

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.10.2019

Pronounced on: 06.11.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.26589 of 2019
& W.M.P.Nos.25965 & 25967 of 2019

K.Lakshmanan,
S/o.Kaleeswarar Ambalam,
Adhappadakki,
Kaalaiyarkoil Taluk,
Sivagangai District.

... Petitioner

/versus/

1. The District Collector,
Erode District.

2. The Tahsildar,
Sathiamangalam Taluk Office,
Sathiamangalam.

3. The Tamil Nadu Slum Clearance Board,
Kamarajar Salai, Chennai - 600 005.

.... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to call for the records in Proceedings dated 11.04.2018 in Na.Ka.No.5556/c2/2018 of the 1st respondent, District Collector, Erode and quash the same and direct the 2nd respondent, Tahsildar, Sathiyamangalam Taluk Office, Sathiyamangalam, to issue Patta for the Survey No.311/1, 311/2 & 311/4 for the property situate at Rajan Nagar Village, Sathiamangalam Taluk registered in Sale Deed No.1062 of 1995 dated 28.03.1995 on the file of the Sub-Registrar Office, Sathiyamangalam, to the petitioner and pass orders.

For Petitioner : Mr.Gomathi Nayagam, Senior Counsel
for Mr.G.Saravanakumar

For R1 & R2 : Mr.D.Raja,
Additional Government Pleader

For R3 : Mr.S.Prabhu, Standing Counsel

O R D E R

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

2. The Petitioner herein seeks issuance of Certiorarified Mandamus directing the Tahsildar, Sathiyamangalam, Erode District, to consider his representation dated 29.11.2018 for grant of patta for the land at a total extent of 2.18.0 Hectares in the following Survey Numbers at Rajan Nagar Village, Sathiyamangalam Taluk.

1. Survey No: 311/1 - extent 0.21.0 hecets.
2. Survey No: 311/2 - extent 1.00.5 hecets.
3. Survey No: 311/4 - extent 0.96.5 hecets.

3. According to the petitioner, he purchased the above land from one Karuppasamy vide sale deed duly registered at Sub-Registrar Office as document Number.1062/1995. From the date of purchase, he is in possession and enjoyment of the property. While so, without any notice to him, the District Collector, Erode District, has issued the impugned proceedings in Na.Ka.No.5556/c2/2018, dated 11.04.2018, granting enter upon permission to the Slum Clearance Board to construct residential tenements to slum dwellers in the petitioner's land. Hence the said proceedings is challenged on the ground that the impugned proceedings is arbitrary, illegal and erroneous and liable to be quashed. Consequentially, Patta should be given to the petitioner on the basis of the sale deed executed by the Karuppasamy.

4. Per contra, in the counter filed by the 2nd respondent on his behalf and on behalf of the first respondent, it is stated that, in R.S.No.311/4 at Rajan Nagar Village, Sathiyamangalam Taluk, Erode, conditional assignment of 1.00.5 hectares of land to one Polappa Gounder S/o.Onnappa Gounder, on 30.07.1963 and 0.96.5 hectares of land to one Panna Sakkili S/o.Konda Sakkili on 15.08.1963 was granted. On violation of the condition, the land bearing S.Nos.311/2 & 311/4 were resumed to the Government as per the proceedings of Revenue Divisional Officer, Gopichettipalayam, dated 04.12.1980 and 03.12.1980 respectively. The classification was changed as Government Poramboke- Assessed waste. As far as the land in S.No.311/1 it is already classified as Government Poramboke - Rock. Thus the land been with government since 1980. On the request of the Slum Clearance Board to provide land to construct multi-storied tenements under the "House for All" scheme, enter upon permission was granted in respect of land in S.Nos.311/1, 311/2 and 311/4. The said proceedings was issued only after due verification of revenue records and public hearing. The land has been taken possession by the Slum clearance board on 01.06.2018 and they have started construction. The petitioner has no right to seek patta for the government land.

5. In the counter affidavit filed by the 3rd respondent, it is stated that, based on the proceedings of the first respondent dated 11.04.2018, the Slum Clearance Board has taken possession of the land in S.Nos.311/1/,311/2 and 311/4 respectively at Rajan Nagar Village, Sathyamangalam, on 01.06.2018. Under the Prime Minister's Housing for All scheme with the approval of the Government 528 tenements (G+2) at the cost of Rs.4752.00 lakhs construction work is underway and presently 35% of the work completed incurring an expenditure of Rs.12.30 lakhs. The petitioner, without objecting the process at the earliest, now with untenable grounds have filed the Writ Petition with malafide intention to stall the project which is going to benefit several homeless poor people.

6. The Learned Counsel for the Petitioner referring the recital in his title deed and the encumbrance certificate issued between 01.01.1975 and 11.03.2019 submitted that, his vendor Karuppasamy purchased the property from Perrappa Gounder and Najunda Gounder on 18.05.1981. Thereafter, he sold it to the petitioner on 28.03.1995. These land are classified as punja manavari. Without proper notice, the land has been reclassified as Government Annadeenam and considered as government Poramboku. The reclassification and assignment to the Slum Clearance Board has been done behind the back of the petitioner, who is the owner of the land. Hence the said proceedings is bad in law.

7. Further, the Learned Counsel for the Petitioner submitted that, the action of the first respondent is arbitrary and without authority. It is contrary to the Revenue Standing Order and the Provisions of Slum Clearance Board Act. It is contented by the Petitioner's Counsel that, as per the Revenue Standing Order 15 (2)(xi) only the competent authority to reclassify the petitioner land is the Commissioner of Land Administration/Government for the land assigned prior to 14.05.1973 and not the Revenue Divisional Officer. Any land to be acquired for the Tamil Nadu Slum Areas (Improvement and Clearance) Rules, 1971, Gazette notification is a pre-requisite under Section 17 of the Act. The impugned proceedings being in violation of the above mentioned Revenue Standing Order and provisions of Slum Clearance Board it has to be quashed.

8. Whereas, the Learned Counsels representing the Respondents/state that, primarily the petitioner lacks locus to challenge the proceedings of the 1st respondent/District Collector since the petitioner is not the assignee and he cannot question the resumption of the assignment. Further, the resumption proceedings challenged after 38 years is hit by delay and laches. The petitioner has no document to support his claim over the property except the sale deed executed by one Karuppusamy.

9. Pointing the recital of the sale deed relied by the petitioner, the Learned Counsels for the respondents submit that, the vendor of the petitioner claims that the property as

his ancestral property. Whereas, the property was a conditional assigned land to Pollappa Gounder and Panna Sakkili in the year 1963 and resumed back by the Government in the year 1980 itself for violation of assignment. Therefore, the said property cannot be the ancestral property of Karuppusamy. So the sale deed executed in the year 1994, 14 years after resumption itself is a doubtful document.

10. The perusal of RSR Register, it is seen that the lands in dispute was originally assigned to Pallappa Gounder and Panna Sakkili in R.S.No.311/2 (1.00.5 hectares and 0.94.5 hectares respectively) in the year 1963 and same resumed in the year 1980 for violation of assignment conditions. The petitioner claims, he purchased the property from one Karuppusamy in the year 1994. Except the sale deed in favour of the petitioner, there is no other document to support the claim of the petitioner that he purchased the property from the lawful owner. Neither the petitioner nor his vendor has taken any steps to mutate the Revenue records. Only in the year 2018, it appears the petitioner has sent a representation to the Tahsildar to issue patta. There is no document to show that the land was assessed to tax and the petitioner or his vendor were paying tax for the said land.

11. The averments in the affidavit of the petitioner as well as the title deed relied by him does not disclose the right of the petitioner's vendor to alienate property in S.Nos.311/1 & 311/4, which on the date of the said alienation described as Government Poromboke.

Revenue Standing Order 15 (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.

12. Admittedly, the land in R.S.No.311/2 & 311/4 were assigned to Pallappa Gounder and Panna Sakkili in the year 1963. Any said land ought to be resumed by the Commissioner of Land Administration/Government. From the RSR Register, the lands were resumed as per the Revenue Divisional Officer proceedings of Na.Ka.No.27380/79, dated 04.12.1980 and Na.Ka.27393/79, dated 03.12.1980 respectively. If at all the said resumption is not based on valid reason or not passed by the person competent, the said resumption order should have been challenged only by the

assignee and within reasonable time.

13. Here is the case where the said resumption is questioned incidentally in this Writ Petition filed by a 3rd party, after 38 years. That apart, the petitioner locus to question the said resumption also not validly supported. If the land was held by the petitioner or his predecessor-in-title, there must be some Revenue records to show that after the assignment to Pallappa Gounder and Panna Sakkili, they have taken possession of it and land been assessed to tax. Not even a piece of document produced to show the land has been assessed to tax and the petitioner or his predecessor-in-title had paid the tax to the Government. This conspicuous absence gains significance because, the Revenue records indicates that in the year 1980 itself the land has been resumed and it has been classified as below:

Before Sub Division			After Sub Division		
Field No.	Extent (in Hectares)	Classification	Field No.	Extent (in Hectares	Classification
311/1	0.21.00	Government Poramboke-Rock	311/1	0.21.00	Tamil Nadu Slum Clearance Board
311/2	1.00.50	Government Poramboke-Anatheenam	311/2	1.00.50	Tamil Nadu Slum Clearance Board
311/4	0.96.50	Government Poramboke-Anatheenam	311/4	0.96.50	Tamil Nadu Slum Clearance Board
Total	2.18.00		Total	2.18.00	

14. While so, the 1st respondent has considered the Revenue record and granted enter upon permission to the Slum Clearance Board. Taking note of the public purpose for which the land sought by the Slum Clearance Board.

15. Section 17 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, which is relied by the Learned Counsel for the Petitioner.

17. Power to acquire land:-

(1) Where the Government are satisfied that, for the purpose of executing any work of improvement in relation to any slum area or any building in such area or for the purpose

of re -developing any slum clearance area, or for the purpose of rehabilitating slum dwellers, it is necessary to acquire any land within, adjoining or surrounded by any such area or any other land not lying in such area, they may acquire the land by published in the Tamil Nadu Government Gazette, a notice to the effect that they have decided to acquire the land in pursuance of this section.

(2) Before publishing a notice under sub-section (1), the Collector, or any officer, authorized by the Government in this behalf shall call upon the owner or any other person, who, in the opinion of the Collector or the officer so authorized, may be interested in such land, to show cause why it should not be acquired. The Collector or the officer shall, after considering the cause, if any, shown by the owner or other person interested in the land, make a report to the Government containing his recommendations on the causes so shown, for the decision of the Government. After considering such report, the Government may pass such orders as they deem fit.

16. The above Section can be pressed into service only when the Government is satisfied to acquire land for the purpose of improving the Slum Areas or any area required for rehabilitation of Slum dwellers.

17. From the facts of the case, this Court finds that from the year 1980 the land in question has been vested with the Government and therefore no need for acquisition of land for the purpose of rehabilitating. Only the right to enter upon the land is required since the Government is the owner of the land.

The 1st respondent being the representative of the Government, in the impugned order had fixed the value of land and handed over the land to the 3rd respondent/Tamil Nadu Slum Clearance Board, on 01.06.2018. Thereafter, the 3rd respondent has invited tender. After identifying contractor, the work has commenced.

The petitioner herein have no right to insist upon personal hearing when his vendor himself has not established the right to alienate the property to the petitioner. If at all, any person aggrieved in this case, it would be only the original assignees. They have never questioned the resumption of land. While so, the petitioner and his vendor cannot stake claim over the property. Further the right of the petitioner's vendor over the property itself a disputed fact which cannot be decided in a writ proceedings. If the petitioner claim right over the property by virtue of the sale deed executed in the year 1994, he should have sought for mutation of records soon

thereafter. Having slept over for decade, it is futile to challenge the resumption or the subsequent proceedings passed by the 1st respondent.

18. For the said reason, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The District Collector, Erode District.
2. The Tahsildar, Sathiamangalam Taluk Office, Sathiamangalam.
3. The Tamil Nadu Slum Clearance Board,
Kamarajar Salai, Chennai - 600 005.

+1cc to Mr.S.Prabhu, Advocate, S.R.No. 92375
+1cc to Mr.G.Saravana Kumar, Advocate, S.R.No. 92273
+1cc to the Government Pleader, S.R.No. 93055

Writ Petition No.26589 of 2019

SJ(CO)
GN(03/12/2019)