

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2019

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.609 of 2018

& C.M.P.No.5912 of 2018

- 1.The Government of Tamil Nadu
represented by its Secretary
Adi Dravida and Tribal Welfare
Department, Fort St.George
Chennai 600 009.
- 2.The District Collector, Thiruvannamalai
District, Thiruvannamalai.
3. The District Revenue Officer
Thiruvannamalai District,
Thiruvannamalai.
- 4.The Revenue Divisional Officer
Thiruvannamalai District
Thiruvannamalai.
- 5.The Tahsildar, Thandrampattu
Taluk, Thandrampattu
Thiruvannamalai District. ... Appellants/Respondents 1to 5

Vs

- 1.R.Amutha
 - 2.Dhanapal
 - 3.Narayanan
- ... Respondents/Respondents

For Appellants : Mr.R.P.Prathap Singh,
Government Advocate

For Respondents : Mr.M.Rajasekar - for R1
R2 & R3 - Served - No appearance

Prayer : Writ Appeal under Clause 15 of the Letters Patent
against the order passed in W.P.No.35247 of 2016 dated
26.10.2016.

Prayer in W.P.No.35247 of 2016:-

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari to call for the entire records of the 2nd respondent in Na.Ka. AA2/36896/2016 dated 28.9.2016 and to quash the same.

J U D G M E N T

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

This appeal by the Government, is directed against the order dated 26.10.2016 in W.P.No.35247 of 2016, filed by the first respondent herein.

2. The first respondent filed the writ petition, challenging a notice issued by the second respondent therein / District Collector dated 28.09.2016. The notice merely calls upon the first respondent / writ petitioner to appear for an enquiry in respect of the patta granted in her favour in respect of the land in question, which according the District Collector has been classified as a panjami land, as the lands were initially allotted to the third respondent herein, who was the seventh respondent in the writ petition. The case of writ petitioner is that Narayanan, the third respondent herein, had been allotted the land in question and he had borrowed a sum of Rs.10,000/- from Dhanapal, the second respondent herein. Since he defaulted in payment of the money, Dhanapal filed a suit in O.S.No.465 of 1995, on the file of the learned District Munsif, Thiruvannamalai and obtained an order of attachment of the property. Since Narayanan failed to furnish security for the suit claim, the attachment was made absolute and ultimately an exparte decree was passed in the suit on 12.07.1995. Dhanapal filed E.P.No.520 of 1995 to execute the decree and the property is said to have brought for sale by the Court and in the said sale, the first respondent / writ petitioner was declared a successful bidder. Therefore, the first respondent's case is that no enquiry can be conducted by the District Collector in respect of the patta granted to her, more particularly when she has purchased the property in a court auction sale in 1996. Subsequently, the property was settled on her daughter and notice was issued in the year 2016.

3. Before the learned single Judge, the first respondent / writ petitioner relied upon the decisions of this Court in Ayi Gounder Vs Gabriel, reported in 1964 77 LW 291, for the proposition that even if the property is granted by the Government in pursuance of any condition, when it is sold by public auction or by Court auction, then that condition will not survive. The first respondent / writ petitioner also relied upon the judgment of the High Court of Andhra Pradesh in the case of

S.Usha Rani -Vs- Government of Andhra Pradesh reported in 2014 CJ (AP) 1247, wherein the purchaser purchased the land in question in an open auction conducted by the bank on account of default of the borrowers, who were assignees. Learned single Judge, after taking into consideration the aforementioned decisions, held that the notice dated 28.09.2016, is not sustainable and accordingly quashed the same.

4. The moot question to be noted in the instant case is that the allegation made in the show cause notice dated 28.09.2016, which is impugned in the writ petition, is that the land in question is a panjami land and cannot be transferred. The learned counsel for the first respondent vehemently contended that there is no such record produced by the appellants and even assuming the lands were assigned to Narayanan, he was free to deal with the land since more than 30 years have elapsed since the assignment was made. What is relevant to know in the instant case is that the authorities were prevented from adjudicating the matter since the first respondent / writ petitioner approached the writ court even at the stage of show cause notice. Proper procedure for the first respondent / writ petitioner would be to produce all the documents of title before the authority and raise contentions which were canvassed by her before the writ court. Without doing so, the writ petition should not have been filed.

5. So far as the decisions which were relied upon before the learned single Judge is concerned, viz., in the cases of Ayi Gounder Vs Gabriel and S.Usha Rani -Vs- Government of Andhra Pradesh, prima facie it appears that the facts are slightly different because in Gabriel's case, it is not clear as to whether the land was a panjami land as that of the allegation in the present case. In Usha's case, the bank had brought the property for auction. Equally, the decision of the Andhra Pradesh High Court in Sub-Registrar and another Vs. K.Guruvaiah reported in 2009 (3) ALT 85 (D.B) is also factually distinguished. That apart, the matter cannot be foreclosed at the very threshold and the authorities cannot be prevented from enquiring into the matter. This is so because the panjami land will have to continue to remain as a panjami land and no revenue authority has jurisdiction to change the classification.

6. For all the above reasons, we allow the appeal and set aside the order dated 26.10.2016 in W.P.No.35247 of 2016 and the first respondent / writ petitioner is directed to appear before the District Collector viz., the second respondent in the writ petition and produce all documents of title and also submit a written representation putting forth all the contentions. On receipt of a copy of the documents and the written representation, the District Collector, Tiruvannamalai, is

directed to afford personal hearing and take a decision on merits and in accordance with law and pass a reasoned order. Needless to state that in the enquiry, notice should be issued to Dhanapal and Narayanan. The enquiry shall be concluded within a period of eight weeks from the date on which the first respondent / writ petitioner files the written representation along with the documents. With the above directions, the appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KST
To

- 1.The Secretary, Government of Tamil Nadu
Adi Dravida and Tribal Welfare
Department, Fort St.George
Chennai 600 009.
- 2.The District Collector, Thiruvannamalai
District, Thiruvannamalai.
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- 5.The Tahsildar, Thandrampattu
Taluk, Thandrampattu
Thiruvannamalai District.

+1 cc to Mr.M.Rajasekhar, Advocate SR.No.20848
+1 cc to The Government Pleader, Sr.No.21535

W.A. No.609 OF 2018
& C.M.P.No.5912 of 2018

SR(CO)
CSL/29.03.2019