

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27/03/2018
Delivered on	16/04/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.Nos.18165 to 18177 of 2013 &
M.P.Nos.1 to 1 of 2013 & 2 to 2 of 2013 & 1 of 2013 and
W.P.No.1859 of 2017 &
W.M.P.No.1856 of 2017 & W.M.P.No.12898 of 2017

N.Guruswamy ..Petitioner in WP.18165 of 2013
G.Venkatraman ..Petitioner in WP.18166 of 2013
A.Krishnan ..Petitioner in WP.18167 of 2013
K.Narayanaswamy ..Petitioner in WP.18168 of 2013
B.Rajaram ..Petitioner in WP.18169 of 2013
V.Saroja ..Petitioner in WP.18170 of 2013
V.Saroja ..Petitioner in WP.18171 of 2013
B.Varadaraj ..Petitioner in WP.18172 of 2013
G.Kosalai ..Petitioner in WP.18173 of 2013
V.Srinivasan ..Petitioner in WP.18174 of 2013
S.Seethammal ..Petitioner in WP.18175 of 2013
B.Rajaram ..Petitioner in WP.18176 of 2013
C.Annamalai ..Petitioner in WP.18177 of 2013
S.Seethammal ..Petitioner in WP.1859 of 2017

Vs.

1. The State of Tamil Nadu,
By the Secretary to the Government,
Revenue Department, Fort St.George,
Chennai - 600 009.
2. The Principal Commissioner
and Commissioner of Land Administration,
Ezhilagam, Chepauk, Chennai - 600 005.
3. The District Collector,
Salem District, Salem.
4. The District Revenue Officer,
Salem District, Salem.
5. The Revenue Divisional Officer,
Athur Division, Athur, Salem District.

6. The Tahsildar, Gangavalli Taluk,
Gangavalli, Salem District.

7. S.Balraj .. Respondents in all Writ Petitions

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records pertaining to the order dated 25.04.2013 made in Na.Ka.No.15395/2013 K2 on the file of the District Revenue Officer, Salem District, Salem, the fourth respondent herein and quash the same in so far as the land in Survey Numbers 5/19, 5/20 and 27/17 in WP.18165 of 2013; 27/24 and 53 in WP.18166 of 2013; 5/10 in WP.18167/2013; 5/17 in WP.18168/2013; 5/9 and 5/15 in WP.18169/2013; 27/25; 27/26 and 5/18 in WP.18170/2013; 27/20; 27/21 and 5/22 in WP.18171/2013; 5/7 and 27/15 in WP.18171/2013; 5/11 in WP.18173/2013; 5/10 in WP.18174/2013; 5/3 and 5/6 in WP.18175/2013; 5/8 and 5/16 in WP.18176/2013; 5/18 in WP.18177/2013; 5/5 in WP.1859/2017. East Rajapalayam Village, Gangavalli Taluk, Salem District are concerned.

For Petitioner : Mr.A.V.Arun

For Respondents : Mr.V.Shanmugasundar
Special Government Pleader for R1 to R6
Mr.S.Baskaran for R7

COMMON ORDER

Since common issues involved in all these Writ Petitions, they have been taken together and disposed of by a common order.

2. These Writ Petitions have been filed by small farmers / agriculturists from a remote village in Salem District, challenging the cancellation of assignments made in the year 1980.

3. The lands in Survey Nos.5 and 27 of East Rajapalayam Village in Gangavalli Taluk having an extent of about 100 acres were originally classified as Gracing Ground Poramboke and after reclassifying as Assessed Waste Darkast, the Revenue Divisional Officer assigned the lands in favour of the members of Anna Sumai Thookum Thozhilalar Sangam in Aathur Bus stand by an order dated 25.10.1980. Each members were assigned with about

2.30 acres. The order of assignment among other things had the following conditions:-

(i) The assignees shall not sell the land for 10 years, but as per the provision of LIL Act, they can mortgage the property to the cooperative societies, but the freedom fighters can sell their properties within a period of ten years.

(ii) The land should be brought for cultivation within a period of three years from the date of assignment.

4. It seems that the original assignees have sold their lands to the petitioners after lapse of 20 years. It is seen that the seventh respondent herein had instituted a suit before the District Munsif Court, Attur in O.S.No.83 of 1999 against Mr.Gurusawamy, who is the petitioner in W.P.No.18171 of 2013 contending that his mother Seethammal had occupied lands in S.F.No.27/24 in the year 1965. Since then she had been in possession and enjoyment of the land by paying "Thanda Theervai" till she passed away in the year 1983 and after her demise, the seventh respondent was in possession of the property. While so, the defendant in the suit on the basis of the agreement of sale, dated 07.10.1998 entered into with one Malik John attempted to disturb his possession. The seventh respondent had also filed an interim application in I.A.No.378 of 1999 and after contest, the application came to be dismissed on 04.10.1999.

5. It is to be noted that the seventh respondent suppressing the suit filed against the said Guruswamy filed a Writ Petition W.P.No.21050 of 2001 for issuance of Writ of Mandamus directing the respondents to consider his representation dated 23.07.2001. It was alleged in the affidavit filed in support of the Writ Petition that he was a small farmer and also having cattles. Approximately about 75 acres of Government poramboke land in his Village was used as a Gracing Land for cattles and in the year 1980, the Government had assigned the lands in favour of the members of Anna Sumai Thookum Thozhilalar Sangam, however, subsequently, the assignees have sold the land to the third parties without the permission of the Government. Neither the assignees nor the purchasers were made as respondents in the Writ Petition. The Division Bench of this Court on 06.11.2001 disposed of the Writ Petition directing the respondents to deal with the representation of the petitioner on merits and in accordance with law.

6. The seventh respondent filed another Writ Petition in W.P.No.33504 of 2002 seeking direction to the respondents to expedite the proceeding for cancellation of assignments. In the second Writ Petition also necessary parties were not impleaded.

The another Division Bench of this Court on 31.01.2018 disposed of the Writ Petition directing the respondents, to pass final orders within a period of three months. Alleging that the respondents have not complied with the directions, the seventh respondent filed a Contempt Petition in Cont.Petition No.829 of 2010. After initiation of Contempt Proceedings, the fourth respondent cancelled the assignment on the only ground that the lands were sold without permission from the authorities.

7. Mr.A.V.Arun, learned counsel for the petitioners submitted that the cancellation proceedings were initiated only due to the private dispute between the seventh respondent with one of the petitioners viz., Guruswamy. The original assignees had every right to sell the property after expiry of 10 years for the purpose of cultivation to the third parties and no condition has been imposed in the original assignment order that the sale can take place only after permission from the Tahsildar or the Revenue Divisional Officer. Even assuming without admitting permission is required, patta issued in favour of the petitioners would show that they granted permission impliedly.

8. The learned counsel by referring the assignment, submitted that there is no condition in the orders mandating the assignees to sell the property with the permission of the Tahsildar, as per the Board Standing Order 15 (12)(3)(1). Further, the respondents without issuing any notice to the petitioners and conducting enquiry passed the impugned order in violation of principles of natural justice, hence, it is liable to be set aside.

9. The sixth respondent has filed a counter affidavit stating that as per the Board Standing Order 15 (12)(3)(1), the assigned lands shall not be alienated for a period of ten years and thereafter with a permission, can be sold. It is further stated that notice of enquiry sent to the assignees had been returned as they were not residing at the Village and the enquiries of the sixth respondent in this regard were sent to the Revenue Divisional Officer and based on their report, the District Revenue Officer cancelled the assignment.

10. Mr.V.Shanmugasundar, learned Special Government Pleader for the respondent 1 to 6 submitted that the sale had taken place contrary to the assignment conditions. The sixth respondent issued notices to the original assignees to provide them opportunity and also conducted an enquiry. Since the original assignees were found not residing in the Village, a report was sent to the higher officials and therefore, the petitioners cannot complain that they were not given an opportunity. It is further submitted after cancellation of the

patta made in favour of the assignees, now the land is shown as Government poramboke land.

11. Mr.S.Bhaskar, learned counsel for the seventh respondent submitted that the petitioners have no locus standi to file these Writ Petitions since they purchased the lands without any permission from the officials as per the Board Standing Order and also without exhausting the alternative appeal remedy.

12. The issues arise for consideration in these Writ Petitions are whether alienations have been made in violation of assignment conditions and the impugned order is an arbitrary exercise of power by the respondents.

13. The facts narrated above, would reveal that cancellation of assignment was made pursuant to the orders passed in Writ Petitions filed by the seventh respondent. A perusal of the affidavit filed in the Writ Petitions, would show that there was no whisper about the suit in O.S.No.83 of 1999 filed against Guruswamy and dismissed of the Interim Application in I.A.No.378 of 1999 on 04.10.1999. It is also seen that he filed a Contempt Application in C.P.No.829 of 2010 against the official respondents. As stated above, the original assignees and the petitioners herein were not impleaded as respondents in the Writ Petitions filed by the seventh respondent. Had they been provided with an opportunity to appear in those Writ Petitions and they would have brought to the knowledge of this Court that the seventh respondent did not have any public interest to file those Writ Petitions and the orders would have been totally different.

14. Be that as it may, it is not in dispute that the assignments have been made in favour of the members of Anna Sumai Thookum Thozhilalar Sangam, consisting of different caste and religions. So, it is not the case of the respondents that the assignments were made in favour of the persons belonging to Adi Dravidar Community and after a period of 10 years, the sale could be made only to the persons belonging to Adi Dravidar Community. Though the Board Standing Order 15 stipulates, the assigned lands shall not be alienated for a period of 10 years from the date of assignment and in the event of assignee wishing to dispose of the land after the above said period, he shall get prior permission or either from the Tahsildar or the Revenue Divisional Officer, however, the said condition of getting permission is not incorporated in the assignment orders. Admittedly, in all these cases, the original assignees have sold the assigned lands after 20 years and immediately mutation had taken place in the revenue records and the petitioners were issued with patta in 2001 and 2002.

15. At this juncture, it would be appropriate to refer the

judgment of this Court in (1997) 2 MLJ 407 [R.Ramanathan and others Vs. The State of Tamil Nadu represented by its Commissioner and Secretary to Government, Harijan Welfare Department and another]. In that case, assignments were made in the year 1922 and 1923 in favour of Adi Dravidars with a condition that the lands can be sold only to the Adi Dravidar people. However, by registered sale deeds dated 14.03.1949 and 19.07.1949, the legal representatives of the assignees conveyed an extent of 25.08 acres in favour of one Dr.Ahamedullah Khan. After the purchase, a patta was issued in his favour. In the year 1956, violation of assignment conditions was informed to the Revenue Divisional Officer and the assignments were cancelled on 01.09.1956. Subsequently, the Revenue Divisional Officer on 31.05.1957 cancelled his earlier proceedings and ordered re-issuance of patta in favour of the purchaser. On 07.11.1968, the said Dr.Ahamedullah Khan sold the entire extent of 25.08 acres to one Rangasamy and Nalliayappan. Later on 25.11.1987, after lapse of 11 years, the assignment was cancelled. Considering the above facts, this Court has held that the action of the respondents in that case was highly arbitrary and violative of Article 14 of Constitution of India. The relevant paragraphs are extracted below:

" 26. The lands in question which was the subject-matter of assignment during the years 1922, 1923, 1928 were purchased by Dr. Ahamedullah Khan during 1949, subsequently the said Ahamedullah Khan sold the lands to Nalliappan and another on 7.11.1968 in whose favour Revenue patta has also been granted and mutation of revenue register has also been affected. In the said circumstances, the petitioners had purchased the lands on 28.11.1973. Thus, the petitioners were made to believe that their vendors Nalliappan and Dr.Ahamedullah Khan had right to convey the property as patta had also been issued in their favour after the cancellation of the earlier proceedings dated 1.9.1956. Based upon that, the petitioners have also invested huge amounts which aspect has also not been denied or disputed by the respondents. The patta has also been transferred not only in the name of the petitioners' vendors but also in favour of the petitioners and substantial amount had also been invested by the petitioners to sink wells, to improve the lands, to instal electric motor and oil motor pumpset based on the fact that the petitioners' vendors had already been granted patta. But, for the representations and mutation by the respondents, the petitioners would not have purchased and would not have invested huge amount. On this ground also, the respondents are estopped from going back and cancelling the assignment at this belated

stage.

27. It is contended that the respondents were well aware of the alienations effected during the year 1949 and also the subsequent dropping of action of R.D.O. on 31.3.1957. The orders of the R.D.O. has not been set aside or reviewed by the appellate or revisional authority within a reasonable time and the said order of the R.D.O. dated 31.3.1957 and issuance of patta have been allowed to become final. At this stage, after a period of 40 years, it is highly arbitrary on the part of the respondents to initiate action as if it is being done for the first time. The action of the respondents is highly arbitrary and violative of Article 14 of the Constitution.

28. As rightly contended by the learned Senior Counsel not only after the 1957 cancellation of the earlier resumption proceedings but subsequently also the action was taken by the State Government but it was dropped and no orders have been passed. Thereafter, for the first time, the present impugned order has been passed on 4.3.1987 and without even issuing a show cause notice and thus the impugned order passed by the respondents is violative of principles of natural justice. The plea of the respondents that the earlier proceedings are illegal and that it has been passed without reference to the entries made in the Settlement A register are of devoid of merits and has no relevance.

29. It is also transpires from the records that a show cause notice was issued on 31.3.1974 but after receipt of objections, the respondents kept silent and it is deemed that the respondents have dropped the action. Thereafter, a lapse of another decade, the present impugned order has been passed and that too without affording an opportunity. A perusal of the impugned G.O. dated 4.3.1987 also demonstrates that there has been no application of mind at all and it has been passed arbitrarily. Even in the impugned proceedings, it has been stated that the petitioner had invested huge amounts and therefore, the extent of 5 acres alone be assigned to the petitioner on the double the market value and the remaining land be resumed which in my considered view is arbitrary and offends Article 14 of the Constitution.

30. For the reasons stated above, the impugned proceedings are quashed and the writ petition is allowed as prayed for with costs of Rs. 3,500."

16. In the case on hand, the assignments were cancelled on the sole ground that the assignees without permission of the Tahsildar or the Revenue Divisional Officer had alienated the property. As stated supra, the assignment orders do not contain the condition and the Revenue Authorities have granted patta in favour of the petitioners in the year 2000 and 2001. Therefore, the reason assigned in the impugned order has no substance or foundation.

17. The Division Bench in the Writ Petitions filed by the seventh respondent directed the Official respondents to consider his representation and pass orders on merits and in accordance with law. Indisputably, the respondents without issuing notice to the petitioners and conducting any enquiry passed the impugned order in a highly arbitrary manner. In the counter filed by the sixth respondent, it is stated that they issued notice to the original assignees and their enquiry found that they were not residing in that Village.

18. It is to be noted that the writ petitioners have been in possession and cultivating the lands for the past about fifteen years and they should have been heard before any order is passed against them. It is not the case of the respondents that they served notice on the petitioners, but none appeared for enquiry. Even this basic principle has not been followed in this case and it seems that the fourth respondent without having any courage to face the Contempt Proceedings had passed the impugned order in a hurried manner to satisfy the seventh respondent.

19. It is settled law that availability of an alternative remedy is not a total bar for invoking Article 226 of the Constitution of India and a Writ Petition can be maintained when an order is assailed on the ground of violation of principles of natural justice. So the contentions of the respondents in this regard cannot be countenanced.

20. One more aspect to be mentioned here. Due to various reasons viz., Globalization, natural calamities, raise of material cost, the agriculturists find it difficult to meet their both ends, in such situation, some are taking extreme decision to commit suicide. In such fact scenario, the authorities should have been more cautious, while passing adverse orders against them. If any order is passed in a casual manner, as in these cases, it would have huge havoc in their

life for the reasons they would have financial capacity to face those situations.

21. In view of the above finding and also following the decision referred above, in my considered opinion, the petitioners are entitled to succeed in these Writ Petitions. Accordingly, these Writ Petitions are allowed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rnrs

To

1. The Secretary to the Government,
Government of Tamil Nadu,
Revenue Department,
Fort St.George,
Chennai - 600 009.
2. The Principal Commissioner
and Commissioner of Land Administration,
Ezhilagam, Chepauk,
Chennai - 600 005.
3. The District Collector,
Salem District, Salem.
4. The District Revenue Officer,
Salem District, Salem.
5. The Revenue Divisional Officer,
Athur Division,
Athur, Salem District.

6. The Tahsildar,
Gangavalli Taluk,
Gangavalli,
Salem District.

+14ccs to Mr.A.V.Arun, Advocate, S.R.No.28554 to 28566 & 28658
+2cc to Mr.S.Baskaran, Advocate, S.R.No.28290

W.P.Nos.18165 to 18177 of 2013 &
M.P.Nos.1 to 1 of 2013 & 2 to 2 of 2013 & 1 of 2013 and
W.P.No.1859 of 2017 &
W.M.P.No.1856 of 2017 & W.M.P.No.12898 of 2017

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