

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.01.2019

CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.26677 of 2005
and W.P.M.P.Nos.29102 & 29103 of 2005

G.Anilkumar

... Petitioner

Vs.

The State of Tamil Nadu, rep. by its
Secretary to Government,
Revenue Department,
Fort St. George, Chennai - 600 009.

... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the respondent pertaining to G.O.Ms.No.352, Revenue NM 3(2) Department, dated 07.06.2005 and quash the same in so far as the petitioner is concerned and consequently direct the respondent to assign the land in S.Nos.3489/A and 3489/B of Kalkulam Village, Kanyakumari District in favour of the petitioner.

For Petitioner : M/s.Selvi George

For Respondent : M/s.R.Janaki
Additional Government Pleader

O R D E R

The Government Order issued in G.O.(Ms)No.352, Revenue Department, dated 07.06.2005 is sought to be quashed and a further direction is sought for to direct the respondent to assign the land in S.Nos.3489/A and 3489/B of Kalkulam Village, Kanyakumari District in favour of the writ petitioner is also sought for in the present writ petition.

2.The petitioner claims that he is in joint possession with Thiru.G.Madan Mohan, Thiru Kesava Chandran, Ms.Giriya and Ms.Leela Jayakrishnan, of the property having an extent of 89.96 acres comprised in S.Nos.3489/a and 3489/B of Kalkulam Village in Kanyakumari District. The title of the said property originally belonged to Royal family of Travancore. The said property was leased to late Krishnan Velayudhan Pillai on 10.09.1038 ME (1863 AD) under a pidipadu without providing any

time limit at the rate of 420 panams per year. The above said Krishnan Velayudhan Pillai possessed the property till his death. On 24.12.1094 ME (1919 AD) the lease of pidipadu was renewed by the Government in favour of Kesava Pillai, Velayudhan Pillai according to Marumakkathayam law fixing at the same rate, i.e. 420 panams (i.e. Rs.25/-) before that 1.33 acres had been acquired by the Government of Tamil Nadu and compensation has also been paid to the predecessors. After the renewal, there was a kuthakkapatam for 12 years in 1944 to the predecessors of Mr.K.K.Kesavan Pillai. It was again renewed by the Government in 1956 for a further period of 12 years and the rent had already been raised to Rs.2526/- per year. Mr.K.K.Kesavan Pillai died on 08.01.1968 and after his death, his wife, namely, Tmt.Gowrikutty Amma came into possession of the said property and she was given lease for 5 years with effect from 29.10.1968. Tmt.Gowrikutty Amma died on 19.07.1971 and thereafter the rights devolved on her sister's daughters, namely, Premamayi Devi and Leelavathi Amma. After the death of the said Leelavathi Amma and Premamayi Devi, the petitioner, the legal heirs of Leelavathi Amma came into possession and enjoyment of the property. The Commissioner and Secretary to Government, Revenue Department in a memorandum issued a show cause notice stating that why Smt.Leelavathi Amma should not be evicted from the property to an extent of 89.95 acres in S.Nos.3489/A and 3489/B in Kalkulam Village, Kanyakumari District. In the said show cause notice, it is admitted that the lease was granted to the predecessors of the writ petitioner. Based on such a right, the writ petitioner now claim that the said property to an extent of 89.95 acres must be assigned to them. Since the claim of the writ petitioner were not considered by the respondent, the petitioner is constrained to move the present writ petition.

3.The impugned order issued by the respondent in G.O.(Ms). No.352, Revenue Department, dated 07.06.2005 states that the earlier assignment/lease granted was cancelled. Thus, the petitioner states that the cancellation done by the Government is not in accordance with law. The petitioner along with others were in joint possession of the property for long years and their predecessors were also enjoying the property for many number of years. Thus, they are entitled to continue in possession and enjoyment of the property by virtue of their long possession. Therefore, the Government Order passed cancelling the assignment is liable to be scrapped.

4.The learned Additional Government Pleader appearing on behalf of the respondent states that the claim of the writ petitioner is untenable and the petitioner is not entitled for any such assignment, more specifically, in respect of the vast extent of land measuring 89.95 acres. Relying on the counter affidavit filed on behalf of the respondent, it is contended that 89.96 acres of land in old Survey Nos.3489/A and 3489/B of

Kalkulam Village in Kanyakumari District is a Government poramboke from time immemorial. The entire area is surrounded by an ancient fortress named "Udayagiri Fort". Inside the fortress, there is a tomb of the Dutch captain named Delenoy who has served as a General to the Maharaja of Travancore. An extent of 7.37.00 hectares in the above land was leased out to the predecessors of the petitioner by the erstwhile Travancore Cochin Government under the Kuthagai pattom rules. After the re-organization of the Indian States in the year 1956 the Vilavancode, Kalkulam, Thovalai and Agasteeswaram Taluk in Trivandrum District of the State Government of Travancore Cochin was annexed with the State Government of Tamil Nadu and formed as Kanyakumari District under the new legislation. The Kuthagai pattom tenure continued to exist in the above territories until the year 1972. Under the Tamil Nadu Government, the above land has been leased out to one Tmt.Gowrikutty Amma, the purported predecessor in interest of the petitioner. The Ryotwari Settlement was carried out in Kanyakumari District during the year 1966. During re-survey, the entire 89.96 acres in old Survey Nos.3489/A and 3489/B of Kalkulam Village has been measured and correlated to Town Survey No.D5-9/1 to 9 of Kalkulam Village in Kalkulam Taluk as follows:

S.No.	Extent in Hectares	Classification
D5/9-1	00.11.58	Kuttai
D5/9-2	00.42.42	Assessed Waste Dry
D5/9-3	00.08.00	Voikal
D5/9-4	00.15.00	Natham
D5/9-5	00.04.10	Kovil
D5/9-6	09.60.00	Assessed Waste Dry
D5/9-7	00.16.00	Pathway
D5/9-8	23.93.60	Kottai (fortress)
D5/9-9	00.21.50	Tomb of Delenoy
Total	34.72.20	

5.It is further stated that the Kuthaigai pattom and other land tenure that prevailed in the State of Travancore Cochin had its origin with an absolute monarchy and it is a feudalistic pattern of land administration which does not suit a Democratic polity in a welfare state. The State Government of Tamil Nadu has repealed the Kuthaigai pattom lease rules vide G.O.(Ms). No.3428, Revenue Department, dated 13.12.1972. Consequent on the repeal of the Kuthaigai pattom rules all the Government lands covered under Kuthagai pattom lease were treated as the

Government lands under the encroachment of individuals and the lease holders were treated as encroachers in Government land and Land Encroachment cases were booked against them. The Government has ordered for assignment of the lands falling under the above strata vide G.O.(Ms) No.947, Revenue Department, dated 02.03.1973. As per the said order, wherever eligible those lands previously held under kuthaigai pattam lease were assigned to the occupants of the land and wherever occupants were found in eligible the land vested with the state Government. Further, on the behest of the above Government order, the legal heirs of (late) Tmt.Gowrikutty Amma have been asked to show cause as to whether they agree to pay the value for the 4.61 Acres which was the maximum assignable extent of land in the disputed property and get assignment, vide Government memorandum No.71412/D1/71-42 Revenue Department, dated 01.03.1977. The legal heirs of Tmt.G.Gowri Kutti Amma came forward to remit the land value only during the year 1995 i.e., after elapse of 18 years. The Government in their order passed in G.O.(Ms) No.247, Revenue Department, dated 26.05.2003 has ordered to assign the land subject to payment of Rs.36,60,642/- towards the cost of the land. In the efflux of time the Udayagiri become a place of tourist attraction. The fortress and the tomb of Delenoy were declared as protected monument by the Government of Tamil Nadu in G.O.(Ms) No.226, Tamil Development and Culture Department, dated 04.09.97. The Forest Department has developed a Deer park and a social forest in the land in question which has given a panoramic view to the location. Further, considering the archaeological value of the land in question and the innated possibilities of developing the site as a tourist centre and to preserve the flora and fauna and promote a social forest, the District administration, has resolved that the disputed property need not be given in assignment and the same may be reserved for Government projects. The District Collector of Kanniyakumari has accordingly sent a proposal to the Government in Letter No.M2/7351/2000 dated 27.05.2003. The Government after careful consideration of the proposals stated supra has withdrawn the assignment orders issued in G.O.(Ms).No.247 Revenue Department, dated 26.05.2003 and cancelled the same vide G.O.(Ms).No.352, Revenue (Ni.Mu.3(2)) Department, dated 07.06.2005. Aggrieved by the above decision of the state Government, the petitioner has filed this writ petition.

6.On a perusal of the counter affidavit, it is made clear that the Government considered the fact that the area in question is a tourist attraction place and the nature of land, which is more or less turned out into a forest and considering the fact that the entire area has already been declared as a protected monuments in G.O.(Ms)NO.226, Tamil Development and Culture Department, dated 04.09.1997, the land could not be given in assignment to individuals. The Government Order in G.O.(Ms).No.247, Revenue Department dated 26.05.2003 issued in

connection with the assignment of 2.82 acres in the land in question was ordered as withdrawn by the Government vide G.O. (Ms)No.352, Revenue Department, dated 07.06.2005. Thus the petitioner's representation for assigning of the property was not considered in the greater interest of the public welfare. It is further stated that the petitioner and his kinsmen are encroachers in the disputed Government land. The Government being the rightful owner of the property has got every right to resume the property. The fortification around the property and the monuments inside the property have been declared as protected monuments by the Government and the entire fort which was once a training base for the Royal Army of Travancore has got inherent archaeological values. Assignment if any given in the above property will be a threat to the the above monuments. The Forest Department has set up a Deer Park and the green vegetation of the area has become an abode to several species of small animals, birds and reptiles. The Government has planned to set up a biodiversity park in the disputed property. Moreover, the disputed land has become a popular tourist spot in Kanyakumari District which is visited by hundreds of tourists everyday. Having regard to the above public interest, the question of assigning the land to individuals cannot be considered. The petitioner is not a landless poor person and therefore, the action of the Government in reserving the land for public welfare activities is legal and constitutional in all aspects. Thus, there is no infirmity in respect of the rejection of the claim of the writ petitioner for assigning of the above property.

7.It is reiterated in paragraph 33 of the counter affidavit that the petitioner and other occupants of the subject land are not landless poor persons. They are not residing in the house available within the disputed land. The land in question is now under the control of the State Government. The Forest Department has maintaining a Deer Park in the above land. The Government has planned to transform the area as a biodiversity park. Owing to the welfare scheme in the disputed property, the Government has barred assignment of land in the disputed schedule.

8.This Court is of the opinion that assignment or allotment of Government land can never be claimed as a right. Mere possession and enjoyment for few years or as a matter of fact for long years will not confer any vested right on the persons to claim assignment as a matter of right. Public lands are to be utilized in the interest of public and for the welfare of the public at large. In the event of granting assignment to such a vast area, the same will infringe the rights of all other citizens. The Government cannot assign the land only on the basis that a person is in possession and enjoyment of the land and even if such a person is poor landless person, the land

should be allotted in the appropriate place under the Scheme. While implementing such welfare schemes, the authorities competent must extend the benefits uniformly to all the eligible persons without causing any discrimination. Thus, the claim of the writ petitioner that they were in possession and enjoyment for long years would not be a ground for claiming assignment for such a valuable historical place being visited by large number of tourists not only from the State as well as from other parts of the Country.

9. Having considered the contentions put forth in the counter affidavit, this Court is of the opinion that the claim of the petitioner deserves no merit consideration and even if there is any other encroachment, the respondent is bound to evict all those encroachments and utilize the land for public purpose and to implement all such welfare schemes in the interest of public. This being the principles to be followed, the writ petitioner has not established any acceptable grounds for the purpose of considering the relief as such sought for in the present writ petition. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cse

To

The Secretary to Government,
Revenue Department,
Fort St. George, Chennai - 600 009.

+1cc to Mr.Selvi George, Advocate, S.R.No.3771

W.P.No.26677 of 2005
and W.P.M.P.Nos.29102 & 29103 of 2005

SR(CO)

rrs 08/02/2019

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