

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.07.2020

Delivered on : 14.07.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.430 of 2020

K.Lakshmanan

... Appellant

-vs-

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: Appeal under Clause 15 of the Letters Patent against the order dated 6.11.2019 in W.P.No.26589 of 2019.

Prayer in W.P.No.26589 of 2019:

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 Appellant : Mr.S.Gomathinayagam
Senior Counsel
for Mr.G.Saravanakumar

For Respondents : Mr.S.R.Rajagopal
Additional Advocate General
assisted by
Mr.V.Anandhamoorthy
Addl. Government Pleader

JUDGMENT

THE CHIEF JUSTICE

This appeal questions the correctness of the judgment dated 6.11.2019 of a learned Single Judge, whereby the prayer made by the appellant against the order dated 11.4.2018 handing over the land in dispute to the Tamil Nadu Slum Clearance Board for its utilization has been denied. The land has been transferred treating it to be Anadhinam Poramboke land.

2. The claim of the appellant is that he purchased the land from one Karuppasamy vide sale deed executed in the year 1995. He was taken by surprise when the impugned proceedings dated 11.4.2018 were initiated for handing over of the land to the Tamil Nadu Slum Clearance Board, whereafter he has approached this Court challenging the same in order to protect his possession on the basis of the said registered sale deed.

3. The respondents filed a counter affidavit stating therein that a conditional assignment of the land was given to Polappa Gounder and Panna Sakkili in 1963. Since the said grantees had violated the conditions of the grant of assignment, the land was resumed by the Government vide proceedings dated 4.12.1980 and 3.12.1980 and the classification of the land was altered as Poramboke Assessed Waste land. It is thereafter that in the year 2018 the land has been handed over by the Government to the Tamil Nadu Slum Clearance Board.

4. The appellant, on the strength of the title deed, contends that without any notice the land has been reclassified and has been erroneously assigned to the Tamil Nadu Slum Clearance Board behind the back of the appellant.

5. The prime contention of the learned Senior Counsel for the appellant is that the handing over of the land to the Tamil Nadu Slum Clearance Board could not have been done without even issuing a proper notice, in as much as under the Tamil Nadu Slum Clearance Board Rules and Regulations and the Tamil Nadu Slum

Areas (Improvement and Clearance) Act, 1971, issuance of a notice is a prerequisite, which has not been done in spite of the fact that the appellant is the owner and occupant of the said land.

6. The second argument of the learned Senior Counsel for the appellant is that the resumption in the year 1980 has not been conducted by the competent authority, and the third argument is that the change of the classification of the land has also not been carried out in accordance with law.

7. Controverting the said stand of the appellant, the State had come up with a plea that after resumption, even the earlier vendor had no right to transfer the land through a sale deed in the year 1995. Thus, the appellant does not get any title or interest through the sale deed. Even otherwise, the resumption order of 1980 was not challenged, nor any such steps were taken either by the vendor of the appellant or by the appellant himself to question the same. It is also stated that the appellant does not have any lease rights, nor has any evidence been adduced by him to indicate that he has been paying any rent for the said land.

8. The learned Single Judge came to the conclusion that in the absence of any challenge raised to the resumption order, the right being claimed through the sale deed may not be available, as the land in question was classified and then entered as government land.

9. Having considered the submissions raised at length, we find that the claim of the appellant is that the land is, as a matter of fact, not Government Poramboke land, but is Anadhinam land. Anadhinam is a category of land under the Madras Estate Land Act [1 of 1908], Section 3(16) whereof has been dealt with by the Andhra Pradesh High Court in the case of Dhullpalla Ramayya and others v. Kota Brahmayya and others, AIR 1958 AP 100, to hold that Anadhinam land is not private land, and it merely means unoccupied land.

10. In the counter affidavit filed by the Tahsildar, Sathyamangalam before the learned Single Judge, paragraph (2) thereof recites as under:

"2. I respectfully submit that an extent of 1.00.5 Hectares in the Land bearing R.S.No.311/4 and an extent of 0.96.5 Hectares in the Land bearing R.S.No.311/4 of Rajan Nagar Village, Sathyamangalam Taluk, Erode District have been conditionally assigned to one Thiru Polappa Gounder, S/o. Onnappa Gounder and another one Thiru Panna Sakkili, Son of Konda Sakkili as per the Patta Nos.762 and 118 vide

the Sathyamangalam Tahsildar's order No.DR 203/72 dated 30.07.1963 and D.R.No.95/73 dated 15.08.1963 respectively. On the violation of the condition, the above lands being no.311/2 and 311/4 were resumed to the Government as per the Gobichettipalayam, Revenue Divisional Officer's Proceedings Na.Ka.27380 dated 4.12.1980 and Na.Ka.27393/79 dated 3.12.1980 respectively and changed the classification as Government Poramboke Assessed Waste. Since the land bearing R.S.No.311/1 was already classified as Government Poramboke - Rock and the resumed lands bearing R.S.no.311/2 and 311/4 were classified as Government Poramboke - Assessed Waste and owned by the Government since the year 1980, the transaction done by the private party i.e. the petitioner on the Government lands through the sale document No.1062 of 28.03.1995 is illegal and liable for the punishment before the law."

11. A perusal thereof indicates that the original assignees of the land had been granted pattas under the orders of the Tahsildar Sathyamangalam dated 30.7.1963 and 15.8.1963 respectively. It is these assignments that came to be resumed by the orders of the Revenue Divisional Officer dated 4.12.1980 and 3.12.1980 respectively. The contention of the learned Senior Counsel for the appellant is that the said resumption could have been only by the Commissioner of Land Administration, as the assignment of the said lands through a patta were admittedly prior to 1973, keeping in view the provisions of the Revenue Standing Order 15(2)(xi) contained in the Standing Orders of the Board of Revenue Volume-I, Section (2) and the same is extracted herein under:

"RSO-15

(2) Definitions:

(i) to (x)

(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 lands is valuable; and

(c) The Commissioner of Land Administration/ Government, for the lands assigned prior to 14.5.1973."

12. It is in this background that the argument has been advanced that the resumption order is non est, in as much as it has been passed by the Revenue Divisional Officer and not by the

Commissioner of Land Administration, who is the authority empowered under the said Revenue Standing Orders.

13. In this background, even assuming that the power of resumption had not been correctly exercised by the competent authority and its conversion was not by following the due procedure of law, yet this took place way back in the year 1980 and, therefore, the appellant after a lapse of almost 40 years may not be able to successfully challenge the same unless he is able to establish that the order of resumption was void ab initio. There is no averment or material to indicate that the vendor of the appellant had questioned the order of resumption or that the vendor had no knowledge of the same in 1995 when the appellant is stated to have acquired the property through the sale deed.

14. Learned Senior Counsel for the appellants contends that if the order of resumption is invalid, then it can be ignored. The Apex Court in the case of Chet Singh v. State of Punjab and others, (1977) 2 SCC 499, has held that orders which are non est can be ignored at any stage. In the said case, an order had been passed by the Additional Director, Consolidation of Holdings, in the absence of the aggrieved person therein, who moved an application for restoration asserting that on account of illness, over which he had no control, he could not attend the case. While interpreting Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the Apex Court held that this did not amount to an exercise of a power without jurisdiction, in as much as the Section itself provided for giving of an opportunity after appearance and hearing that an order could be passed. Since the opportunity had been denied, which was established, then in that event, the authority had the competence to proceed in the matter and did not amount to a review of his own order. For this, the Apex Court pressed into service the principle that an order which is non est can be ignored at any stage.

15. For this, the appellant could have established on the basis of material upon a challenge raised to the order of resumption as to whether it was non-est and could be ignored or not. Firstly, the appellant did not challenge the said orders of 1980 and secondly, the same having not been appropriately questioned either on fact or in law before the learned Single Judge, it will be difficult for us to assume that the said order is non est. By merely raising an argument, an order even if alleged to be illegal, cannot be questioned without challenging the same.

16. Even otherwise, the Apex Court in the case of State of Kerala v. M.K.Kunhikannan Nambiar, (1996) 1 SCC 435 has held

that even if an order is void, then such a decision cannot be said to be non-existent in every case and in all situations. Ordinarily, the order will be effective inter-parties until it is successfully avoided or challenged in a higher forum. The invalidity or illegality of an order is different from its voidness and the degree of invalidity depends upon the nature of the infirmity. Unless the infirmity is of a fundamental nature, the order would not become non est.

17. Reference be also had to the judgment of the Apex Court in the case of Anita International v. Tungabadra Sugar Works Mazdoor Sangh, (2016) 9 SCC 44, where the Apex Court has in paragraphs 54 and 55 held as under:

"54. We are also of the considered view, as held by the Court in Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group, (2011) 3 SCC 363, that it is not open either to parties to a lis or to any third parties to determine at their own that an order passed by a court is valid or void. A party to the lis or a third party who considers an order passed by a court as void or non est, must approach a court of competent jurisdiction to have the said order set aside on such grounds as may be available in law. However, till an order passed by a competent court is set aside as was also held by this Court in Official Liquidator v. Allahabad Bank, (2013) 4 SCC 381 : (2013) 2 SCC (Civ) 619] and Jehal Tanti v. Nageshwar Singh, (2013) 14 SCC 689 : (2014) 3 SCC (Civ) 512 cases, the same would have the force of law, and any act/action carried out in violation thereof would be liable to be set aside. We endorse the opinion expressed by this Court in Jehal Tanti v. Nageshwar Singh, (2013) 14 SCC 689 : (2014) 3 SCC (Civ) 512. In the above case, an earlier order of a court was found to be without jurisdiction after six years. In other words, an order passed by a court having no jurisdiction had subsisted for six years. This Court held that the said order could not have been violated while it subsisted. And further that the violation of the order before it is set aside is liable to entail punishment for its disobedience. For us to conclude otherwise may have disastrous consequences. In the above situation, every cantankerous and quarrelsome litigant would be entitled to canvass that in his wisdom the judicial order detrimental to his interests was void, voidable, or patently erroneous. And based on such plea, to avoid or disregard or even disobey the same. This course can never be permitted.

55. To be fair to the learned counsel for the appellants, it needs to be noticed that reliance was also placed on behalf of the appellants on Kiran Singh v. Chaman Paswan, (1955) 1 SCR 117 : AIR 1954 SC 340, Sadashiv Prasad Singh v. Harendar Singh, (2015) 5 SCC 574 : (2015) 3 SCC (Civ) 154, and Jagmittar Sain Bhagat v. Health Services, Haryana, (2013) 10 SCC 136 cases to contend that a decree passed by a court without jurisdiction was a nullity and that its invalidity could not be corrected even by the consent of the parties concerned. We are of the considered view that the proposition debated and concluded in the judgments relied upon by the learned counsel for the appellants (referred to above) is of no relevance to the conclusions drawn in the foregoing paragraph. In our determination hereinabove, we have not held that a void order can be legitimised. What we have concluded in the foregoing paragraph is that while an order passed by a court subsists, the same is liable to be complied with, till it is set aside."

18. As already noted above, in the absence of any appropriate challenge having been raised to the resumption orders that are of the year 1980, on the facts of the present case, it will not be possible for us to hold that the proceedings of resumption were non est and, therefore, the consequential classification of the land, so as to enable the Government to handover the possession of the land to the Slum Clearance Board, is also invalid.

19. Thus, on account of the lapse of time and the intervening event of the reclassification of the land having not been challenged before the appropriate forum, the learned Single Judge was justified in refusing to exercise discretion under the extraordinary jurisdiction under Article 226 of the Constitution of India.

20. The appellant could have approached the appropriate forum for the redressal of his grievances or declaration against resumption and in the event any such course is permissible either under the revenue law or under the common law of the land, it will be open to the appellant to avail of such remedy.

The appeal is, accordingly, consigned to records. No costs. Consequently, C.M.P.No.6632 of 2020 is closed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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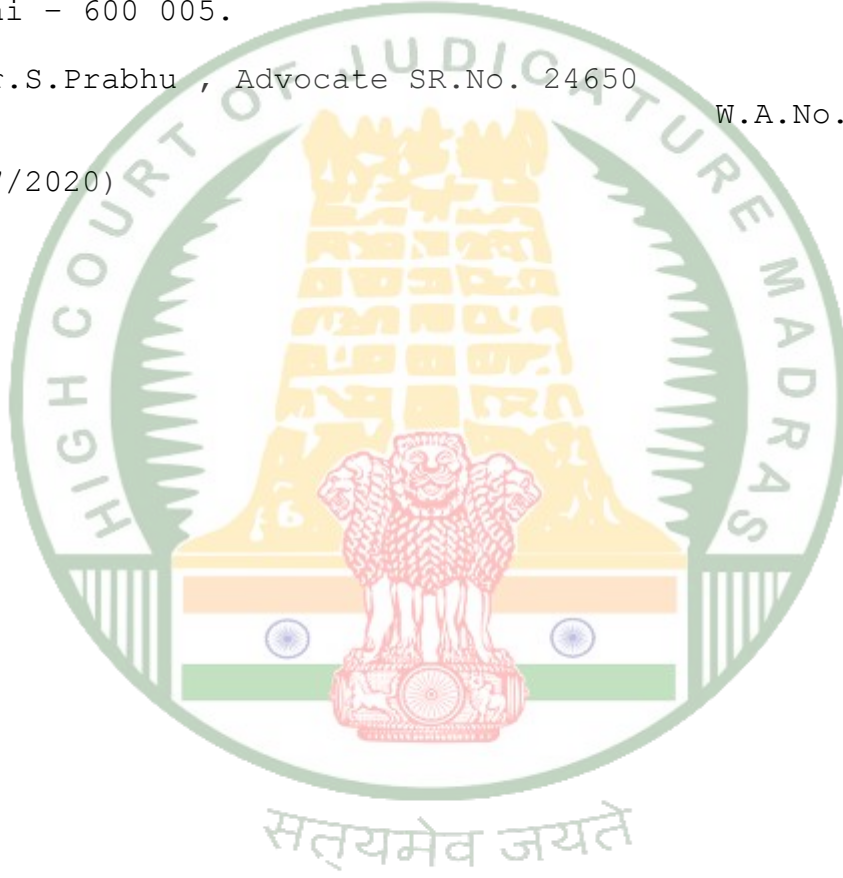
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+1cc to Mr.S.Prabhu , Advocate SR.No. 24650

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A.SK(28/07/2020)



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