

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.15737 of 2020

and

WMP Nos.19570 and 19571 of 2020

M.Radha

...Petitioner

.Vs.

- 1 The State of Tamil Nadu
Rep by its Secretary to Government
Revenue Department
Fort.St.Geroge, Chennai-9
 - 2 The District Collector
Office of the District Collector
Thiruvottiyur District.
 - 3 The Tahsildar
Office of the Tahsildar
Thiruvottiyur Taluk Office
Thiruvottiyur District.
 - 4 The Sub Registrar
Office of the Sub Registrar office
Thiruvottiyur Taluk
Thiruvottiyur District.
- ...Respondents

This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to Call for the records of the impugned Communication of the 3rd Respondent in his Proceedings No. NA.KA.No.682/2020/A1 dated 11.09.2020 and to quash the same and further direct the 4th Respondent to register and return the Pending Document NO P. Thiruvottiyur/77/2020 to the Petitioner in respect of the lands comprised in S.NO 29/4 in Plot old No 948 and new No 739 situated at No.44, Sadayankuppam village, Thiruvottiyur Taluk, Chennai.

For Petitioner : Mr.M.Raja sekhar

For Respondents 1 to 3 : Mr.E.Balamurugan
Special Government Pleader

For Respondent 4 : Mr.T.M.Pappiah
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the impugned letter issued by the third respondent to the fourth respondent dated 11.09.2020, wherein the fourth respondent was informed not to register any document pertaining to S.No.29/1 at Sadayankuppam Village.

2. The case of the petitioner is that a larger extent of land in S.No.29/1 was originally classified as 'Maikkal Poramboke (grazing ground)'. This survey number was sub-divided and it was converted as housing sites and by G.O.Ms.No.1143 dated 01.12.1995, a portion of the land was re-classified as 'Grama Natham' for the purpose of issuing free house site to those, who were affected due to floods and sea erosion. Totally, 1440 beneficiaries were allotted free house sites by the Tahsildar, Saidapet through proceedings dated 01.12.1995. The deed of assignment itself contained a clause to the effect that the assignee cannot alienate or encumber the land assigned free of costs for a period of 10 years from the date of allotment.

3. The vendor of the petitioner, namely Aravalli was also granted assignment patta on 01.12.1995 by the Tahsildar, Saidapet. The petitioner wanted to purchase this property from the said Aravalli. It is seen from records that the petitioner had already purchased the adjacent plot in new Block No.738 from one Devaki, who was also originally an assignee. This sale deed was also registered on the file of the fourth respondent. When the present sale deed was presented for registration before the fourth respondent, the same was refused to be registered based on the objections given by the third respondent. Aggrieved by the same, the present Writ Petition has been filed before this Court.

4. The third respondent has filed a counter in this case and the relevant portions in the counter affidavit are extracted hereunder:-

"4. It is respectfully submitted that the property involved in this Writ Petition is the property measuring 23.025 Hectares comprised in Survey No.29/1 of Sadayankuppam Village of Thiruvotriyur Taluk and the same was originally stood classified as Grazing Ground (Meikkal Poramboke). The 1st respondent herein taking into consideration of the plight of the General Public living in the said area who were affected due to floods and sea erosion, passed the Government orders in G.O.Ms.No.1143 dated 01.12.1995 reclassified a portion of the land measuring an extent of 11.735 Hectares from and out of the total extent of 23.025 Hectares comprised in S.No.29 of Sadayankuppam Village as Gramanatham for issuance of the free housing site to those people.

5. It is respectfully submitted that thereafter the aforesaid extent of 11.735 Hectares was sub-divided as S.No.29/4 and were converted as 'House sites' and the said land in S.No.29/4 was allotted to 1440 beneficiaries on 01.12.1995 by the Tahsildar, Saidapet with an endorsement therein 'not to alienate or encumber the same for a period of 10 years' from the date of allotment. As the actual sub-division was not carried out, in the orders of assignment, the survey number was furnished as 29/1 only. In pursuance of the said assignment, in the year 2006, the assignees started selling their respective portions by virtue of the order of assignment. Hence, the Sub-Registrar, Thiruvottiur had called for a report from the Tahsildar, Ambattur, as to whether the said documents shall be registered and released to the buyers.

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10. It is respectfully submitted in his letter Aa/684/2020 dated 11.09.2020 addressed to the 4th respondent, the 3rd respondent has informed that the proceedings of the District Collector issued in R.C.No.115416/95 dated 01.12.1995 is a genuine one and that the orders of assignments were issued for the lands comprised in Survey Number 29/1 and that the said land stands classified as 'Circar Poramboke - Grazing Ground'. As the said land stands classified as Grazing Ground in the Revenue Records, the sale transactions need not be allowed. Hence, the 4th respondent had refused to register the said document. In this connection, it is further submitted that though the said order of assignment was issued to the individuals as an immediate relief for construction of houses as they were affected by sea erosion during the year 1995, none of the beneficiary has constructed the house to live in. In the year 2005, it was brought to the notice of the Sub-Collector, Ponneri, that though the said order of assignment was given to them in the year 1995, most of them have not constructed any house to live in. Hence, the assignees were directed by the Sub-Collector, Ponneri, by a public notice in the year 2005 and they were also given time to construct houses in their respective portions within six months. As they failed to construct the said houses, within the said period, proposals were submitted to the Government through the Collector with a request to cancel the order of assignment to resume the land.

11. It is respectfully submitted that the petitioner further submits that the said Sadayankuppam Village was forming part of Ambattur Taluk. At that time, a similar communication sent by the Tahsildar, Ambattur to the 4th respondent's office was challenged by the Hon'ble High Court in W.P.No.10940 of 2009, W.P.Nos.23228 to 23282 of 2009 and 3532 to 3602 of 2010. The said W.P.No.10940 of 2009 was allowed on 16.07.2009. Besides this, the batch of Writ Petitions filed in W.P.Nos.3532 to 3602 were also allowed by the Hon'ble High Court in their order dated 23.02.2010. In the said circumstances, the petitioner has filed this Writ Petition with the aforesaid prayers.

12. As regards the averments of the petitioner set out in paras 2 to 4 of the affidavit, it is respectfully submitted that it is an admitted fact that the first respondent herein taking into consideration of the plight of the General Public living in Thiruvottiur village, who were affected due to Floods and Sea erosion, passed the order in G.O.Ms.No.1143 dated 01.12.1995 setting aside the land measuring to an extent of 11.735 hectares as Gramanatham with an intention for granting pattas to the persons who were affected by the Floods and Sea erosion. But, no sub-division of the said portion of land was made and the Orders of assignments were served on them in the year 1995 itself. While things being so, consequent on the Sea waves triggered by a massive undersea earth quake, coastal areas of Chennai, Thiruvallur and Kancheepuram areas were affected by Tsunami. At that time, it was brought to the notice of Sub-collector Ponneri, that most of the assignees have not constructed a house to live in. Hence, a public notice was issued directing the assignees to show cause as to why the order of assignment granted to them as an immediate relief shall not be cancelled for having not utilised by them and they have failed to construct houses therein. Further, they were granted 6 months' time to construct houses therein. But, the assignees have not constructed any house as per the said direction. Even after receipt of the said proceedings, no assignee had come forward to construct a house, but started selling their portions to companies and for commercial users. A company by name Shree Aagarsen Steel Industries, which had purchased the assigned lands from the assignees in the said survey field had filed W.P.No.31727 of 2019 with a prayer for issue of a Writ, order or direction or any other appropriate writ in the nature of a Writ of

Certiorari, calling for the records relating to the impugned order passed by the 3rd Respondent in Na.Ka.1082/2019/Al dated 06.11.2019 and to quash the same and pass such further or other orders as this Hon'ble Court may deem fit and proper. But, the said Writ petition was disposed on 16.12.2019 with the following order:

"Be that as it may, Disputed questions of facts cannot be gone into in this Writ Petition. This Court cannot conduct any roving enquiry under Article 226 of the Constitution of India. However, it is submitted that the respondent(s) had earlier W.P.No.31727 of 2019 issued notice under Section 7 of the Tamil Nadu Land Encroachment Act. Thereafter, the impugned order dated 06.11.2019 had been passed directing the petitioner to remove the fencing in the property. Therefore, the petitioner-company can submit explanation to the respondents by putting forth all their contentions. On receipt of such explanation, the respondents shall pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of such explanation from the petitioner-Company. Till such time the orders are passed by the respondents on the said explanation, the status-quo as on today, shall be maintained by the parties.

10. With the above observations and directions, the Writ petition is disposed of. No costs. Consequently, W.M.P. is closed. "

The assignees failed to utilize their respective portions which was granted to them as an immediate relief, who were affected by the floods and sea erosion in the year 1995. Besides this, by virtue of the order of assignment granted to them, they started selling their lands to Commercial purposes and to third parties, who were trying to utilize the said land for commercial purposes. In the said circumstances, necessary report has been submitted to the Government through the District Collector, Thiruvallur, with a request to cancel the said assignment and to resume the land in favour of the Government. The Orders of the Government are Still awaited. In the said circumstances, the impugned letter by the 3rd respondent was sent to the 4th respondent as encumbering the property further would result in multiplicity of complications. Hence, the impugned letter was sent to the 4th respondent.

under grounds a) and b), it is respectfully submitted that though the petitioners claim that the said lands are comprised in Survey Number 29/4, the Village Administrative officer, Sub-Inspector of Survey, who inspected said field have reported that the said land stands classified as follows in the land Records:-

Survey Number	Extent Hec. Ares.Sq. metres	Stands Classified as
29 / 1	11 29 00. 0	Grazing Ground
29/4	11 73 50. 0	Gramanatham
	23 02 00.0	

It is further submitted that though the said lands in Survey Number 29/4 (formerly 29/1) is classified as Gramanatham, proposals have been submitted to the Government with a request to cancel the orders of assignment and also to resume the said land which was not utilized by the assignees so far. Moreover, the portions of certain lands are being sold to individuals who have proposed to utilize the said land for commercial purpose. As stated supra, the lands stand classified as Gramanatham cannot be utilized for commercial purpose.

14. As regards the averments of the petitioner set out in Grounds c) to i), it is respectfully submitted that as it has been proposed to cancel the orders of assignment and to resume the lands in favour of Government, the impugned letter was sent to the fourth respondent by the third respondent to avoid multiplicity of complications. The petitioner is put to strict proof of the same.

15. In the circumstances, it is respectfully submitted that though the orders of assignment were issued to the assignees, as an immediate relief to those who were affected by floods and sea erosion, most of the assignees have not constructed the houses even after 6 months' time granted by the Sub-Collector, Ponneri till December 2005. They have failed to construct the houses even after issue of public notice by the Sub-collector, Ponneri, issued in the year 2005. Further, proposals have been submitted to the Government for cancellation of the order of assignment for resumption of the land. In the said circumstances, the impugned letter was sent to the 4th respondent

5. Heard Mr.M.Raja Sekhar, learned counsel for the petitioner and Mr.E.Balamurugan, learned Special Government Pleader for respondents 1 to 3 and Mr.T.M.Pappiah, learned Special Government Pleader for fourth respondent.

6. The short issue that arises for consideration in the present Writ Petition is as to whether the third respondent can object to the registration of the document before the fourth respondent pertaining to the subject property. On an earlier occasion, when similar attempt was made by the original assignees to sell the property, the same was objected by the third respondent and it became a subject matter of challenge in various Writ Petitions. For the sake of convenience, this Court will take into consideration the order passed in W.P.No.3530 etc of 2010 dated 23.02.2010. The relevant portions in the order are extracted hereunder:-

"5. Regarding the very same issue, a batch of Writ Petitions were allowed by this Court, by an order dated 08.12.2009 in W.P.Nos.23238 to 23282 of 2009 following the order of this Court dated 16.07.2009 made in W.P.No.10940 of 2009.

6. The order made in W.P.No.10940 of 2009 is usefully extracted hereunder:-

"This Writ Petition is filed challenging the order of the respondent dated 11.09.2007 and for a further direction to the third respondent to return the document No.P-91/2008 dated 06.08.2008.

2. According to the learned counsel for the petitioners, originally the land in question has been allotted to the petitioners by proceedings dated 01.12.1995 after the lapse of ten years in the 2008, by way of settlement, the land in question has been settled to the first son the petitioners. The authorities refused to register the settlement deed and stating the reason for not registering the settlement deed, the impugned order dated 11.09.2007 has been passed. Challenging the same, this Writ Petition is filed.

3. As per the impugned order dated 11.09.2007, by converting the land comprised in S.No.29/4 as Gramanatham, the same was allotted to 1400 individuals, but violating the rules and norms prescribed those allottees sold the lands in question. Hence, directions were issued by the

Tahsildar, Ambattur, not to register any document, relating to the land comprised in Survey No.29/4 at Ambattur Taluk.

4. According to the learned counsel for the petitioners as far as the land in question is concerned, the same has been assigned to the petitioners by order dated 01.12.1995 and as per the allotment order, a restriction has been imposed in paragraph 9 only for a period of 10 years. As far as the settlement deed in question is concerned, it is executed after a period of 10 years, ie., only in the year 2008. Consequently, the reason basing on which, this impugned order is passed is prima-facie an illegal one.

5. But according to the learned Additional Government Pleader appearing for the respondents, as per Clause 7 of the allotment order, without the permission of the Government, the said land cannot be assigned to anybody. Consequently, the settlement deed cannot be registered.

6. As per the impugned order, since the lands in question were sold violating the terms and conditions of the allotment order, the settlement deed could not be registered. As rightly pointed out by the learned counsel for the petitioners as far as this land is concerned, it has been assigned to the petitioners by order dated 01.12.1995 and as per the said assignment order also, a restriction has been imposed only for a period of 10 years. Since the settlement deed has been executed after the lapse of 10 years, even as per the assignment order also, execution of the settlement deed is not in contravention of the terms of the assignment order.

7. Apart from this, as far as the reason furnished in the impugned order is concerned, it cannot be applicable to the land in question, since this land has been assigned long back ie., before a period of 13 years. Consequently, the reason basing on which the petitioner's request to register the land was rejected is

unsustainable. Hence, the impugned order is set aside and the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed."

7. The order made in W.P.Nos.23238 to 23282 of 2009 is usefully extracted hereunder:-

"Mr.L.S.M.Hasan Fizal, learned Government Advocate takes notice for the respondents. By consent of either parties, the Writ Petitions are taken up for disposal.

2. These Writ Petitions are filed challenging the order of the Tahsildar dated 11.09.2007 issued in Na.Ka.No.10000/2007, whereby the Registering Authorities have been requested not to register the land comprised in Survey Nos.29/1 and 29/4, Sadayankuppam Village, Ambattur Taluk, Thiruvallur District.

3. The petitioners were assigned the land in the year 1995. As per the Assignment Order, the beneficiaries should not sell the land or in any way alienate the land for a period of ten years. However, that period of ten years has been over in 2005 itself and now, in view of the impugned order of the Tahsildar dated 11.09.2007, the petitioners are not able to make any transaction with regard to assigned lands, consequently, these Writ Petitions.

3. In similar circumstances challenging the very same issue, earlier W.P.No.10940 of 2009 was filed and by an order dated 16.07.2009, this Court has allowed the said writ petition.

4. Now, the learned Government Advocate has produced a letter of the present Tahsildar of Ambattur dated 07.12.2009 and in the last paragraph of the said letter, it has been stated as follows:-

"வீட்டு மனை ஒப்படை வழங்கி 10 ஆண்டுகள் கடந்து விட்ட நிலையில் மேற்படி பலங்களை விற்பனை செய்ய அனுமதி கோரி வழக்கு தொடர்ந்துள்ளனர். மனுதாரர்களுக்கு வீட்டுமனை ஒப்படை வழங்கப்பட்ட ஆணையில் நிபந்தனைகளில் மேற்படி நிலத்தினை 12 ஆண்டுகளுக்கு விற்பனை செய்யக் கூடாது என

உத்தரவிடப் பட்டுள்ளது. இந் நிலையில் இவ்வழக்கில் மனுதாரர்கள் குறிப்பிட்ட பல எண், 49/1 ல் 12 ஆண்டுகளை கடந்த நிலையில் விற்பனை செய்ய அனுமதி ஏதும் வழங்க வேண்டிய நிலை இல்லை என பணிவ,டன் தெரிவித்துக் கொள்கிறேன். மேலும் பல எண், 49/4 அரசு ப,றம்போக்கு நிலமான மேய்க் கால் என வசைப்பாடு செய்யப்பட்டுள்ளது என்றும் பணிவ,டன் தெரிவித்துக் கொள்கிறேன்.”

5. In view of the above and also in view of the earlier order passed by this Court, as against which, no appeal has been filed, the impugned order dated 11.09.2007 is set aside and the writ petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.”

8. Thus, the impugned order of the second respondent dated 11.09.2007 was quashed by this Court by an order dated 16.07.2009 in W.P.No.10940 of 2009, which was followed in the other batch of Writ Petitions in W.P.Nos.23238 to 23282 of 2009 by an order dated 08.12.2009.”

7. In the present case, the third respondent has given the objections on the very same ground, which was considered by this Court in the earlier Writ Petitions. The petitioner will also be entitled to take advantage of the above orders passed by this Court, since he is also similarly placed. In fact, the petitioner has already purchased one such plot, which is adjacent to the present subject property and the document was also registered before the fourth respondent.

8. In view of the above, the impugned letter issued by the third respondent to the fourth respondent is liable to be interfered with by this Court. The petitioner will be entitled for the same relief that was granted in the earlier Writ Petitions. It should be made clear that the counter affidavit filed by the third respondent specifically refers to an action that is going to be taken by the Government to resume the entire lands that were assigned, due to violation of the assignment conditions. These averments are found at para-14 and 15 of the counter affidavit. The present order passed in this Writ Petition will not come in the way of Government to take such action in accordance with law.

9. In the result, the impugned letter of the third respondent dated 11.09.2020 is hereby quashed and there shall be a direction to the fourth respondent to register the pending document pertaining to the subject property, if it is otherwise in order and the necessary stamp duty and

10. This Writ Petition is allowed with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

mra

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

To

- 1 The Secretary to Government
The State of Tamil Nadu
Revenue Department
Fort.St.Geroge, Chennai-9
- 2 The District Collector
Office of the District Collector
Thiruvottiyur District.
- 3 The Tahsildar
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Thiruvottiyur Taluk Office
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- 4 The Sub Registrar
Office of the Sub Registrar office
Thiruvottiyur Taluk
Thiruvottiyur District.

+1cc to Mr.Raja Sekhar, Advocate, S.R.No. 38451

+1cc to the Government Pleader, S.R.No. 38665

W.P.No.15737 of 2020

and

WMP Nos.19570 and 19571 of 2020

VD(CO)
GN(07/01/2021)

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