said property without any interruption. The petitioner states that he had plotted out the above said property, sold it to several persons and all of them are put into the possession of the said property. As per the Tamil Nadu Government Gazette issued in the year 1953 for the Tiruvannamalai District, only three survey numbers have been set apart as Depressed class land and the subject survey number has not been included in the Depressed class category. The Revenue Divisional Officer, Tiruvannamalai without providing any opportunity to the writ petitioner and to the affected persons, cancelled the patta granted in the name of the petitioner in proceedings dated 30.07.2009 at the behest of some third parties, who are politically influential people. Aggrieved from and out of the said order passed by the Revenue Divisional Officer, the petitioner preferred an appeal to the District Revenue Officer, who in turn confirmed the order in his proceedings dated 10.02.2012. Once again, the writ petitioner preferred a revision petition before the first respondent and the first respondent also rejected the petition filed by the writ petitioner in his proceedings dated 22.01.2013, which is under challenge in this writ petition.

4.The petitioner is of an opinion that for the past more than three decades, the petitioner is in possession and enjoyment of the property. This apart, the said portion of the land has not been categorized as Depressed Class category in the revenue records. All along the same is being shown as a patta land and therefore, the order impugned passed by the respondents which prevails and contrary to the legal records available.

5. Initially, the matter was listed for hearing on 21.06.2018. At request of the learned counsel appearing on behalf of the petitioner, the matter was adjourned after one week. Again, the case was listed for further hearing on 26.06.2018. On that day, the respective parties commenced their arguments and the Court requested the learned Government Pleader to produce the files. Accordingly, the staff from the respondent's office brought the files and the files were verified by the Court. On 04.07.2018, when the matter was posted for orders. On that day, there was no representation on behalf of the writ petitioner. Once again in order to give an opportunity to the writ petitioner, the matter was listed for further consideration on 11.07.2018. On that day also, the learned counsel for the petitioner remained absent. Then, it is posted for orders on 12.07.2018 and on 16.07.2018. Thereafter, the writ petition was posted under the caption for dismissal on 18.07.2018. On that day also, there was no representation on behalf of the writ petitioner. Thus, it is posted on 19.07.2018 and on 19.07.2018 also, none appeared on behalf of the writ petitioner. Thus, it is posted on 23.07.2018 and the learned counsel for the petitioner appeared and thereafter, the case is posted on 25.07.2018.

6. The learned Government Advocate appearing on behalf of the respondents opposed the contention by stating that the land situated in Sorandai Village, Tiruvannamalai Taluk in Survey No14/1, measuring an extent of 1.09.5 Ares. The said land has been classified as "Depressed category land" and it was assigned in favour of the poor depressed category people. In respect of the present land, which is the subject matter of the present writ petition, it was initially assigned in favour of one Mr. Puduran and as per the assignment conditions, the original assignee cannot encumber the property for ten years. After ten years also the assignee can transfer the property only in favour of another depressed class people belong to the same community and, he cannot sell the property to any other person and also to any other community. The said condition has been imposed in clause 8 of the assignment granted in favour of the said Mr. Puduran. In fact, the land was assigned by the Government for the usage of the depressed class people belongs to a particular community for their livelihood. Thus, the land cannot be encumbered to any other person from any other community is the object and the condition imposed in the original assignment. Thus, the original assignee has no power to transfer the property in favour of any other person from any other communities or to any other clause of persons. It is further clarified that in the assignment order that in the event of any such illegal transfer, the original assignment will be cancelled. This apart, the original assignment was granted only for the purpose of cultivation and with an object to provide a livelihood for this poor and deprived class people. Thus,

the very purpose and object of the assignment to such poor people by the Government is to uplift the standard of life of the depressed class people, who belongs to a particular community. Such being the object and purpose of the assignment, the original assignee has no power to alienate the property in favour of any other person belong to any other community. In such an event, the authority competent is empowered to cancel the assignment. Therefore, the very submission of the writ petitioner that it is a patta land, is erroneous and as per the revenue records, it is a "Panchami land" and assigned in favour of the depressed class people. Even, the writ petitioner admits in his affidavit that the original assignment was granted in favour of one Mr.Puduran, who belongs to a depressed class community. Under these circumstances, the transfer of land in favour of the writ petitioner was illegal and in violation of the assignment conditions and the Revenue Standing orders. The revenue officials consistently refused the grant of patta and in fact, the first respondent also considered all these factors and rejected the claim of the writ petitioner for restoration of patta already granted erroneously.

7.This Court is of an opinion that the purchase of land by the writ petitioner was illegal and in violation of the original assignment conditions imposed by the Government, while assigning the land in favour of one Mr.Puduran, who belongs to a depressed class community. The said land is to be utilized only for cultivation and even in case of transfer, the same is to be transferred only in favour of the same community people, who belongs to depressed class. Under these circumstances, there is no infirmity in respect of the order passed by the respondents, rejecting the claim of the writ petitioner.

8.This Court is of an opinion that the land was classified as Panchami land, which was assigned in favour of the landless poor depressed class community people by the Government for their welfare and their upliftment. Such a land can never be dealt with by any other person other than the person in favour of whom such assignments, are granted. This apart, the Government also imposed conditions to deal with such assigned lands. Any violation of such conditions will result in cancellation of assignment. Thus, the assigned land was canceled on the ground that it was sold to some other person, who cannot purchase or dealt with the lands in view of the conditions stipulated in the assignment.

8(a).The Courts have settled the legal principles in this regard as follows:

(1).In the High Court of Madras, in the case of VGP Prem Nagar Minvariya Kudi Erupor Nala Sangam Vs. The State of Tamil Nadu in W.P.No.17467 of 1996, and the relevant

paragraphs are extracted hereunder:

"2. In all these cases, admittedly, the survey numbers referred to by them were all pertaining to the lands allotted to the members of the Scheduled Caste community in that area, in terms of the Revenue Board Standing Order No.15, which are all conditional assignments. The condition being that the same cannot be alienated by any other person and in case of any alienation for reasons other than mentioned in the conditions of allotment, the Government has power to resume such lands.

3. These lands were otherwise known as 'Panchami lands' or 'Depressed Classes lands' (i.e. DC lands). It is claimed by the petitioners that there was no bar for such allotment and they have purchased the land from various persons, who inherited from the original assignees. After forming a society and after getting the opinion of a local Government Pleader, the lands were purchased. Layouts were made for constructing houses to their members and different petitioners. If at this stage, the lands are taken over possession, they will be put to grave hardship.

7. Before considering the submission made by the learned counsel for the petitioners, it is necessary to refer to the history of allotment of Panchami land to the Dalits by the Government. Such allotments came to be made by the colonial Government after coming to know the plight of the members of the Scheduled Castes in this State. The atrocities against the dalits which are of common occurrence throughout India are well described in the Abstracts of Proceedings of the Board of Revenue of the Government of Madras dated 05th November 1882, No.723. The following is an extract from the said proceedings as found in paragraphs 134 to 136:-

"134. There are forms of oppression only hitherto hinted at which must be at least cursorily mentioned. To punish disobedience of Pariahs, their masters-

(a) Bring false cases in the village court or in the criminal courts.

(b) Obtain, on application, from Government, waste lands lying all round the paracheri, so as to impound the Pariahs' cattle or obstruct the way to their temple.

(c) Have mirasi names fraudulently entered in the Government account against the paracheri.

(d) Pull down the huts and destroy the growth in the back-yards.

- (e) Deny occupancy right in immemorial sub-tenancies.
- (f) Forcibly cut the Pariah's crops, and on being resisted charge them with theft and rioting.
- (g) Under misrepresentations, get them to execute documents by which they are afterwards ruined.
- (h) Cut off the flow of water from their fields.
- (i) Without legal notice, have the property of sub-tenants attached for the landlords' arrears of revenue.

135. It will be said there are civil and criminal courts for the redress of any of these injuries. There are the courts indeed; but India does not breed village Hampdens. One must have courage to go to the courts; money to employ legal knowledge, and meet legal expenses; and means to live during the case and the appeals. Further most cases depend upon the decision of the first court; and these courts are presided over by officials who are sometimes corrupt and who generally, for other reasons, sympathize with the wealthy and landed classes to which they belong.

136. The influence of these classes with the official world can hardly be exaggerated. It is extreme with natives and great even with Europeans. Every office, from the highest to the lowest, is stocked with their representatives, and there is no proposal affecting their interests but they can bring a score of influence to bear upon it in its course from inception to execution".

8. After referring to the proceedings of the Board of Revenue, Dr.B.R.Ambedkar, an Architect of the Indian Constitution, emphasized the need for a special care of such persons and he stated as follows:-

"The helpless, hapless and sapless condition of the Depressed Classes must be entirely attributed to the dogged and determined opposition of the whole mass of the orthodox population which will not allow the Depressed Classes to have equality of status or equality of treatment. It is not enough to say of their economic condition that they are poverty-stricken or that they are a class of landless labourers, although both these statements are statements of fact. It has to be noted that the poverty of the Depressed Classes is due largely to the social prejudices in consequence of which many an occupation for earning a living is closed to them. This is a fact which differentiates the

position of the Depressed Classes from that of the ordinary caste labourer and is often a source of trouble between the two. It has also to be borne Depressed Classes are very various and the capacity of the Depressed Classes to protect themselves is extremely limited."

(Ref. :Dr.Babasaheb Ambedkar : Writings and Speeches Vol. No.II : Page Nos.552 and 553)

9. J.H.A.Tremen Heere, the then Collector of Chengalpattu District during the British period submitted a memorandum to the British government about the plight of the depressed classes in Chengalpattu District and the need for distribution of land for them in 1891. The British Government conceded his demand and enacted a law in British Parliament to distribute land for cultivation purpose to the Untouchables in India to improve their socio-economic status. The government order numbers 1010 and 1010A dated September 30, 1892 specified that land would be assigned to the Depressed Classes by the government under this Act, agricultural land was distributed to the Depressed Classes from 1892. While distributing the land to the Depressed Classes, the British government made certain conditions and hence they are known as conditional assignments. These conditions were: 1. These lands cannot be sold or mortgaged to any one for ten years, 2. These lands may be sold or mortgaged after 10 years to the Depressed Classes only, 3. Any breach of these conditions will be liable to be cancelled.

13. In State of U.P. v. Zahoor Ahmad, reported in (1973) 2 SCC 547, the Supreme Court held in para 16 thus:-

'16. Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter what the general law of the land be. The meaning of Sections 2 and 3 of the Government Grants Act is that the scope of that Act is not limited to affecting the provisions of the Transfer of Property Act only. The Government has unfettered discretion to impose any conditions, limitations, or restrictions in its grants, and the rights, privileges and obligations of the grantee would be regulated according to the terms of the grant, notwithstanding any provisions of any statutory or common law.

23. After hearing the arguments of the learned counsel for the petitioners one is only reminded of the wise Indian Chief of Seattle who replied to the great White Chief in Washington

when he offered to buy their land. The following passage found in para 2 quoted by the Supreme Court in Sachidanand Pandey v. State of W.B., reported in (1987) 2 SCC 295 may be reproduced below :-

'2. A hundred and thirty-two years ago, in 1854, #the wise Indian Chief of Seattle# replied to the offer of #the great White Chief in Washington# to buy their land. The reply is profound. It is beautiful. It is timeless. It contains the wisdom of the ages. It is the first ever and the most understanding statement on environment. It is worth quoting. To abridge it or to quote extracts from it is to destroy its beauty. You cannot scratch a painting and not diminish its beauty. We will quote the whole of it: (Reproduced verbatim from Pariyavaran Vol.1 No.1 June 1984).

'How can you buy or sell the sky, the warmth of the land? The idea is strange to us.

If we do not own the freshness of the air and the sparkle of the water, how can you buy them?

Every part of the earth is sacred to my people. Every shining pine needle, every sandy shore, every mist in the dark woods, every clearing and humming insect is holy in memory and experience of my people. The sap which courses through the trees carries the memories of the red man.

The white man#s dead forget the country of their birth when they go to walk among the stars. Our dead never forget this beautiful earth, for it is the mother of the red man. We are part of the earth and it is part of us. The perfumed flowers are our sisters; the horse, the great eagle, these are our brothers. The rocky crests, the juices in the meadows, the body heat of the pony, and man # all belong to the same family....
... .."

24. In the light of the above, all the writ petitions will stand dismissed. However, there will be no order as to costs.

(2) In the High Court of Madras, in the case of VGP Prem Nagar Minvariya Kudi Erupor Nala Sangam Vs. The State of Tamil Nadu in W.P.No.1446 to 1448 of 2008, and the relevant paragraphs are extracted hereunder:

"4. Today, statistics reveal that vast extents of the lands so distributed are now with the persons who do not belong to the depressed classes. Therefore, the conditions appear to have been violated without any restraint or check. The Special Form-D applies to order for assignment of lands to Scheduled Castes and Condition No.9

reads as follows :-

"If the land is alienated to any person within a period of ten years from the date of the grant by way of sale, gift, mortgage or lease of any kind, or after that period, to any person who is not a member of the Scheduled Caste..., 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."

Several Government Orders have been passed, as for instance, G.O. Ms. No.2217, Revenue dated 1.10.1941; G.O. Ms. No.3092, Revenue dated 12.12.1946, etc. which affirm the same conditions.

5. A Division Bench of this Court, in K. Palaniappan @ K.Subramaniam Vs. The Government of Tamil Nadu and others, 1992 (2) M.L.J. 561, referring to Section 3 of the Government Grants Act and the decision in Uttar Pradesh State vs. V. Sagur Ahamed, A.I.R. 1973 S.C. 2520, rejected the contentions raised by the subsequent purchaser who came into possession of the 'panchami land' and turned down the plea raised by them. In paragraph 6 of the judgment, the Division Bench observed as follows:-

"6. Coming now to the second contention raised by the learned counsel for the appellant, suffice it to say that the classification is both rational and has a clear nexus with the object sought to be achieved, that is to prevent alienation by exploitation of the Harijans by persons, other than Harijans.

...

In view of the settlement of law by the Supreme Court which has again been reiterated in Lingappa Pochanna vs. State of Maharashtra, A.I.R. 1985 S.C. 389, the second ground of attack viz., the unconstitutionality of the restrictions contained in Clause (9) of Special Form D, Board Standing Orders 15, paragraph 9 must also fail and holding that Clause (9) is constitutionally valid, we reject the argument raised to the contrary by Mr. Doraiswamy."

The Division Bench also referred to a decision in Sri Manche Gowda vs. State of Karnataka, A.I.R. 1984 S.C. 1151, wherein it is held that it is not possible to accept that the conditions contained in Form-D are illegal or invalid and dismissed the writ petition. Therefore, with regard to the same subject matter, the Division Bench has held as above and hence, the submission that in the present case, no provision in pari materia as in

the Karnataka Act is existing is immaterial since the lands were assigned to persons belonging to the depressed classes subject to the above conditions.

7. In *Papaiah Vs. State of Karnataka and others*, (1996) 10 S.C.C. 533, the Supreme Court again dealt with the question of right to economic justice and with reference to Article 46, which casts upon the State a duty to provide economic justice to Scheduled Castes/Scheduled Tribes and other weaker sections of the society in order to prevent their exploitation, observed in paragraph 8 as follows:-

"8. It is seen that Article 46 of the Constitution, in terms of its Preamble, enjoins upon the State to provide economic justice to the Scheduled Castes, Scheduled tribes and other weaker sections of the society and to prevent their exploitation. Under Article 39(b) of the Constitution, the State is enjoined to distribute its largess, land, to subserve the public good. The right to economic justice to the Scheduled Castes, Scheduled Tribes and other weaker sections is a fundamental right to secure equality of status, opportunity and liberty. Economic justice is a facet of liberty without which equality of status and dignity of person are teasing illusions. In rural India, land provides economic status to the owner. The State therefore, is under constitutional obligation to ensure to them opportunity giving its largess to the poor to augment their economic position. Assignment of land having been made in furtherance thereof, any alienation, in its contravention, would be not only in violation of the constitutional policy but also opposed to public policy under Section 23 of the Contract Act, 1872. Thereby, any alienation made in violation thereof is void and the purchaser does not get any valid right, title or interest thereunder."

8. In *R. Chandavarappa Vs. State of Karnataka*, (1995) 6 S.C.C. 309, while considering the alienation which was in violation of the Scheduled Castes/Scheduled Tribes Prohibition of Transfer of Certain Lands Act, 1978, the Supreme Court held as follows:

"The Prohibition from alienation is to effectuate, the constitutional policy of economic empowerment under Articles 14, 21, 38, 39 and 46 read with the Preamble of the Constitution. Accordingly it was held that refusal to permit alienation is to effectuate the constitutional policy. The alienation was declared to be void

under Section 23 of the Contract Act being violative of the constitutional scheme of economic empowerment to accord equality of status, dignity of persons and economic empowerment."

9. This Court is of an opinion that the entire transactions made by the writ petitioner in respect of the assigned land by the Government is a fraudulent transaction and made in violation of the conditions imposed in the assignment. Thus, the writ petitioner is not entitled for any relief. Such transactions are to be treated as illegal transactions and authorities competent are bound to evict all those persons, who are in illegal occupations and those occupations are to be treated as encroachments.

10. In view of the fact that there is a growing attitude of encroachment of Government lands and public lands by certain Real Estate Mafia. It is imminent for the competent authorities to be vigil in respect of protecting the Government lands and other public lands. In view of the fact that large number of encroachments are made by these land grabbers, the State is duty bound to protect the public lands and utilize the same for the welfare of the public at large. Such land grabbers and Real Estate Mafia must be dealt with iron hand and there cannot be any leniency or misplaced sympathy in respect of prosecuting them or to evict them from the encroached lands.

11. Considering the facts and circumstances of the present case, the following orders are passed:

(i) In respect of the encroachments made in the Government lands, the respondents are directed to initiate immediate action against all the encroachers under the provisions of the Tamil Nadu Land Encroachment Act, 1905, by issuing show cause notice and by following the procedures contemplated under the provisions of the said Act and thereafter, evict all such encroachers without any delay and within a period of four weeks from the date of receipt of a copy of this order.

(ii) The District Collector, Thiruvannamalai, is directed to conduct review meetings with all the revenue officials concerned and identify all the encroachments in his jurisdiction and issue suitable orders to evict all such encroachers in the interest of public, and by following the procedures contemplated under the Tamil Nadu Land Encroachment Act, 1905. Such review meetings and orders to be passed by the District Collector, Thiruvannamalai, within a period of four weeks from the date of receipt of a copy of this order.

(iii) The District Collector, Thiruvannamalai, is directed to oversee the implementation of the provisions of the Tamil Nadu Land Encroachment Act, 1905 by all the officials concerned and if there is any negligence or dereliction on duty, then the District Collector shall initiate appropriate disciplinary proceedings against all the officials concerned under the provisions of the Tamil Nadu Civil Services(Discipline and Appeal)Rules, and criminal prosecutions, if warrants under the facts and circumstances.

(iv) The writ petitioner has not established even a semblance of right, so as to consider the relief sought for. Thus, the writ petition in respect of the writ petitioner stands rejected.

12.Thus, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

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Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal Secretary and Commissioner,
Land Administration,
Chepauk, Chennai - 5.
- 2.The District Revenue Officer,
Collectorate Office,
Thiruvannamalai, Thiruvannamalai District.
- 3.The Revenue Divisional Officer,
Revenue Divisional Office, ,
Thiruvannamalai, Thiruvannamalai District.
- 4.The Thasildhar,
Tiruvannamalai, Thiruvannamalai District.
- 5 The District collector,
Thiruvannamalai District.

+1CC TO GOVERNMENT PLEADER SR.NO. 50830 & 51441

W.P.No.3628 of 2013

AK(CO)

ASK(11/08/2018)