

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.19313 of 2009
and M.P.Nos.2 & 3 of 2009

1.V.Kuruvammal

2.K.G.Subramanian

3.G.Edward Selvam

4.T.N.Krubendra Babu

5.K.Muruganandam

6.A.Natarajan

7.N.Sivagami

8.K.Srinivasan ... Petitioners

Petitioners 2 to 8 represented by their
registered Power of Attorney
Thiru Vairamuthu

-vs-

1.The Special Commissioner and
Commissioner of Land Administration,
Chepauk, Chennai-600 005.

2.The District Revenue Officer,
Tuticorin District. .. Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India, praying for the issue of a Writ of
Certiorari calling for the records of the first respondent in
Proceedings ROC.F3/39961/04 dated 20.05.2009 and quash the same.

For Petitioners:: Mr.C.Prakasam

For Respondents:: Mr.K.Ravikumar,
Additional Government Pleader

ORDER

The writ petition has been filed challenging the correctness of the Proceedings ROC.F3/39961/04 dated 20.05.2009 issued by the Special Commissioner and Commissioner of Land Administration, Chennai, the first respondent herein.

2.Learned counsel appearing for the petitioners submitted that petitioners 2 to 8 are represented by their registered Power of Attorney one Vairamuthu. According to the learned counsel appearing for the petitioners, originally a land measuring to an extent of 1.84 acres in Survey No.553/1 at Pandavarmangalam Village, Kovilpatti Taluk, Tuticorin District, was assigned in favour of one Murugesu Pillai under Ex-Serviceman Quota by the Government in the year 1957 on condition that the assignee should not sell the entire extent of land for the next ten years i.e. from the date of assignment and should have cultivated the land within three years. However, the original assignee Murugesu Pillai, after receiving the assignment order dated 30.06.1957, sold the property in favour of one Kanakaraj Samuel in the year 1969 after the period of ten years from the date of assignment. The said Kanakaraj Samuel also sub-divided the entire extent of 1.84 acres of land and sold the same as residential flats to 11 persons and the petitioners are one among those 11 persons, who have purchased the above property for valuable consideration. Since the afore mentioned immovable property belongs to the said Murugesu Pillai by way of assignment order under Ex-serviceman Quota by the Government, a show cause notice dated 24.10.1979 was issued by the District Revenue Officer, the second respondent herein stating that the assignment is liable to be cancelled, as the original assignee has contravened the conditions of assignment. Thereafter, the said Murugesu Pillai submitted a reply on 03.12.1979 stating that the assigned land was reclaimed by him. Subsequently, the said land was proposed by the first respondent to be assigned for house less people by proceedings dated 12.03.1987. However, a personal hearing dated 22.05.1987 was given by the first respondent in which the said Murugesu Pillai submitted a representation for grant of patta and contended that the conditions of assignment was not contravened.

3.According to the learned counsel appearing for the petitioners, thereafter, when the purchasers filed Writ Petitions in W.P. Nos.12844 of 1988 etc. batch before this Court, by order dated 29.09.1995, this Court dismissed the same holding that the order of cancellation of assignment issued in favour of Murugesu Pillai had been sent to him and the same was not challenged and therefore, the order of cancellation of assignment has become final. Thereafter, the first petitioner preferred an Appeal as against the order of the District Revenue Officer, the second respondent herein cancelling the assignment and by order dated 15.06.1999, the Special Commissioner and

Commissioner of Land Administration, the first respondent herein setting aside the order of the second respondent, remitted the same to the second respondent for fresh consideration. However, the second respondent passed final orders on 06.03.2002 confirming the cancellation of assignment order. Aggrieved by the same, the first petitioner preferred a Revision Petition before the first respondent, in which the orders of the Revenue Divisional Officer, Kovilpatti dated 16.07.1981 has been cancelled holding that as per the proceedings of the Thasildar in Na.Ka.A1/6685/57 dated 30.06.1957, the said Murugesu Pillai was assigned land by the Government.

4.Learned counsel appearing for the petitioners submitted that subsequently, the petitioners have approached the second respondent by several representations to implement the order of the first respondent. As there was no response from the second respondent, the petitioners moved a writ petition in W.P. No.11962 of 2004 before this Court seeking a direction to the Thasildar, Tuticorin District to consider their representation. This Court by order dated 29.04.2004 directed the respondents to pass orders within a period of twelve weeks. Despite the said order, the respondents have not come forward to comply with the order of this Court to dispose of the representation. Therefore, the petitioners have filed Contempt Petition No.766 of 2004 before this Court for non compliance of the said order. Subsequent to the filing of the Contempt Petition, the first respondent set aside the order dated 29.07.2003 reopening the revision proceedings. Aggrieved by the same, the petitioners filed a writ petition in W.P. No.28435 of 2004. This Court by order dated 29.09.2008 setting aside the order dated 17.09.2004, has allowed the writ petition and remitted back the matter to the first respondent for consideration of the matter afresh, but the first respondent passed the above impugned order dated 20.05.2009 confirming its order dated 17.09.2004, which was set aside by this Court. Aggrieved by the same, the petitioners are before this Court.

5.According to the learned counsel appearing for the petitioners, all the petitioners are bonafide purchasers and they were unaware of the implication and the mis-representation made by the original assignee and in any event, these petitioners, being subsequent purchasers, have purchased the property, after the expiry of ten years and therefore, the cancellation of assignment order passed in favour of the original assignee cannot stand. It is an admitted case that the original assignee was issued with the assignment order on 30.06.1957 and sold the same in the year 1969. Therefore, the original assignee has violated the conditions of assignment by assigning the property by way of sale within ten years time is wholly untenable and unjustified.

6.Reiterating the averments made in the counter affidavit, learned Additional Government Pleader appearing for the respondents would submit that it is not in dispute that the original assignee Murugesan Pillai was issued with the assignment order dated 30.06.1957 for an extent of 1.84 acres of dry land in S.No.553/1 and he was issued with 'D' Form patta on 01.11.1961. While reviewing past cases of conditional Assignment in 1979, it was noticed by the Special Staff appointed as per G.O. Ms. No.804 Revenue Department dated 09.04.1979 that the land was not brought into cultivation within the period of three years from the date of assignment and it is lying 'virgin waste' and after sub dividing the land, the assignee has sold the land within a period of ten years from the date of assignment and thus, the assignee violated the conditions of grant. Therefore, the assignment was cancelled by the Revenue Divisional Officer, Kovilapatti for the violation of conditions and the same has been upheld by the Special Commissioner and Commissioner of Land Administration in the impugned order dated 20.05.2009, which needs no interference.

7.According to the learned Additional Government Pleader, since the earlier order was passed on the mis-representation and suppression of facts, i.e. mortgage and sale, the first respondent has passed the revised order dated 17.09.2004, in which the orders of the Revenue Divisional Officer, Kovilpatti was upheld and a direction was issued to resume possession of land in question and dispose of the land by considering the application from other eligible persons. Pursuant thereto, the possession was taken immediately since the major portion of the land is lying vacant. The first respondent, on the Revision Petition filed by the petitioners, having conducted enquiry, after giving due opportunity, has passed orders on 20.05.2009, dismissing the same and upholding the orders of his predecessor, namely, erstwhile Special Commissioner and Commissioner of Land and Administration. As the land was assigned to the assignee on conditions prescribing crucial date of assignment, the date of mortgage and date of sale have been rightly considered with acceptable evidence with the original assignee and after receiving the assignment order dated 13.06.1957, between 30.06.1957 and 01.11.1961, the above assigned land was mortgaged by the assignee on 14.09.1960 vide document No.2021/60 and sold by him to an extent of 10 cents of lands on 04.11.1960 vide document No.2428/60. As one of the conditions is that the land assigned could not be sold or mortgaged within ten years from the date of assignment, the assignee has mortgaged and sold the land in question within a period of ten years violating the conditions in the assignment order. Therefore, the assignment was cancelled by the Revenue Divisional Officer, Kovilpatti for the violation of conditions and therefore, the impugned order cannot be questioned.

8.I also agree with the reply given by the learned Additional Government Pleader appearing for the respondents. A perusal of the impugned order clearly shows that the original Assignee Mr.K.Murugesan Pillai was issued with an assignment order dated 30.06.1957 and immediately within three years, he has mortgaged the entire land to one Venkatasamy for Rs.200/- as per registered Document No.2021/60 dated 14.09.1960. Secondly, he has also sold away 10 cents of vacant land to one Muruganandampillai for Rs.50/- on 04.11.1960 as per registered document No.2428/60 and these facts have been rightly gone through by the respondents. Therefore, this Court finds no infirmity in the impugned order rejecting the case of the petitioners. Accordingly, the writ petition fails and the same is dismissed. Consequently, connected W.M.Ps are closed. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

vga

To

1.The Special Commissioner and
Commissioner of Land Administration,
Chepauk, Chennai-600 005.

2.The District Revenue Officer,
Tuticorin District.

+1 CC to Mr.C.Prakasam, Advocate sr 24882

+1 CC to Govt. Pleader sr 25114

W.P.No.19313 of 2009
and M.P.Nos.2 & 3 of 2009

MR (CO)
SP (12/04/2019)

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