



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2015

CORAM

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD).No.14331 of 2015

K.Venkateshwaran

.. Petitioner

Vs.

- 1.The Additional Chief Secretary/
The Commissioner of Land Administration,
Chepauk,
Madras - 600 005.
- 2.The State of Tamil Nadu,
Rep. by its Secretary (Revenue Department),
Secretariat,
Chennai.
- 3.The District Collector,
O/o. The District Collector,
Theni.
- 4.The District Revenue Officer,
Collectorate,
Theni.
- 5.The Revenue Divisional Officer,
O/o. The Revenue Divisional Officer,
Periyakulam,
Theni District.
- 6.The Tahsildar,
O/o.The Tahsildar,
Periyakulam,
Theni District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the fourth respondent to cancel the classification of the land as Government vacant land in the village record comprising Survey No.1233, an extent of 1.41 acre situated at Vadaveeranaickenpatty village, Periyakulam Taluk, Theni District and consequently direct the sixth respondent to issue patta in petitioner's favour for the same.



For Petitioner : Mr.K.Anandan
For Respondents : Mr.C.Ramar
Government Advocate

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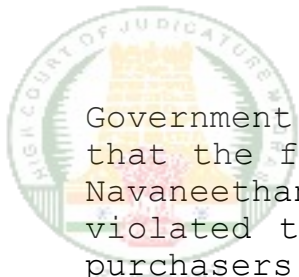
ORDER

This Writ Petition is filed for issuing a Writ of Mandamus directing the fourth respondent to cancel the classification of the land as Government land in the Village record in respect of an extent of 1.41 acre in Survey No.1233 in Vadaveeranaickenpatty village, Periyakulam Taluk, Theni District and consequently direct the sixth respondent to issue patta in favour of the petitioner.

2.The brief facts that are necessary for the disposal of this Writ Petition are as follows:

2.1.An extent of 1.41 acres in Survey No.1233 in Vadaveeranaickenpatty village, Periyakulam Taluk, Theni District was in the holding of one Navaneethan, S/o.Thangam Asari. Though the petitioner states that the property belong to the said Navaneethan by inheritance, it is stated that an assignment was made in favour of Navaneethan in the year 1970.

2.2.The said Navanatheen sold the land to Mrs.Shakunthala Arunagiri, W/o.Arunagiri under registered sale deed dated 28.04.1982. Thereafter, the said Shakunthala Arunagiri through her Power of Attorney Agent entered into an agreement of sale with one Rajangam, S/o.Ponnaiah Thevar, on 05.11.1988. It is admitted that the said Rajangam filed a suit for specific performance in O.S.No.104 of 2007 and obtained a decree for specific performance. It is also stated that the decree was executed in E.P.No.124 of 2007 before the Sub Court, Periyakulam and the sale deed was executed by the learned Subordinate Judge in favour of the said Rajangam on 31st July, 2008 before the Sub Registrar, Theni. The petitioner states that he purchased the property from the said Rajangam by a registered sale deed dated 14.09.2012. Though the petitioner's sale deed was produced before the respondents for mutation of revenue records, it appears that the respondents have not considered the representation of the petitioner. The petitioner thereafter filed a Writ Petition in W.P.No.5821 of 2014 and this Court, by order dated 04.04.2014 directed the sixth respondent to consider the petitioner's representation dated 16.09.2013 on merits within a stipulated time. The representation of the petitioner was thereafter rejected on the ground that the property in Survey No.1233 has been classified in the village record as Government vacant land. The sixth respondent advised the petitioner to submit a representation before the District Revenue Officer/fourth respondent herein to get an order to cancel the classification as

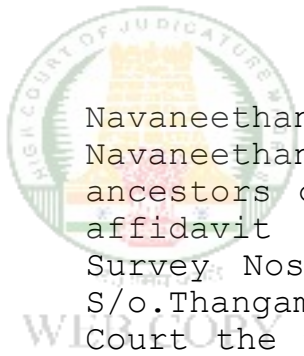


Government vacant land in the village records. The petitioner admit that the fifth respondent has cancelled the assignment in favour of Navaneethan by proceedings dated 28.07.1998 as the assignee had violated the terms and conditions of the assignment. Some of the purchasers of the land from the assignee appears to have filed a suit in respect of Survey No.1232 and obtained a decree in a batch of suits filed against the State. Though the decree was challenged subsequently by filing appeals before the Sub Court, Periyakulam, the appeals were dismissed and the respondents 2 and 3 herein preferred Second Appeal in S.A.No.1129 of 2011 and this Court dismissed all the Second Appeals filed by the respondents 2 and 3 confirming the judgment and decree passed by the Courts below. The petitioner, citing the judgment of Civil Court, submitted that the title of petitioner's predecessor-in-interest has been upheld by this Court in the civil suit and that the classification of the land as Government vacant land should be cancelled in view of the Civil Court's decree.

3.The learned Counsel appearing for the petitioner relied upon paragraph 15 of the judgment of this Court in the second appeal which was decided on 11.01.2012. Since paragraph 15 of the judgment is relevant, the same is extracted below for convenience:

"15.The sale deed alleged to have been executed by Navaneethan in favour of Sakunthala has been marked as Ex.A1, wherein it has been clearly stated that the suit survey number is the ancestral property of the vendor Navaneethan. The sale deed which stands in the name of Dhanalakshmi has been marked as Ex.A2 and patta which stands in the name of the said Dhanalakshmi has been marked as Ex.A3. Except the assignment order dated 20.11.1970, on the side of the defendants 1 and 2, no document has been filed for the purpose of showing that prior to 20.11.1970, the suit survey number belonged to the Government. Therefore, considering the recitals found in Ex.A1 and also considering the fact that no document has been filed prior to assignment order dated 20.11.1970 on the side of the defendants 1 and 2, the Court can unflinchingly come to a conclusion that the plaintiffs are the absolute owners of the suit properties since they purchased the same from its rightful owner viz., Dhanalakshmi."

4.No doubt it is true that in the batch of Civil Suits and the appeals, some of the purchasers, who also derived title from Navaneethan, contented that the property is the property of Navaneethan not by virtue of the assignment but by virtue of his prior title through proper source. In other words, the title of the said Navaneethan was projected as if the property is the ancestral property of Navaneethan. Relying upon the said portion of the judgment of Civil Court, the learned Counsel appearing for the



Navaneethan by virtue of the assignment made in favour of the Navaneethan in the year 1970 but by virtue of the title of the ancestors of the said Navaneethan. The petitioner admitted in the affidavit filed in support of the petition that the property in Survey Nos.1232 and 1233 was assigned in favour of Navaneethan, S/o.Thangam Asari. The petitioner himself has produced before this Court the proceedings of the Special Tahsildar assigning the lands in favour of Navaneethan, S/o.Thangam Asari. Having claimed title on the basis of the assignment, the petitioner also pleaded that the title of assignee was upheld by this Court in S.A.(MD)Nos.1121 to 1129 of 2011. The learned Counsel appearing for the petitioner admit that the property in Survey No.1233 measuring an extent of 1.41 acres in Vadaveeranaickenpatty village is not the subject matter of the previous suit and that therefore, the order of this Court in the Second Appeals may not have any relevance. Insofar as the property in Survey No.1233 is concerned, no record is produced before this Court except the assignment and other documents to show that the assignment of land in favour of Navaneethan was acted upon. No other document is produced in this case to suggest that the said Navaneethan got the property through some other source. In the said circumstances, the judgment and decree in S.A.(MD)Nos.1121 to 1129 of 2011 has no relevance to the present case.

5.The petitioner himself has admitted before this Court that proceedings were initiated for cancellation of assignment and resumption of land from the petitioner way back in 1998. The petitioner has not challenged the cancellation of assignment so far by filing any independent Writ Petition. In such circumstances, this Court is unable to entertain this Writ Petition which is filed to cancel the classification of the land as Government vacant land. When the assignment relied upon by the petitioner is already cancelled, the petitioner is not entitled to any relief without challenging the order cancelling the assignment. In that view of the matter, this Writ Petition is devoid of any merits and accordingly, dismissed. However, liberty is given to the petitioner to challenge the cancellation of assignment made in favour of the petitioner's predecessor-in-interest by name Navaneethan in the year 1970. No costs.

Sd/-

Assistant Registrar (AD-II)

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/ /2020

Sub Assistant Registrar(CS)

SRM

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Additional Chief Secretary/
The Commissioner of Land Administration,
Chepauk,
Madras - 600 005.

2.The Secretary to Government,
Revenue Department,
Secretariat,
Chennai.

3.The District Collector,
O/o. The District Collector,
Theni.

4.The District Revenue Officer,
Collectorate,
Theni.

5.The Revenue Divisional Officer,
O/o. The Revenue Divisional Officer,
Periyakulam,
Theni District.

6.The Tahsildar,
O/o.The Tahsildar,
Periyakulam,
Theni District.

ORDER MADE IN
W.P. (MD) .No.14331 of 2015
23.01.2015

JMN(20.02.2020) 5P : 7C