

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.19614 of 2018
and
W.M.P.No.23032 of 2018

1. M.Palanisamy,
2. V.M.Natarajan,
3. M.Somasundaram,

Petitioners 1 to 3 are represented
by their General Power of Attorney
P.K.Shamsudeen,
No.14-D, West Power House Road,
Coimbatore - 641 012.

... Petitioners

/versus/

1. The District Collector,
Coimbatore District,
Coimbatore.
2. The District Revenue Officer,
Coimbatore District,
Coimbatore.
3. The Revenue Divisional Officer,
Coimbatore.
4. The Tahsildar,
Coimbatore South Taluk,
Coimbatore.
5. The Tahsildar,
Perur Taluk,
Coimbatore.
6. The Executive Engineer,
Coimbatore Division,
Tamil Nadu Slum Clearance Board,
No.397-A, North Housing Unit,
Selvapuram, Coimbatore - 641 026.

... Respondents

R6 impleaded vide order of this Court dated 26.03.2019 made in W.M.P.No.6684 of 2019 in W.P.No.19614 of 2018.

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, to call for the records of the respondents relating to the order of the 3rd respondent R.C.No.6/1996/B3, dated 10.12.2013 and quash the same in so far as it relates to the lands of the petitioners of an extent of 1.75 acres in Survey No.194 of Vadavalli Village, Coimbatore South Taluk (now Perur Taluk), Coimbatore District.

For Petitioner : Mr.K.Doraisami, Senior Counsel,
for Muthumani Doraisami

For R1 to R5 : Mr.K.RaviKumar,
Additional Government Pleader

For R6 : Ms.Narmatha Sampath,
Additional Advocate General
Assisted by S.Prabhu,
Standing Counsel

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. It is a case where the land which was assigned in the year 1932 was purchased by the petitioners predecessor in the year 1961 and enjoyed for nearly 35 years. Thereafter. the patta granted was canceled and resumed by the Revenue Divisional Officer, vide order dated 24.10.1996 on grant of violation of grant condition.

3. Aggrieved by that, the petitioners herein have preferred Writ Petition before this Court in W.P.Nos.15861 & 16234 of 1996, in which this Court after considering the averments made by the petitioners as well as the Government, has given liberty to the petitioners to prefer regular appeal before the Appellate Authorities concerned, within two months from the date of receipt of a copy of this order and direction was given by the Appellate Authority to examine and dispose of the appeal preferred on merits and in accordance with law.

4. Consequence to that, the District Revenue Officer has conducted enquiry and found that, the entire records from District Revenue Officer was not forwarded to him for appreciation of the dispute and arrive at a conclusion. Hence,

remanded back to the Revenue Divisional Officer to conduct a detailed enquiry and pass appropriate order.

5. Pursuant to this order of District Revenue Officer, dated 17.04.2009, the Revenue Divisional Officer has caused notice to the parties and after considering the pleadings of the parties, has confirmed its earlier order dated 24.10.1996, resuming the land from the petitioners holding that there is no prima facie material to interfere the earlier order dated 24.10.1996.

6. The Learned Senior Counsel appearing for the petitioner submitted that the order of District Revenue Officer is bad in Law on two folds:-

(i). The order is non-speaking. Without assigning any reason, the Revenue Divisional Officer, who has received the written submission of the petitioners as well as the documents in favour of the petitioners has passed a cryptic order. He ought to have considered the submissions and should have given reason for not accepting the same.

(ii). The land assigned on 15.03.1932 was purchased by the petitioners on 21.05.1961, nearly after 30 years of assignment, same has been resumed by the order of Revenue Divisional Officer dated 24.10.1996 on the ground that there was a violation of assignment. The Board Standing Order 15 mandates that any resumption of land assigned prior to 1973 shall be only by order of Commissioner of Land Administration/Government. Whereas, the earlier order of resumption, dated 24.10.1996 was passed by Revenue Divisional Officer and same has been confirmed and reiterated by Revenue Divisional Officer in spite of specific direction by his superior District Revenue Officer, to conduct enquiry and pass orders on merits.

7. In response to the above submission, the Learned Additional Advocate General representing the respondent would submit that, the Writ Petition itself is not maintainable, since the order of the 3rd respondent in R.C.6/1996/B3, dated 10.12.2013 is impugned in the Writ Petition filed in the year 2019, i.e., after lapse of 5 years. Further as far as the competence of Officials to issue order of resumption, the Board Standing Order empowers Commissioner of Land Administration/Government to pass resumption order in respect of land assigned prior to 14.05.1973. The order has been passed by the Revenue Divisional Officer who is an Authority of the Government, hence there is legal in competency in passing the order.

8. This Court, after considering rival submissions is of the view that laches pointed out by the Additional Advocate

General may not stand in the way of the petitioners to agitate and protect his property right, when the impugned order on the face of it bristles with infirmity and illegality. The impugned order is not a speaking order. Though, the Learned Additional Advocate General may say that it is only a reiteration of the earlier order passed on 24.10.1996, the Revenue Divisional Officer is bound to assign reason for his order and ought to have substantiate how and what condition of assignment has been violated to resume the land assigned in the year 1932. In the absence of such reasoning, the impugned order is unsustainable.

9. Further, the Revenue Standing Order 15.3(2)(xi) reads as below:-

(xi) Resuming authority:- The authority competent to resume or re-enter on lands for breach of any condition of assignment shall be as follows:-

(a). The Tahsildar, if the land is non-valuable.

(b). The Revenue Divisional Officer if the land is valuable and

(c). The Commissioner of Land Administration/Government, for the lands assigned prior to 14.05.1973.

10. When the statute prescribes authority by designation to exercise the power of resumption no any person below his rank cannot exercise that power. The Government referred in the said statute doesn't mean that all the Officials in the Government. It is the Department in the Government/Higher Authority representing the Government and the Executive of the concerned Department. By no stretch of imagination, the power vested with Commissioner of Land Administration/Government can be exercised by any Officials who is the below rank of Commissioner Land Administration.

11. For the reasons stated above, the Writ Petition is bound to be allowed.

12. Accordingly, the Writ Petition is Allowed. It is open for the Authorities concern to refer the matter to Commissioner of Land Administration/Government and to consider the matter afresh and pass appropriate order. No costs. Consequently, connected Miscellaneous Petitions are closed.

bsm

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,
Coimbatore District, Coimbatore.
2. The District Revenue Officer,
Coimbatore District, Coimbatore.
3. The Revenue Divisional Officer,
Coimbatore.
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No.397-A, North Housing Unit,
Selvapuram, Coimbatore - 641 026.

+1cc to Mr.Muthumani Doraisami, Advocate, SR.No.86801
+1cc to Mr.S.Prabhu, Advocate, SR.No.87092
+1cc to the Govt.Pleader, Vide Sr.No.87327

W.P.No.19614 of 2018

Kak(08/11/2019)