

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04/04/2018

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P. No.29808 of 2013

P.V.Shaji

.. Petitioner

Vs.

1.The Collector of Nilgiris District,
Udhagamandalam,
The Nilgiris.

2.The Revenue Divisional Officer,
Gudalur,
The Nilgiris District.

3.The Tahsildar,
Pandalur Taluk,
The Nilgiris.

.. Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent with reference to his order dated 30.05.2006 in Na.Ka.No.Q2 77099/2005 and quash the same and direct the respondents to resume land in R.S.No.255/193, New No.819/5 an extent of 1.70 acres in Erumad Village, Pandalur Taluk to the petitioner.

(Prayer amended as per order dated 22.02.2018 in W.M.P.No.4562 of 2018 in W.P.No.29808 of 2013)

For Petitioner : Mr.R.T.Doraisamy

For Respondents : Mr.P.H.Arvind Pandian
Additional Advocate General

Assisted by Mr.V.Shanmuga Sundar
Special Government Pleader

O R D E R

The amended prayer in the Writ Petition is to issue a Writ of Certiorarified Mandamus to quash the impugned order of the first respondent dated 30.05.2006 and direct the respondents to resume land in R.S.No.255/193, New No.819/5 an extent of 1.70 acres in Erumad Village, Pandalur Taluk to the petitioner.

2. The case of the petitioner is that the second respondent has assigned an extent of 1.70 acres in Old Survey No.255/193 and New Survey No.819/5 in Erumad Village in favour of A.Kunhikoran, S/o.Ayyappan, vide his order in Reference No.A3/7736-72, dated 13.06.1972 along with 4 Ayini trees and two Venteak trees with a condition that the trees should not be cut and removed without prior permission of the concerned authority. The petitioner's mother Mrs.Rosa @ Rosamma purchased the said land through a registered sale deed dated 03.04.1986 and registered as Document No.532 of 1986. The original assignee was in possession till 1985 and thereafter his mother was in put in possession of the lands.

3. The petitioner would further state that the second respondent cancelled the assignment on 01.04.1991 for the reason that the original assignee in breach of the assignment condition had cut and removed two Ayini trees. Aggrieved over the cancellation, the mother preferred an appeal and the Appellate Authority, viz., the District Collector, confirmed the same. Subsequently, she preferred a revision before the Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai.

4. The further case of the petitioner is that the Commissioner of Land Administration had set aside the order of the Revenue Divisional Officer and the District Collector holding that the assignment could be cancelled by the Commissioner of Land Administration. It is further observed that if the penalty for cutting the trees was not paid by the original assignee, it could be recovered from the petitioner's mother.

5. The grievance of the petitioner is that despite the order of the Commissioner of Land Administration, the respondents installed a board in the land stating that it is a Government land and also issued a receipt BM II 48 instead of land tax.

6. The petitioner would further state that his mother died on 19.04.2007 and even during her lifetime and thereafter repeated representations were made to the respondents to remove the board and collect the land tax. Since it was not considered, the petitioner has come up with the Writ Petition seeking

direction to the respondents to remove the board installed in his land and issue receipts for the tax paid as patta land.

7. The respondents filed a counter affidavit stating that subsequent to the order of the Special Commissioner and Commissioner of Land Administration, dated 27.08.1999, the penalty for unauthorized cutting of trees was collected from the petitioner on 27.08.1999 and the same was deposited in the Government account. Subsequently, the first respondent had sent a recommendation to the Special Commissioner and Commissioner of Land Administration to resume the land for violation of assignment condition.

8. It is further stated that in the counter that the Land Commissioner vide letter dated 20.02.2006 left the matter to the first respondent for his consideration and thereafter, the first respondent vide his proceedings dated 30.05.2006 had dismissed the revision petition filed by the mother of the petitioner and ordered to resume the property in favour of the Government.

9. After filing of the counter, the petitioner amended the prayer to set aside the cancellation order of the first respondent.

10. In the reply, the petitioner has stated that no notice was served by the first respondent before cancelling the assignment dated 30.05.2006 and that he sent an application to the concerned officer under Right to Information Act and calling upon him to furnish acknowledgment for service of notice to the petitioner and the recommendation letter given by the first respondent dated 11.09.2002 and the order passed by the first respondent dated 30.05.2006. But, the Information Officer, the District Collector, Udagamandalam, sent a reply stating that except the order dated 30.05.2006, no other records are available.

11. Mr.R.T.Doraisamy, learned counsel for the petitioner urged before this Court that the assignment was made in favour of one Kunhikoran in the year 1972. The Commissioner of Land Administration has categorically held that the assignment can be cancelled only by the Commissioner of Land Administration and the District Collector and the Revenue Divisional Officer have no authority to cancel the assignment. According to the learned counsel for the petitioner, as per Revenue Standing Order-15, if the assignment had been made prior to 14.05.1973, the Resuming Authority is the Commissioner of Land Administration and therefore, the cancellation of assignment by the District Collector, cannot be sustained.

12. Per contra Mr.P.H.Arvind Pandian, learned Additional Advocate General appearing for the respondents submitted that

the assignment was cancelled for violation of conditions and the petitioner, who was aware of the cancellation of the order dated 30.05.2006, filed this Writ Petition suppressing the material facts. The learned Additional Advocate General by placing reliance on the decision of this Court in W.A.No.1230 of 2015, submitted that the petitioner is not entitled for any equity.

13. Heard Mr.R.T.Doraisamy, learned counsel for the petitioner; Mr.P.H.Arvind Pandian, learned Additional Advocate General, assisted by Mr.V.Shanmuga Sundar, learned Special Government Pleader for the respondents and perused the records.

14. In the instant case, it is not in dispute that the second respondent by an order dated 13.06.1972 assigned 1.70 acres of land in favour of one Kunhikoran. It is equally not in dispute that the assignee in violation of the conditions of the assignment had cut and removed two Ayini trees worth about Rs.9,900/-. It is an admitted fact that the petitioner's mother had purchased the assigned land by a registered sale deed dated 03.04.1986. Pursuant to the sale, petitioner's mother objected the cancellation proceedings, but, despite her objections, the assignment was cancelled. However, the Commissioner of Land Administration had set aside the cancellation order passed by the Revenue Divisional Officer and the District Collector holding that they have no authority to pass such orders.

15. At this juncture, it would be useful to refer the Revenue Standing Order-15:-

"(xi) Resuming Authority: The authority competent to resume or re-enter on lands for breach of any condition of assignment shall be as follows:-

(a) The Tahsildar, if the land is non-valuable;

(b) The Revenue Divisional Officer if the land is valuable; and

(c) The Commissioner of Land Administration / Government, for the lands assigned prior to 14.05.1973. G.O.Ms.No.2555, Rev. dated 14.05.1973.

Govt.Lr.No.36059/F1/88-2, Rev.dated

15.07.1988

W.P.No.906/70, dated 17.06.1988

C.L.A.'s Proc.No.E3/8199/87, dated 01.03.1989.

Govt.Lr.36741/LD3-1/97-1, Rev. dated 15.07.1977."

16. A plain reading of the Revenue Standing Order would reveal that the lands assigned prior to 14.05.1973, could be cancelled only by the Commissioner of Land Administration.

17. It is seen that an undertaking was given by the mother of the petitioner to the Commissioner of Land Administration,

that if the penalty was not paid by the assignee, she was ready to pay the same. Based on her statement, the Commissioner of Land Administration, after setting aside the order of cancellation, left open to the authorities to verify whether any penalty for the tree cutting has been paid either by the previous assignee and in the event, fine has not been paid, such a fine can be collected from the petitioner's mother viz., Mrs. Rosa @ Rosamma. In the counter filed by the third respondent, it is admitted that pursuant to the order of the Special Commissioner and Commissioner of Land Administration, the mother of the petitioner had paid Rs.9,906/- for the value of the trees on 27.08.1999.

18. Though the counter proceeds further that the Commissioner of Land Administration had permitted the first respondent to resume the land assigned in favour of Kunhikoran and thereafter, the revision petition filed by the mother of the petitioner was dismissed vide order dated 30.05.2006 and an order of resumption was made, but no material was placed to substantiate their case. Even assuming without admitting that the Commissioner of Land Administration has granted permission, but there is no delegation of power in the Revenue Standing Order-15 empowering the Commissioner of Land Administration to authorize the District Collector or the Revenue Divisional Officer to cancel the assignment made prior to 1972.

19. It is specifically contended by the petitioner that the impugned order has been passed in violation of the principles of natural justice. Though it is contended by the respondents notices were served, but no materials have been produced to substantiate their case. Perusal of the records reveal that the Commissioner of Land Administration had only permitted the respondents to collect the penalty, if not already paid, after setting aside the order of cancellation of assignment, as stated supra, so the first respondent has no jurisdiction to again dismiss the revision preferred by the mother of the petitioner.

20. In the Judgment in W.A.No.1230 of 2015 relied on by the learned Additional Advocate General, the assignment was made on the condition that the land should not be sold for a period of 10 years and in violation of the assignment conditions, the land was sold and the order of resumption of land was not challenged by the assignee. It seems that the petitioner in that case purchased the property after cancellation of the assignment and filed the Writ Petition based on the sale deed. The learned Single Judge and the Division Bench, in those circumstances, have held that the petitioner has no equity as the sale was made in violation of the condition of assignment. In my considered opinion, the decision has no relevance to the facts of this case.

21. In the light of the above discussions and findings, the petitioner is entitled to succeed in this Writ Petition. Accordingly, the Writ Petition is allowed. The order of cancellation is set aside and the respondents are directed to hand over possession of the land in question to the petitioner forthwith. There is no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

r n s

To

1.The Collector of Nilgiris District,
Udhagamandalam,
The Nilgiris.

2.The Revenue Divisional Officer,
Gudalur,
The Nilgiris District.

3.The Tahsildar,
Pandalur Taluk,
The Nilgiris.

+lcc to Mr.R.T.Doraisamy, Advocate, S.R.No.24921

W.P. No.29808 of 2013

KJ(CO)
CS/19/06/18

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