

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.987 of 2016

and C.M.P.No.12809 of 2016

1. District Collector
Salem District.

2.Revenue Divisional Officer
Now at, Sub-Collector
Mettur Dam, Salem District.

3.Tahsildar
Omalur Taluk, Salem District.Appellants

Vs

K.RajappanRespondent

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order of this Court passed in W.P.No.24175 of 2012 dated 10.02.2015.

Prayer i WP.No.24175/12: Petition praying for a Writ of Mandamus directing the 2nd respondent to recovery the property in S.No.28/6 situated at Mallikuttai Village Omalur Taluk Salem District in favour of the petitioner and consequently directing the 3rd respondent to issue a patta in favour of the petitioner after reconveyance of the said property within a stipulated time as may fixed by this Court.

For Appellants : Ms.A.Sri Jayanthi
Special Government Pleader

For Respondent : Mr.R.Ezhilarasan

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The challenge in this appeal is to the order dated 10 February, 2015 in W.P.No.24175 of 2012, whereby and whereunder, the learned Single Judge issued a mandamus directing the appellants to reconvey the property in S.No.28/6 situated at Mallikuttai Village, Omalur Taluk, Salem District to the respondent, taking into account the payment made by him. The learned Single Judge further directed the appellants to issue

patta in favour of the respondent. Feeling aggrieved by the said order, the appellants have come up with this intra court appeal.

2. We have heard the learned Special Government Pleader on behalf of the appellants and the learned counsel for the respondent.

3. The documents available on record and the pleadings would indicate that the land which is the subject matter of this appeal was put to auction by the Government, in view of the non payment of the loan amount taken by the land owner from the Government for agricultural purpose. The Government itself took the property in auction by paying 0.10 ps. Thereafter, the legal representative of the borrower paid the entire amount. The Government received the payment. The District Collector, Salem, by proceedings dated 21 March, 2003, recommended to the Government to reconvey the property to the respondent on account of the payment earlier made by him. Since there was no action taken by the concerned authorities, the respondent filed the Writ Petition.

4. The learned Single Judge having found that the entire loan amount was cleared by the respondent immediately after the auction by the Government, allowed the Writ Petition and issued a mandamus.

5. There is no dispute that the land was taken in auction by the Government. The auction was necessitated on account of the failure on the part of the land owner to clear the agricultural loan taken by him. It is also a matter of record that the Government took the property in auction just by paying 0.10 ps. The legal representative of the borrower, immediately after the auction, paid the entire amount. The payment was received by the Government without protest. The Government was therefore, expected to reconvey the property to the legal representative of the borrower.

6. In case the sale has become final and third party interest has crept in, the Government was expected not to receive payment from the respondent. It is also a matter of record that there is no third party interest involved in the matter, in view of the fact that the Government continues to possess the property even after the auction. We are therefore, of the view that the learned Single Judge was correct in directing the appellants to reconvey the land to the respondent.

7. The other question relates to the direction given by the learned Single Judge to the appellants to issue patta. There is no question of issuing such a positive direction by the learned Single Judge in a Writ Petition filed by the respondent for

reconveying the property on account of the payment made by him. We are, therefore, of the view that the direction given to issue patta by the learned Single Judge requires to be set aside.

8. In the result, the order passed by the learned Single Judge insofar as the direction given for reconveying of land to the respondent is confirmed. The consequential order to issue patta is set aside. However, we make it clear that this order would not stand in the way of the respondent from filing appropriate application for issuance of patta, if he is otherwise entitled. There shall be a further direction to the appellants to reconvey the land to the respondent within a period of two months from the date of receipt of a copy of this judgment.

The intra court appeal is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS II)

//True copy//

Sub Assistant Registrar

gms

To

1. District Collector
Salem District.

2. Revenue Divisional Officer
Now at
Sub-Collector
Mettur Dam, Salem District.

3. Tahsildar
Omalur Taluk, Salem District.

+1cc to Mr. R. Ezhilarasan, Advocate SR.No.2688

NRI (CO)
GN(17/02/2018)

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