IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12/7/2019

C O R A M

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.11968 of 2009
MP.Nos. 1 & 2 of 2009

K. Dhanapal ...Petitioner

Vs

1. The District Revenue Officer
   Collectorate
   Namakkal District.

2. The Revenue Divisional Officer
   Tiruchengode Taluk
   Tiruchengode
   Namakkal District.

3. The Tahsildar
   Tiruchengode Taluk
   Tiruchengode
   Namakkal District. ... Respondents

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 from the file of the first respondent made in Proceedings in Na.Ka.No.12689/2008 (01) dated 4/10/2008 confirming the order passed by the second respondent in Na.Ka.1221/2007/B dated 8/9/2007 and quash the same and further direct the respondents to issue patta in favour of the petitioner for the lands measuring about 88 cents in S.F.No.34/4C, 34/4B and 34/4E at Keelmugham Village, Mallasamuthiram, Tiruchengode Taluk, Namakkal District.

For petitioners ... Mr.C.Kulanthaivel

For respondents ... Mr.M.Sricharan Rangarajan
Additional Government Pleader

- - - - -

O R D E R

Instant writ petition has been filed, for a writ of certiorari, calling for the records of the District Revenue Officer, Namakkal District, first respondent, with regard to

Proceedings, in Na.Ka.No.12689/2008 (01), dated 4/10/2008, confirming the order passed by the Revenue Divisional Officer, Tiruchengode, Namakkal District, second respondent, in Na.Ka.1221/2007/B, dated 8/9/2007, and quash the orders of redemption, and for a further direction, to direct the respondents, to issue patta, in favour of the petitioner, for the lands measuring about 88 cents, in S.F.No.34/4C, 34/4B and 34/4E at Keelmugham Village, Mallasamuthiram, Tiruchengode Taluk, Namakkal District.

2. Lands in question was originally assigned to persons belonging to Scheduled Caste and classified as Adi Dravidar condition lands. Lands were assigned by an order No.53/35, dated 16/1/1926. These lands were in possession of the legal heirs original assignees as under:-

S. No.	Survey No.	Total Extent in ace	Name of the land owners at the time of execution	Patta No.
1	34/4B	0.09.0	1. Perumal 2. Paruvathi 3. Kunjammal 4. Ragunathan 5. Varuthan 6. Sengodan	1149
2	34/4C	0.10.5	1. Parvathi 2. Kunjammal 3. Ragunathan	869
3	34/4E	0.16.0	Varuthan	612

3. Petitioner states that he had purchased these lands from Parvathy, Gunjammal, Raghunathan, Perumal, Manickam and Ayyavu, in the year 1993, through the registered sale deed Nos.1004, dated 16/9/1993; 1040 dated 28/9/1993 and 1099 dated 22/10/1993 registered at the Sub-Registrar office, Mallasamuthiram, Tiruchengode Taluk, Namakkal District. Petitioner states that he has been in continuous occupation and enjoyment of the land from 1993.

4. It is stated by the petitioner that the petitioner received a show cause notice, from the Revenue Divisional Officer, stating that the sale deeds were in violation of the conditions, under which the land had been assigned in the year 1926. According to him, legal heirs of the original assignee, could not have sold the property, without permission from the Government. A show cause notice was issued as to why the land should not be resumed from the petitioner.

5. Petitioner states that he has given his explanation to the Revenue Divisional Officer. The petitioner states that based on the recommendation of the Tahsildar, Tiruchengode Taluk, Namakkal District, Revenue Divisional officer, by an order, dated 8/9/2007, cancelled the patta, granted to the petitioner and directed the lands to be classified, as Adi Dravidar condition lands, without affording any opportunity of hearing nor furnishing the copy of the recommendation of the Tahsildar. Petitioner states that he also came to know that there is a statutory limitation period of thirty years, beyond which there is no embargo for the alienation of conditional patta lands. According to the petitioner, after a period of thirty years, there could not be a bar in the assignment of these lands. Petitioner states that he gave a representation to the District Revenue Officer. He states that, District Revenue Officer, by the impugned order, dated 4/10/2008, in Na.Ka.No.12689/2008 (01) dated 4/10/2008, confirmed the order passed by the Revenue Divisional Officer, Tiruchengode, in his Proceedings, in R.O.C.No.1221/2007/B, dated 8/9/2007.

6. Petitioner states that lands have been purchased by giving valuable consideration. Sale has taken place by a registered documents. No objection has been raised, at the time of registration by the Registrar, who was fully aware about the nature of lands, and the conditions attached to the lands. Petitioner further states that the observation of the Revenue Divisional Officer, Tiruchengode Taluk, Namakkal District, that the petitioner did not appear for the enquiry is not correct. It is further stated that the order of the first respondent is also not a well considered ordered inasmuch as it ignores the several Board proceeding orders, wherein permission has been granted by the Board of Revenue, in various cases.

7. On notice, respondents have file a counter. According to the respondent, it was the duty of the petitioner to first obtain permission from the authorities before purchasing the property. It cannot be said that the petitioner was unaware that the lands have been classified as Adi-Dravidar condition land. Revenue records reflected this land as Adi -Dravidar condition land and therefore, it was the duty of the petitioner to first obtain permission before purchasing the lands.

8. It is also stated that the petitioner did not submit any explanation before the Revenue Divisional Officer According to the respondents, condition with which the lands are assigned, could not have been sold, for a period of ten years and even after ten years, it should be sold only to the person belong to the Scheduled Caste and that too with the permission of Revenue Divisional Officer.

9. Heard Mr.C.Kulanthaivel, learned counsel for the petitioner and Mr.M.Sricharan Rangarajan, learned Additional Government Pleader and perused the materials available on record.

10. Mr.C.Kulanthaivel, learned counsel for the petitioner submitted that lands were not shown as Adi-Dravidar condition lands. On the other hand, the patta showed that the land belongs absolutely to the vendors of the petitioner. Petitioner relies on the encumbrance certificate which does not show any condition attached to the land. It is therefore contended that, in absence of any material, classifying the property, as Adi-Dravidar conditional land, the entire proceeding for redemption is not correct.

11. Petitioner further submitted that the respondents have violated various provisions of the Revenue Standing Orders. Petitioner would say that records have not been properly maintained, in terms of the Revenue Standing Orders. He would also contend that various Board proceedings reflect that after 30 years of period, permission is granted for sale of the properties, which are classified as Adi Dravidar condition lands. The petitioner relies on certain proceedings of the Board of Revenue, wherein the Board of revenue has granted permission, for sale of lands, after thirty years of the original assignment. Petitioner also state that the impugned orders passed are in violation of the principles of natural justice.

12. On the other hand, learned counsel for the respondents submit that the fact that the petitioner is relying on the orders of the Board of Revenue, would show that the petitioner is aware that these lands are condition lands and that therefore, he could not have purchased the property, without getting proper permission from the Board of Revenue.

13. Hear the counsel for the parties.

14. Material on record would show that the said lands were assigned to Adi Dravidar with conditions. The conditions of a statement prohibited assignees or their successors, to sell the property, for the first ten years to any person and for subsequent years, property could have been sold only to Scheduled Caste and that too after obtaining permission from the Government. Admittedly, no permission has been sought for by the petitioner. The argument that records have not been maintained properly is no ground to validate the sale. After receiving show cause notice, it is clear that petitioner came to know that the lands had been assigned to the predecessors of the vendors of the condition. Petitioner also knew that there are orders passed by the Board of Revenue wherein such assignments have been permitted, yet not permission has been sought from the government.

15. At this juncture, it is relevant to reproduce the orders passed by the Board of revenue in similar cases.

Copy of B.P.2269/dt.25/5/1973
from the Board of Revenue, Chepauk, Madras 5.

Sub: Assignment - land - Coimbatore Dharapuram Taluk - Kangur Village - S.No.117/A1 - 2.00 Acres - assigned to D.C. Persons - delation of special conditions - orders - passed.

Ref: From the District Revenue Officer, Coimbatore.Ref.90629/72 P 7 dated 7/2/1973.

\- - - -

The District Revenue Officer, Coimbatore has sent proposals for delation of the land in S.No.177/A1 measuring 2.00 acres in Kongur Village, Dharapuram Taluk from the list of lands reserved for assignment in favour of Sanmarga Kurukulam an orphanage run at Keeranur.

S.No.117/A1 measuring 2.00 acres of Kongur Village in Dharapuram Taluk was classified as A.W.D and reserved for assignment to depressed class persons. The entire land was assigned to one Thiru Nallan in Taluk D.Dis.55 DR 32 dated 31/10/1922 under D.C conditions. The original assigned is no more. Thiru Muthan Madari a Hindu Harijan of the same village has purchased this land from the heirs of Thiru.Nallan, the original Assignee in Document No.2363 dated 8/1/1968. But Thiru Muthan Mathari gave this land as free gift to Thiru Kuppusamy Trustee of Sanmarga Gurukulam in settlement deed No.1404/71/8.1.71. This Gurukulam is an orphanage and doing philanthropic service. The trustee of the Gurukulam has constructed a Mill on the land in question at a cost of Rs.5,000/- to Rs.6,000/-. According to the condition of the grant, the land cannot be assigned to any one other than a member of depressed class.

The Board was carefully examined the proposals of the D.R.O Coimbatore. In view of the fact that the original assignment was made in the year 1992 and the sale to a Hindu took place only in 1968 i.e., after the lapse of the statutory period of 30 years of limitation, the Board considers that there appears to be no need to interfere with the sale. The D.R.O., Coimbatore is, therefore, informed that there is no need to diserve the land from the list of lands reserved for assignment in D.C.persons.

The connected records of enquiry are returned herewith.

Copy of Revenue Divisional officer, Coimbatore K.Dis.19357/70 dated 20/4/70

Sub: Land - Avanashi Taluk - Tholampalayam Village - S.No.14555/2 - 1455-3 condition patta breach of condition - redemption of land - orders passed.

Ref:Avanashi Tahildar's L.Dis.5433/70 dated 13/4/78.

- - - -

As recommended by the Tahsildar, Avanashi and in Boards' reference 2269/8 dated 25/2/78, the Deputy Tahsildar is requested to drop the proposals for the resumption of land in S.No.1455/2, 1455/3 of Tholampalayam village and there are clear instruction from the Board that there should not be any interference if the statutory period of thirty year has been expired.

Revenue Divisional Officer, Coimbatore.

- - - - -

From

Thiru.S.A.M.Arunachalam, B.Sc
District Revenue Officer
Salem.

To

The Revenue Divisional Officer
Sankari.

K.Dis.109077/79/K5, dated 22/6/1979

- - - - -

Sir,

Sub: Assignment - land - Salem District - Thiruchengode Taluk - Pallipalayam Village - S.No.335/5, 7 and 260//2 and 3 extend 4.74 acres - conditionally assigned to Harijans - violation of harijan conditions - land alienated to caste Hindus (Non-Harijans) report - submitted - orders - passed.

Ref: 1. Tahsildar Tiruchengode ROC.561/79/B1 dated 21/1/79.

2. R.D.O Sankari ROC B.465/79 dated 29/5/79.

- - - - - -

As per B.P.RT 2269/B.Board of Revenue, Madras, dated 25/5/73, I request you to drop the proposals for the redemption of land in S.No.335/5, 260/2 and 260/3 of Pallipalayam Village as the sale to caste Hindu took place after 53 years and as there are clear instructions from the Board in the B.P cited that there should not be any interference with the sale if the statutory period of 30 years of limitation has been expired.

16. Petitioner has not filed any application, before the Board of Revenue, for the delation of said conditions. Petitioner could have very well moved the Board of Revenue, for the delation of conditions, restraining sale to others. Perusal of the order thus shows that there is some provision, regarding a 30 year period, after which these lands have been permitted to be sold by relaxing the conditions restraining sale. Neither the learned counsel for the petitioner nor the respondent counsel has pointed out as to from where this 30 years period of limitation is provided.

17. Learned counsel for the petitioner places reliance on a judgment by a Bench of eight Hon'ble Judges of the Andhra Pradesh High Court, in Land Acquisition Officer-cum-RDO, Chevella Division, Hyderabad and Others Vs. Mekala Pandu and Others {2004 (3) CTC 19}. The question which arises for consideration in that case is whether the assignee to whom land had been assigned by the Government with the conditions are entitled to the payment of compensation when the assigned lands are resumed by the Government for public purpose. This decision does not apply to the facts of this case. Discussion in the said judgment is primarily as to the social object and the purpose as to why the land was assigned and after discussing, the Hon'ble High Court of Andhra Pradesh, came to the conclusion that assignees should be paid the full compensation. The fact that assignees are entitled to full compensation and the said Andhra Pradesh judgment did not mean that they become absolute owners of the land, who are not bound by the conditions of assignment.

18. Revenue Standing Order 15 (21) deals with Maintenance of assignment records, and the same reads as under:-

"Files of A and B Memoranda and the Register C should be maintained by the Village Administrative Officers, while a register in Form No.4 prescribed in the Taluk Manual should be kept in the Tahsildar's Office. It will be the duty of the Tahsildar to have the village file of Memorandum and C Register examined and compared with the taluk register, and to submit the latter at the jamabandi to the Jamabandi Officer, with an attestation under his signature duly certifying that it is correct. It will be the duty of jamabandi officers to examine how far the rules in this Standing Order have been observed.

19. Similarly, Revenue Standing Order 15 (29) deals with D Form - The Conditions of assignment and the same reads as under:-

All conditions subject to which land is assigned or sold should be specified in the 'D' Form or in the "Form or order of assignment by sale" printed in Appendix V. The forms of notice of sale "printed in the same Appendix should be used for notifying such sales."

20. Revenue Standing Order 15 (41) deals with Reservation of land for assignment to Scheduled Casts - and the same reads thus:-

(1) Powers of Revenue Divisional officers to set apart land:- In the case of villages which contain a considerable extent of land available for occupation, the Divisional Officer should, and in all other villages, he may, if he thinks it necessary in the interests of the Scheduled Castes, set apart a specific area for assignment for cultivation to the Scheduled Castes. Land occupied on sivayijama may be included in the reserved list, but if such lands have been cultivated by the same person for three or more years, whether continuously or otherwise, provided that they have not been cultivated by any other person in the intervening years. They should not be included in the list unless and until assignment has been offered to and refused by the sivayijamadar. When lands is placed in the list is wrongly occupied, action should be taken promptly to evict the occupation.

(2). The needs of scheduled castes to be considered when lands are transferred to assessed waste:- In the case of transfer of considerable areas of poramboke or unassessed land to assessed, as for example, when reserved forests are disforested, or grazing poramboke are transferred to ayan, particular care should be taken that the present and prospected needs of the scheduled castes are considered.

(3) Darkhasts how dealt with: Darkhast for land in such areas will be dealt with in accordance with the general rule above, but no application will be considered unless it is in the name, and genuinely on behalf of a member of the scheduled castes or of

an approved society acting on behalf of the scheduled castes, such as a missionary or philanthropic or co-operative society. Assignment to societies by Tahsildars require the previous approval of the Collector.

4 (i). Restrictions to be imposed on alienation:- Assignments whether of ordinary land or of valuable land in these areas, will be subject to the condition that the lands shall not be alienated to any person (whether a member of the scheduled castes or not) in any manner before the expiry of ten years from the date of grant not even thereafter, except to other members of these castes. However, in cases when the assignees offer to give such conditionally assigned lands to Gramdan Sarvodaya Co-operative Societies within 10 years from the date of assignment or even thereafter, the Tamil Nadu State Bhoodan Yagna Board is permitted to accepted such gift of lands. The Collectors of the Districts concerned are authorised to relax the conditions of assignment of lands on receipt of a joint request from the Bhoodan Board and the donor.

(ii). Special conditions when to be imposed:- In cases of assignment outside these areas, the special conditions should be imposed only when concessions are enjoyed by assignees as being members of the scheduled castes.

(iii). Power to re-enter in case of violation of conditions:- If the conditions of non alienation is violated or if the land ceases to be owned by the assignee or his legal heirs or (after the ten years) other members of their class, owing to sale by process of law or otherwise, or if default is made in the payment of the Government revenue on the dates prescribed, 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.

(iv). Hypothecation to Government:- This prohibition does not however apply to hypothecation of the land to a co-operative institution advancing loans on the security of lands or to a scheduled bank including the Nationalised Banks for affording credit to the agriculturists subject to the following conditions:-

(i). That loans for minor irrigation purposes should be contingent on ground water discipline.

(ii).The commercial banks can be allowed to lend for minor irrigation purposes on the security of the land assigned wherever Primary Land Development Banks are not able to lend for the purposes.

It does not also operate to debar payment of compensation if such lands are subsequently acquired under Land Acquisition Act. The power of resuming the grant and ordering re-entry referred to above will vest in the Revenue Divisional Officer in regard to valuable lands. Similar powers will be exercised by Tahsildar in regard to non-valuable lands. Both can exercise the powers subject to the limits (extent) prescribed.

Where this limit is to be exceeded the previous sanction of the Government should be obtained. Lands unsuitable for assignment for some reason or other may be removed from the reserved list. As in cases of resumption and re-entry, the Revenue Divisional Officer will be the authority to eliminate valuable lands from the reserved list, and in regard to non-valuable lands, the Tahsildar will exercise similar power. The officer eliminating the land from the reserved list may use his discretion in deciding whether a particular land is unsuitable for assignment.

5 (i). Concession regarding payment of assessment:- Assignment of lands to members of the scheduled castes the cultivation of which entails much labour, and expense will be free of assessment for a period of seven years from the date of the grant, but subject to the conditions that one-fifth of the extent assigned is brought under cultivation in each of the five years succeeding the grant. The exemption will be for seven years only and not for shorter periods. If however, an assignee whom the concession is granted fails to cultivate in accordance with the condition, assessment will be collected from the year in which the default occurs.

(ii). Procedure, in granting the concession:- Applications from members of the scheduled castes for lands (other than lands already in their sivaijama occupation) the cultivation of which in the opinion of the Tahsildar involves much labour and expense should be reported to the Divisional Officer for orders on the question whether the lands should be exempted from the payment of assessment for a period of seven years. The Tahsildar should without reference to the Divisional Officers dispose of all applications for assessed waste lands which are fit for cultivation and are therefore, not entitled to the concession. Against an order refusing the concession an appeal will lie to the Divisional Officer.

(iii). Form or order of assignment to be used: The special form or order to be used in the case of assignments to the scheduled castes is printed in Appendix V as "Special Form D".

(iv). Assignment of lands to Scheduled Tribes:- In the matter of assignment of lands for cultivation purposes the concession enjoyed the Scheduled Castes as enumerated in R.S.O.No.15-41, are extended to Scheduled Tribes also, subject to the modification that the maximum extent of land to be assigned to the Scheduled Tribes, will be 1-21-15 hectare of dry land, and 60.5 acres of wet land in hilly tracts, if sufficient lands are available. Any limitations imposed on Scheduled Castes, along with the concessions, are applicable to the Scheduled Tribes also. The form of order of assignment to be used, is the same as for the scheduled castes, mentioned in clause (iii) above, which should be adopted with suitable modifications, wherever necessary.

21. A perusal of the above mentioned would show that if the conditions to which the land is assigned, is violated and the same can be resumed. Contention of the petitioner that respondents could not have initiated proceedings for redemption after twelve years, cannot be accepted. It is settled in law that any sale in violation of the contentions of assignment is void (Refer Manchegowda Vs. State of Karnataka – AIR 1984 SC – 1151). The Hon'ble Supreme Court, in the said judgment had observed as under:-

"39. As regards the nature of the right of the transferee and the power to resume the land, without process of a long litigation, the Supreme Court, at Paragraphs 18, 19 and 21, held as follows:

"18. The transferees of the granted lands from the original grantees, acquired the lands improperly and illegally in contravention of the condition imposed on such transfers. Such transferees must have been aware and must in any event be deemed to have been aware of the condition regarding the prohibition on transfer and they cannot be considered to be bona fide transferees for value. Such persons acquired in the granted lands only a voidable title which was liable to be defeated and possession of such lands could be resumed from such transferees. Such a person who only acquires a defeasible legal right cannot make a grievance of any violation of Article 19(1)(f) of the Constitution, when the defeasible legal right is, in fact, defeated by appropriate legal action or by any suitable provision enacted in an Act passed by the competent Legislature. It may further be noted that in most cases such transferees have after the transfer, which is liable to be avoided in accordance with law, enjoyed for a sufficiently long period the benefits of lands transferred to them before the lands could be recovered from them. Article 19(1)(f), therefore, did not invalidate Section 4 of the Act.

19. We have earlier noticed that the title which is acquired by a transferee in the granted lands, transferred in contravention of the prohibition against the transfer of the granted lands, is a voidable title which in law is liable to be defeated through appropriate action and possession of such granted lands transferred in breach of the condition of prohibition could be recovered by the grantor. The right or property which a transferee acquires in the granted lands, is a defeasible right and the transferee renders himself liable to lose his right or property at the instance of the grantor. We have further observed that by the enactment of this Act and particularly Section 4 and Section 5 thereof, the Legislature is seeking to defeat the defeasible right of the transferee in such lands without the process of a prolonged legal action with a view to speedy resumption of such granted lands for distribution thereof to the original grantee or their legal representatives and in their absence to other members of the Scheduled Castes and Scheduled Tribes communities. In our opinion, this kind of defeasible right of the transferee in the granted lands cannot be considered to be property as contemplated in Articles 31 and 31-A. The nature of the right of the transferee in the granted lands on transfer of such lands in breach of the condition of prohibition relating to such transfer, the object of such grant and the terms thereof, also the law governing such grants and the object and the scheme of the present Act enacted for the benefit of the weaker sections of our community, clearly go to indicate that there is in this case no deprivation of such right or property as may attract the provisions of Articles 31 and 31-A of the Constitution.

21. With the enactment of the Act, the voidable right or title of the transferee in the granted lands becomes void and the transferee is left with no right or property in the granted lands. The lands which are sought to be recovered from the transferees of the granted lands are lands in which the transferees cease to have any interest or property. The effect of the provisions contained in

Sections 4 and 5 of the Act is that the defeasible right or interest of the transferees in the granted lands is defeated and the voidable transaction is rendered void. We have earlier held that it is clearly open to the Legislature to declare void the transfers of granted lands in contravention of the condition of prohibition on transfer. As soon as such transfers are rendered void by virtue of the provisions of the Act, the transferee does not have any right in the granted lands so transferred, and possession is sought to be recovered of such lands in which the transferees have lost their right and interest. Therefore, the question of acquisition of any property by the State or any modification or extinguishment of right of property does not really arise and Article 31-A cannot be applied. We are, therefore, of the opinion that there is no infringement of Article 31 and Article 31-A of the Constitution. We may further observe that this aspect has been carefully and elaborately considered by the learned Judges of the High Court while holding that Articles 31 and 31-A are not violated."

22. Learned counsel for the Government has not produced the registers and 'D' form which should contain the restrictions. In the absence of any material before this Court, this Court cannot come to a conclusion that there are conditions that restrain the assignees from selling the property. Order of the second respondent and first respondent also not relied as to whether they perused the registers and the conditions that were attached to the assignment which should have been specified in "D" form. The second respondent has shown that it has only accepted the recommendation of the Tahsildar without looking at the documents. There is no discussion as to whether the Officer has himself to looked into the conditions restraining alienation. It only proceeds on the ground that respondent has not given their objection. There is also nothing in the order of the first respondent as to whether he has seen the register and as to whether the conditions contained in the assignment deed have been violated.

23. Since the respondent State has not produced the relevant register and documents to demonstrate the existence of such condition, the orders of respondent Nos.1 & 2 cannot be sustained.

24. In the result, writ petition is allowed and the impugned orders of are set aside, and the case is remanded back to the second respondent, who is directed to look into the records, and the condition restraining alienation. The respondent No.2 is directed to pass appropriate orders, within a

period of eight weeks, from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

mvs/pkn.

To

1. The District Revenue Officer
   Collectorate
   Namakkal District.

2. The Revenue Divisional Officer
   Tiruchengode Taluk
   Tiruchengode
   Namakkal District.

3. The Tahsildar
   Tiruchengode Taluk
   Tiruchengode
   Namakkal District.

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.59179

W.P.No.11968 of 2009

RSV(CO)

RRS(21/08/2019)