

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered On: 01.07.2019

Reserved On: 25.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.18380 of 2008

S.Veera Raghavan

... Petitioner

Vs.

- 1.The Commissioner and Special Commissioner of Land Administration,
Chepauk,
Chennai - 600 005.
- 2.The District Collector,
Kancheepuram District.
- 3.The Joint Commissioner (Land Reforms),
Villupuram.
- 4.The Asst. Commissioner cum Assigning Officer (Land Reforms),
Villupuram.
- 5.The Special Tahsildar (Land Reforms),
Tambaram Taluk,
Kancheepuram District.
- 6.The Revenue Divisional Officer (Land Reforms),
Chengalpattu Taluk,
Kancheepuram District.
- 7.Vasantha
- 8.Bhoopathi (Deceased)
- 9.N.Mohan
- 10.Raman
(Respondents 9 and 10 impleaded
as per order dated 23.04.2015 made
in M.P.No.1/2012)
- 11.Lalitha
- 12.Lidiya
- 13.Baby
- 14.Revathy

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15.Rani
16.Prabu @ Kirubakaran
17.Deisy Kalaiselvi

(Respondents 11 to 17 substituted
as legal heirs of the deceased
eighth respondent as per the order
of this Court dated 25.06.2019
made in W.M.P.No.22931 of 2018)

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the entire records pertaining to the impugned Notice vide Rc.No.A1/761/2008 dated 14.07.2008 issued by the 3rd respondent and quash the same and consequently direct the respondents forbearing them from anyway disturbing the petitioner's peaceful possession and enjoyment of the property having an extent of 1.21 acres comprised in Survey No.59/02 in 23, Vengadamangalam Village, Chengalpattu Taluk, Kancheepuram District consequently not to dispossess the petitioner without due process of law and allow the writ petition.

For Petitioner : Mr.V.Raghavachari
for Mr.Ma.Pa.Thangavel
For Respondents : Mr.J.Ramesh
Additional Government Pleader
for R1 to R6
Mr.G.Rajan for R7
Mr.K.Balu for R8
Mr.T.Easwaradhas for R9 and R10

O R D E R

The petitioner has filed this petition seeking issuance of Writ of Certiorarified Mandamus to call for the entire records pertaining to the impugned Notice vide Rc.No.A1/761/2008 dated 14.07.2008 issued by the third respondent and to quash the same and to consequently direct the respondents forbearing them from anyway disturbing the petitioner's peaceful possession and enjoyment of the property having an extent of 1.21 acres comprised in Survey No.59/02 in 23, Vengadamangalam Village, Chengalpattu Taluk, Kancheepuram District, consequently not to dispossess the petitioner without due process of law.

2.The case of the petitioner is that the petitioner belong to Scheduled Caste Community and he is a poor, landless

agricultural labourer. The petitioner worked as agricultural labourer to one Landlady Deivayanai Ammal for so many years. Out of the hard earned money, the petitioner purchased agricultural lands to an extent of 1 Acre 88 cents in S.No.59/2 in 23, Vengadamangalam Village, Chengalpattu Taluk, Kancheepuram District, for a valuable sale consideration of Rs.56,400/- from one Egan S/o.Murugan by a registered sale deed dated 17.07.1989 and registered as Document No.2108 of 1989 in Book No.1 on the file of the Sub-Register, Guduvancheri.

3.It is the further case of the petitioner that from the date of purchase, the petitioner was in continuous possession of the said lands. Thereafter, the Deputy Zonal Tahsildar issued patta in Patta No.103 for the said lands. Subsequently, out of the total extent of 1.88 Acres, the petitioner sold an extent of 0.45 cents of land to one Ponnammal by a registered Sale Deed in Document No.5404/2004 dated 04.10.2004 and further sold an extent of 0.22 cents to one Mahalakshmi by a registered Sale Deed in Document No.5225/2006 dated 06.03.2006 and the petitioner is in possession of the remaining 1.21 Acres of land.

4.It is the further case of the petitioner that patta, chitta and adangal documents issued by the Deputy Zonal Tahsildar, Chengalpattu stands in the petitioner's name. While being so, during March, 2008, the petitioner came to know that the lands to an extent of 1.00 Acres and 0.88 cents respectively comprised in S.No.59/2 were assigned to one Vasantha and Bhoopathy/ respondents 7 and 8, by proceedings of the Assistant Commissioner (Land Reforms), Villupuram dated 11.06.1993 without any notice or opportunity of personal hearing to the petitioner.

5.It is the further case of the petitioner that immediately, the petitioner submitted his detailed representation dated 20.03.2008 to the respondents 1 to 6 for cancellation of the alleged assignment of the said lands in the name of Vasantha and Bhoopathy and to confirm his ownership. Since there was no reply, the petitioner sent objection petition on 15.04.2008 enclosing all relevant documents to prove the ownership of the above said lands and the same was received by the respondents 1 to 6, however, no order was passed by any of the Authority.

6.It is the further case of the petitioner that the third respondent without considering the petitioner's representation and with malafide intention, colluded with the respondents 7 and 8, issued the notice dated 28.04.2008 calling upon the petitioner for enquiry along with documents to prove the ownership of the above said lands and fixing the date of hearing on 19.05.2008. The petitioner participated in the enquiry and also produced the relevant documents with regard to the ownership of the said lands before the third respondent.

However, the third respondent issued the impugned notice dated 14.07.2008 stating that an extent of 4.38 Acres in S.Nos.57/3 and 59/2 of Vengadamangalam Village were assigned in favour of the assignees vide proceedings dated 11.06.1993 and directed them to remit the land value in the Government Treasury for the lands assigned and produce Challan in original for taking further action, against which the present writ petition has been filed.

7.The learned counsel for the petitioner would submit that the petitioner purchased the above said land in the year 1989 after ascertaining that the lands were assigned in favour of the petitioner's vendor namely, Egan vide order dated 12.03.1975. Even bare perusal of the assignment order makes it clear that Egan is the assignee and in the capacity of assignee, he landed the property and the petitioner purchased the above said land, which is legally valid.

8.The learned counsel for the petitioner would further submit that without considering the above said assignment, without the knowledge of the petitioner and without issuing any notice to the petitioner, assigning the lands in favour of the respondents 7 and 8 in the year 1993, is impermissible one and liable to be cancelled. He would further submit that without considering the representation made by the petitioner immediately after coming to know about the same and calling upon the respondents 7 and 8 to pay the land value in the Government Treasury is legally impermissible and liable to be set aside.

9.In support of his contentions, the learned counsel for the petitioner relied upon an un-reported judgment of the Division Bench of this Court dated 08.01.2018 made in W.A.No.2460 of 2011 (C.Raman and others Vs. The Secretary to the Government, Revenue Department, Secretariat, Fort St.George, Chennai - 9 and others), the relevant portion of which reads as follows:

"7.The Land Commissioner passed the order on 24 June, 1999. Necessarily, the date of the order has to be excluded for the purpose of computing the period of limitation. It is not as if the appellants were present before the Land Commissioner when the order in question was passed. Even according to the Land Commissioner, the order was passed ex parte after taking steps to serve notice on the appellants. Therefore, it is evident that the appellants were not aware of the order as on date on which it was passed. The revision petition was received by the Government on 26 June, 2000. In view of the fact that the order was passed on 16

August, 2000 and that too in the absence of the appellants, the Government was not correct in rejecting the revision on the ground that it was received belatedly. We are therefore of the view that the matter requires consideration by the Government."

10.The respondents 1 to 6 have not yet filed a counter affidavit. However, the learned Additional Government Pleader produced a letter dated 06.08.2008 from the Joint Commissioner (Land Reforms), Villupuram addressed to the Additional Government Pleader, High Court, Chennai, wherein, it is stated that an extent of 2.50 Acres in S.No.57/3B and 1.88 Acres in S.No.59/2A1 was declared as surplus under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 and assigned in the year 1975 to landless agricultural labours under the Tamil Nadu Land Reforms (Disposal of Surplus Lands) Rules, 1965. However, the assigned lands were ordered to be resumed to the Government in the year 1979.

11.The letter dated 06.08.2008 would further state that since the assignees had violated the conditions of the assignment as stipulated, the above extent of 4.38 Acres was reassigned to five persons vide proceedings dated 11.06.1993. The petitioner was one among the applicants for assignment and his request was rejected on the ground that he did not appear for the statutory enquiry conducted under Rule 8 (3) of the Tamil Nadu Land Reforms (Disposal of Surplus Lands) Rules, 1965.

12.The letter dated 06.08.2008 would further state that during the course of enquiry that the petitioner was enjoying the lands in S.No.59 and he himself admitted about the selling away of a portion of the land to a third party. The lands are vested with the Government under Section 18 (4) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961. The petitioner has no right to sell away any land which were vested with the Government, as he is only an encroacher.

13.The letter dated 06.08.2008 would further state that if the petitioner is aggrieved by the orders of assignment dated 11.06.1993, he should have filed an appeal or revision before the appropriate forum as contemplated under the Tamil Nadu Land Reforms (Disposal of Surplus Lands) Rules, 1965. The petitioner has not chosen to seek remedy before the proper forum.

14.The learned Additional Government Pleader would submit that the petitioner without filing an appeal or revision before the appropriate forum as contemplated under the Tamil Nadu Land Reforms (Disposal of Surplus Lands) Rules, 1965 and approaching this Court and challenging the consequential notice is un-

sustainable. Accordingly, he prayed for dismissal of the writ petition.

15.The seventh respondent has filed a counter affidavit wherein it is stated that the seventh respondent is a poor widow belonging to the Scheduled Caste. A vacant land admeasuring to an extent of 1.00 Acre was assigned to her in Survey No.5/2, situated at Vengadamangalam Village, Chengalpattu, Kancheepuram District, vide proceedings of the fourth respondent dated 11.06.1993. However, the said proceedings was not allowed to reach her due to the collusion with some Officials working in the Office of the respondents 3 and 4 and the petitioner. The petitioner's brother's son is the Panchayat President in Vengadamangalam Village where the property is situated and is having lot of influence with the respondents 3 and 4. The petitioner is illegally occupying the said land along with 0.88 Acres comprised in the same survey number by fabricating sham and nominal sale deeds, mortgage deeds etc.

16.The learned counsel appearing for the seventh respondent would submit that once the assignment was cancelled against the vendor of the petitioner, even the vendor has no right to alienate the property. In the present case, the petitioner without challenging the cancellation proceedings is challenging the proceedings assigning lands in favour of the respondents 7 and 8 by filing writ petition before this Court, which is unsustainable one and hence, the writ petition is liable to be dismissed.

17.In support of his contentions, the learned counsel appearing for the seventh respondent relied upon the decision of the Hon'ble Apex Court reported in (2010) 2 MLJ 713 (SC) (Edukanti Kistamma (Dead) through LRs and others Vs. S.Venkatareddy (Dead) through LRs and others), the relevant portion of which reads as follows:

"20.It is a settled legal proposition that challenge to consequential order without challenging the basic order/ statutory provision on the basis of which the order has been passed cannot be entertained. Therefore, it is a legal obligation on the part of the party to challenge the basic order and only if the same is found to be wrong, consequential order may be examined (vide P.Chithranja Menon and Others Vs. A.Balakrishnan and Others, AIR 1977 SC 1720 : (1977) 3 SCC 255; H.V.Pardasani v. Union of India and Others, AIR 1985 SC 781 : (1985) 2 SCC 468; and Government of Maharashtra and Others v. Deokars Distillery, AIR 2003 SC

1216 : (2003) 5 SCC 669."

18.The learned counsel appearing for the respondents 9 and 10 would submit that in the present case, the dispute is only in respect of the land situated in S.No.59/2 in 23, Vengadamangalam Village, Chengalpattu Taluk, Kancheepuram District and assigning of the land in S.No.57/3 of Vengadamangalam Village is not the subject matter and hence, the land in S.No.57/3 of Vengadamangalam Village may be excluded in the present litigation. Accordingly, he prayed for appropriate orders.

19.Heard the submissions made on either side and perused the materials available on record.

20.The issue involved in the present case is whether the petitioner was right in challenging the consequential proceedings without challenging the cancellation of assignment against the vendor and whether the subsequent assignment in favour of the respondents 7 and 8 is permissible one.

21.In the present case, the petitioner purchased the property from one Egan S/o.Murugan by a registered Sale Deed dated 17.07.1989 and registered as Document No.2108 of 1989 in Book No.1 on the file of the Sub-Register, Guduvancheri. Thereafter, the Deputy Zonal Tahsildar issued patta in Patta No.103 for the said lands. Subsequently, out of the total extent of 1.88 Acres, the petitioner sold an extent of 0.45 cents of land to one Ponnammal by a registered Sale Deed in Document No.5404/2004 dated 04.10.2004 and further sold an extent of 0.22 cents to one Mahalakshmi by a registered Sale Deed in Document No.5225/2006 dated 06.03.2006 and the petitioner is in possession of the remaining 1.21 Acres of land.

22.However, on perusal of letter dated 06.08.2008 from the Joint Commissioner (Land Reforms), Villupuram addressed to the Additional Government Pleader, High Court, Chennai, reveals that an extent of 2.50 Acres in S.No.57/3B and 1.88 Acres in S.No.59/2A1 was declared as surplus under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 and assigned in the year 1975 to landless agricultural labours under the Tamil Nadu Land Reforms (Disposal of Surplus Lands) Rules, 1965. However, the assigned lands were ordered to be resumed to the Government in the year 1979. Since the assignees had violated the conditions of the assignment as stipulated, the above extent of 4.38 Acres was reassigned to five persons vide proceedings dated 11.06.1993. The petitioner was one among the applicants for assignment and his request was rejected on the ground that he did not appear for the statutory enquiry conducted under Rule 8 (3) of the Tamil Nadu Land Reforms (Disposal of Surplus Lands)

Rules, 1965.

23.The said fact is also confirmed from the communication dated 19.10.2012 from the Assistant Commissioner (Land Reforms), Viluppuram addressed to the ninth respondent/ information obtained by the ninth respondent under the Right To Information Act, particularly, in serial nos.3 and 4 of the column, wherein, it is stated that the lands declared as surplus in respect of S.No.57/3B to an extent of 2.50 acres and in S.No.59/2A1 to an extent of 1.88 Acres were assigned to one Murugapillai and Egan in the order of the Assistant Commissioner (L.Ref), Kancheepuram in the Proceedings No.MRIV/204/70 dated 12.12.1975. The above said assignment has been cancelled in the orders of the Assistant Commissioner (L.Ref), Kancheepuram in periodical No.123/70J dated 04.02.1979 since the assigned lands were not in possession of the assignees and the lands were cultivated by Nagulan and Veeraraghavan in S.No.57/3 and S.No.59/2 respectively.

24. In the said communication dated 19.10.2012, it is also stated that the Assistant Commissioner (L.Ref), Viluppuram has assigned the same land in his proceedings dated 11.06.1993 to the following persons:

N.Mohan	S.No.57/3B(P)	0.75 Acres
Gunasundari	S.No.57/3B(P)	1.00 Acres
Vasanth	S.No.59/2A1(P)	1.00 Acres
Pathipooranan	S.No.57/3B(P)	0.75 Acres
Boopathi	S.No.59/2A1(P)	0.88 Acres

Thereafter the impugned notice dated 14.07.2008 came to be issued stating that an extent of 4.38 Acres in S.Nos.57/3 and 59/2 of Vengadamangalam Village were assigned in favour of the assignees/ respondents 7 and 8 vide proceedings dated 11.06.1993 and directed them to remit the land value in the Government Treasury for the lands assigned and produce Challan in original for taking further action.

25.In the said communication dated 19.10.2012, it is also stated that since Paripooranam died, the land value was remitted by her legal heir one Raman on 06.08.2008. Since the petitioner filed this writ petition and since this Court has granted an order of interim stay, patta in form 'F' was not issued.

26.From the said communication dated 19.10.2012, it is known that the assignment was cancelled in the year 1979 and subsequently the lands were assigned to the respondents 7 and 8 vide proceedings dated 11.06.1993. The petitioner without challenging the above proceedings in this writ petition is challenging only the consequential notice. Without challenging the original proceedings of cancellation of assignment, challenging the assignment of land in favour of respondents 7

and 8 is impermissible. Hence, I am not inclined to grant any relief to the petitioner.

27. On a perusal of the un-reported judgment of the Division Bench of this Court dated 08.01.2018 made in W.A.No.2460 of 2011 (C.Raman and others Vs. The Secretary to the Government, Revenue Department, Secretariat, Fort St.George, Chennai - 9 and others), the Division Bench has held that the date of the order has to be excluded for the purpose of computing the period of limitation. The impugned order in the said appeal was passed ex parte after taking steps to serve notice on the appellants therein. Therefore, the appellants therein were not aware of the order as on date on which it was passed. On that ground the impugned order therein was set aside and remanded back to the Authorities.

28. However, in the present case, the petitioner purchased the property in the year 1989. However, an extent of 2.50 Acres in S.No.57/3B and 1.88 Acres in S.No.59/2A1 was declared as surplus under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 and assigned in the year 1975 to landless agricultural labours under the Tamil Nadu Land Reforms (Disposal of Surplus Lands) Rules, 1965. Thereafter, the assigned lands were ordered to be resumed to the Government in the year 1979. The provisions of Tamil Nadu Land Reforms (Disposal of Surplus Lands) Rules, 1965 makes it clear that the land vest with the Government and if any condition is violated, the Government is entitled to cancel the assignment.

29. In the present case, since the assignees/ vendor of the petitioner had violated the conditions of the assignment as stipulated, the above land was reassigned to five persons vide proceedings dated 11.06.1993. After cancellation of assignment, the vendor of the petitioner conveyed the property in favour of the petitioner is not valid.

30. The writ petition is accordingly dismissed. No costs.

sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

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To

- 1.The Commissioner and Special Commissioner of
Land Administration,
Chepauk,
Chennai - 600 005.
 - 2.The District Collector,
Kancheepuram District.
 - 3.The Joint Commissioner (Land Reforms),
Villupuram.
 - 4.The Asst. Commissioner cum Assigning Officer (Land Reforms),
Villupuram.
 - 5.The Special Tahsildar (Land Reforms),
Tambaram Taluk,
Kancheepuram District.
 - 6.The Revenue Divisional Officer (Land Reforms),
Chengalpattu Taluk,
Kancheepuram District.
- +1cc to M/s.Ma.P.Thagavel, Advocate, sr.no.54963
+1cc to Mr.G.Rajan, Advocate, sr. no.54628
+1cc to Mr.T.Easwaradhas, Advocate, sr. no.54212
+1cc to The Government Pleader, sr.no.54752

W.P.No.18380 of 2008

RK(CO)
RMP(09/07/2019)

सत्यमेव जयते

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