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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.2545/2012 and M.P.No.1/2012
and W.A.No.2546/2012 and M.P.No.2/2012
W.A.No.2545/2012 :

1. The Government of Tamil Nadu
rep. by the Secretary to Government,
Revenue Department,
Fort St. George, Chennai-600 009.
2. The District Revenue Officer,
Salem, Salem District.
3. The Tahsildar,
Sangagiri Taluk, Salem District. ... Appellants

-vs-

1. V.Palaniyappan
2. The Assistant Executive Engineer/O&M/Rural,
Tamil Nadu Electricity Board,
Sangagiri Rural, Sangagiri Post,
Salem District.
3. The Assistant Engineer/O&M/Rural,
Tamil Nadu Electricity Board,
Sangagiri Post, Salem District. ... Respondents

Prayer: Writ appeal filed under Clause 15 of the Letters Patent praying to allow the Writ Appeal by setting aside the order of the learned Single Judge made in W.P.No.3306 of 2009 dated 07.07.2010.

Prayer: W.P.No.3306 in 2009:-

Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to the impugned order of the 1st respondent



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in G.O.ms. No.108 Revenue (Ni.Mu.7) Department dated 25.2.2008 and the consequential order of the 2nd respondent in na.ka. No.29269/2007/K3 dated 27.1.2009 and quash the said orders

For Appellant : Mr.V.Manoharan,
Government Advocate

For respondents : Mr.M.Abdhulkaleem
2 and 3

R1 : No Apprarance

W.A.No.2546/2012 :

1. The Government of Tamil Nadu
rep. by the Secretary to Government,
Revenue Department,
Fort St. George, Chennai-600 009.
2. The District Revenue Officer,
Salem, Salem District.
3. The Tahsildar,
Sangagiri Taluk, Salem District. ... Appellants

-vs-

- 1.P.Perumayi
- 2.P.Suveetha
- 3.P.Kavitha
4. The Assistant Executive Engineer/O&M/Rural,
Tamil Nadu Electricity Board,
Sangagiri Rural, Sangagiri Post,
Salem District.
5. The Assistant Engineer/O&M/Rural,
Tamil Nadu Electricity Board,
Sangagiri Post, Salem District. ...Respondents

Prayer: Writ appeal filed under Clause 15 of the Letters Patent praying to allow the Writ Appeal by setting aside the order of the learned Single Judge made in W.P.No.6491 of 2009 dated 07.07.2010.

Prayer: W.P.No.6491 in 2009:-

Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to the impugned order of the 1st respondent in G.O.ms. No.108 Revenue (Ni.Mu.7) Department dated 25.2.2008 and the consequential order of the 2nd respondent in na.ka.



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No.29269/2007/K3 dated 27.1.2009 and quash the said orders

For Appellants : Mr.V.Manoharan,
Government Advocate

For respondents : Mr.M.Elango
1 to 3

For Respondents : Mr.M.Abdul Kaleem
4 and 5

COMMON JUDGMENT

(Judgment of the Court was pronounced by T.RAJA.J)

These Writ Appeals have been filed by the Government of Tamil Nadu represented by the Secretary to Government, Revenue Department, Fort St. George, Chennai and two others, challenging the correctness of the impugned Common Order dated 07.07.2010 passed in W.P.Nos.3306 and 6491 of 2009 in and by which the writ petitions filed by the writ petitioners/1st respondent in W.A.No.2545/2012 and the respondents 1 to 3 in W.A.No.2546/2012 were allowed.

2. At the outset, it is pertinent to state that the learned Single Judge of this Court has allowed the Writ Petitions on two grounds, namely, firstly, the action taken by the appellants to cancel the assignment would itself make it clear that the lands were assigned to the writ petitioners and they were in possession and enjoyment of their lands, but after transferring the lands by the Government to the Tamil Nadu Electricity Board, when the lands-in-question were already assigned in favour of the fathers' of the writ petitioners in both Writ Petitions long back during 1980 without cancelling the same, it was transferred to the TNEB on 25.02.2008 and only to justify the said transfer, cancellation order was passed subsequently on 27.01.2009 which indicates the mala fide intention; and secondly, the principles of natural justice was violated while holding the enquiry. Penultimately, the learned Single Judge permitted the Tamil Nadu Electricity Board to proceed with the erection of sub-station work as the same is for public purpose. Accordingly, directed the 1st respondent therein/1st appellant herein to hold private negotiation with the writ petitioners and to arrive at an amicable settlement within a period of two months from the date of receipt of a copy of that order. Finding fault with the same, the present Writ Appeal has been preferred.

3. Learned Government Advocate appearing for the appellants submitted that originally, a notice was published calling for objections from the public on 22.06.2007 that was even before starting the erection work by the Tamil Nadu



Electricity Board and installing sub-station in S.No.1/6 of Iveli Village since that was found suitable after inspection. As there was no objection from the public, Iveli Panchayat passed a resolution dated 29.06.2007 classifying the lands-in-question as 'Anatheenam Poramboke'. Only thereafter, the Revenue Department, Government of Tamil Nadu in G.O.(Ms.)No.108, Revenue Department, dated 25.02.2008, proposed to transfer the ownership of the lands-in-question to the Tamil Nadu Electricity Board. On an earlier occasion in W.P.Nos.11001/2008 and 11678/2008, by a Common Order dated 20.08.2008, a direction was issued to the revenue authorities to proceed further with the enquiry and pass orders in accordance with law. Only as per the orders passed by this Court permitting the appellants to proceed with the enquiry, the 2nd appellant herein after conducting enquiry has cancelled the pattas issued to the writ petitioners as per the powers conferred under G.O.No.2555, Revenue Department dated 14.05.1973 in Proc.No.29269/2007 K3 dated 27.01.2009, he pleaded.

4. Learned Government Advocate for the appellants further submitted that the learned Single Judge overlooking this fact came to the conclusion that the lands-in-question were firstly transferred to the Tamil Nadu Electricity Board and thereafter only, the assignment was cancelled, justifying his stand in transferring the lands to the Tamil Nadu Electricity Board. The learned Government Advocate also argued that as the lands-in-question were urgently required for setting up of an Electricity Sub-Station at Sangagiri, the District Revenue Officer, Salem, the 2nd appellant herein issued a notice on 13.01.2009 for enquiry to be held on 23.01.2009. On 23.01.2009, the writ petitioners attended the enquiry and gave their statement and the 2nd appellant after perusing the records finally cancelled the assignment of 'D' Card in Proceeding Roc.No.29269/07/K3, dated 27.01.2009. Therefore, the Writ Petitioners filed Writ Petitions against the cancellation of 'D' Card made by the 2nd appellant. Hence, the question of not cancelling the assignment even according to the stand taken before this Court during the earlier occasion does not arise.

5. Adding further, it is contended that when the lands-in-question were assigned to the Writ Petitioners, neither the fathers' of the writ petitioners nor the writ petitioners were in possession of the lands-in-question, therefore, the Revenue records also show that the lands-in-question are Assessed Waste Dry vested with the Government. Hence, finding that the lands assigned to the writ petitioners were not put to use, they continued to be only Assessed Waste Dry lands, the 2nd appellant has rightly transferred the same to the TNEB for erection of Sub-Station for the simple reason that due to the non-cultivation of the private lands-in-question as per the



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conditions mentioned in the assignment and thereby having lost right to hold the patta, the lands are automatically vested with the Government on completion of three years from the date of grant of assignment of patta. As argued earlier, the writ petitioners have not even produced any documentary proof for payment or receipt for the period 2008 showing that the lands were put to use or cultivated or enjoyed. Therefore, when the terms and conditions mentioned in the assignment order specifically made it clear that if the assignee fails to make use of the land by physically cultivating the same within three years, on completion of 3 years from the date of grant of assignment of patta, automatically, the non-cultivation of the property will vest with the Government, while holding good, this crucial aspect has been overlooked by the learned Single Judge. Therefore, the appellants found that there was no any need or necessity to hold the private negotiation for the purpose of payment of compensation, as there is no provision for payment of compensation to the assigned land.

6. Concluding his arguments, learned Government Advocate for the appellants submitted that pursuant to the orders passed by this Court, the 2nd appellant has conducted an enquiry in which the writ petitioners have also participated. After hearing the parties, the impugned order has been passed. Therefore, the same cannot be found fault with for cancelling the assignment of patta-in-question.

7. In reply, learned Counsel appearing for the writ petitioners stated that originally, the fathers' of the writ petitioners in both these appeals were in actual possession and enjoyment of the lands-in-question having an extent of 0.57 acres at Iveli Village, Sangagiri Taluk, Salem District for more than 25 years, physically cultivating the said land. As they were in long and continuous possession and enjoyment of the said lands, they applied for assignment of lands in their favour. The Village Administrative Officer, Iveli Village and the Revenue Inspector made a detailed enquiry and confirmed the actual physical possession of the said lands by the fathers' of the writ petitioners and on the basis of the said confirmation, the Tahsildar, Sangagiri sent a report to the Deputy Collector, Sangagiri, on 20.07.1980 making it clear that the said lands were not required for any public purpose indicating that there was no any objection from the general public or from the Panchayat Union. Only on the said basis, the Deputy Collector issued the order in Pa.Mu.No.11437/80 dated 25.07.1980, directing the Tahsildar to receive the necessary charges and assign the said lands to the fathers' of the writ petitioners and also issue 'D' Card pattas in their favour and to effect necessary mutation in the revenue records. Following the said order, the father of the Writ Petitioner in W.P.No.3306/2009



remitted a sum of Rs.2077.10 towards land cost, Rs.52.50 towards tree cost, Rs.16.40 towards stone charges and Rs.20.40 towards sub-division charges and the father of the writ petitioners in W.P.No.6491/2009 remitted a sum of Rs.708.90 towards land cost, Rs.23.25 towards tree cost Rs.10/- towards stone charges and Rs.4/- towards sub-division charges and these amounts were remitted on 21.08.1980 and thereafter pattas were granted on 30.06.1981. Since then, the writ petitioners families have been cultivating the said lands with their own physical labour and with the physical labour of their family members till the death of the fathers' of the writ petitioners and after the death of the fathers' of the writ petitioners, the writ petitioners, being their legal representatives have been in possession and enjoyment of the said lands. Since the lands were continuously shown as assessed waste dry in the revenue records, it was a mistake committed by the revenue officials.

8. Learned Counsel for the writ petitioners further stated that taking advantage of the non-changing of revenue records during the year 2007-2008, the Tamil Nadu Electricity Board visited the lands with a plan to construct a sub-station. After coming to know about the same, it was informed to the TNEB that the lands-in-question are private properties for which the competent authority has also issued pattas and that the same were not even cancelled in the manner known to law. However, when there was no response, the writ petitioners filed W.P.No.11001/2008 seeking a Writ of Mandamus, forbearing the Government and Tamil Nadu Electricity Board from acquiring their lands-in-question without authority and due process of law. Though there was no notice issued to the Writ Petitioners, a final order was passed by a learned Single Judge on 20.08.2008 stating that when the pattas were issued in respect of the lands-in-question, the same have not been so far cancelled. Therefore, it is for the revenue authority to proceed with the enquiry and pass appropriate orders in accordance with law and liberty was also given to the writ petitioners to make their objections before the authorities concerned in this regard. But without passing any final order and without adopting due process of law, the appellants cannot dispossess the writ petitioners from their lands. After the writ petition was disposed of, a notice was issued on 19.12.2008 by the District Revenue Officer, Salem, calling upon the writ petitioners to show cause why the pattas should not be cancelled for the reasons stated therein for which the writ petitioners requested extension of time till 28.02.2009 for perusing the old documents and submitting their reply.

9. Learned Counsel for the writ petitioners also brought to our notice that when notice was issued on 19.12.2008 for enquiry, the Government of Tamilnadu had issued G.O.Ms.No.108,



Revenue (Ni.Mu.7) Department, dated 25.02.2008, transferring the ownership of the said lands in favour of the Tamil Nadu Electricity Board on collection of the land value. Appreciating this fact, the learned Counsel for the writ petitioners submitted that when the lands-in-question were lawfully assigned to the writ petitioners on receipt of the lands costs etc., without cancelling the assignments, transferring the lands-in-question to the TNEB for erecting the sub-station on 25.02.2008 and cancelling the assignments only subsequently on 27.01.2009 is like putting the cart before the horse. As a matter of fact, when the lands-in-question were already assigned to the writ petitioners only after cancellation of the pattas in the manner by giving all reasonable opportunities, the lands-in-question could have been transferred to the Tamil Nadu Electricity Board later on. As it has not been done, the learned Single Judge has quashed the proceedings in question and directed them to proceed with the private negotiation so that the lands-in-question can be utilised for public purpose by the Tamil Nadu Electricity Board. Even now, it is pleaded that the appellants have not come forward to hold private negotiation as the lands-in-question were purchased by the fathers' of the writ petitioners on payment of land cost, the cancellation of order of assignment is unknown to law.

10. We are also able to find some merits on the submissions of the learned Counsel for the writ petitioners for two reasons. Firstly, the Deputy Collector, Sangagiri, Salem, has directed the Tahsildar, Sangagiri in Pa.Mu.No.11437/80 dated 25.07.1980 to receive the necessary charges and assign the said lands to the fathers' of the writ petitioners and issue D-Card patta in their favour and to effect necessary mutation of names in the revenue records. Thereafter, it appears that the fathers' of the writ petitioners paid the lands costs, trees costs and stone charges and sub-division charges and the said amounts were remitted on 21.08.1990 and subsequently, the pattas were granted on 30.06.1981 to them. It appears that the said pattas till date have not been cancelled by the Revenue Department. Secondly, when the cancellation took place on 27.01.2009 the lands were not found with the writ petitioners because it was already transferred to the Tamil Nadu Electricity Board on 25.02.2008. As a matter of fact, when the lands-in-question were required for setting up of an Electricity Sub-station in Sangagiri Taluk, Salem, this could have been transferred to the Tamil Nadu Electricity Board as held by the learned Single Judge in the manner known to law and that the public purpose will override the individual interest. Thirdly, the appellants have transferred the lands-in-question to the Tamil Nadu Electricity Board on 25.02.2008 and thereafter assignment was cancelled on 27.01.2009. As we are unable to find any justification, we are not inclined to interfere with the findings and conclusions



reached by the learned Single Judge of this Court.

11. In the result, the writ Appeals fail and the same are, accordingly, dismissed. However, the appellants shall explore the possibilities of settling the matter through private negotiation as suggested by the learned Single Judge of this Court. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Assistant Executive Engineer/O&M/Rural,
Tamil Nadu Electricity Board,
Sangagiri Rural, Sangagiri Post,
Salem District.
- 2.The Assistant Engineer/O&M/Rural,
Tamil Nadu Electricity Board,
Sangagiri Post, Salem District.
- 3.The Secretary to Government,
The Government of Tamil Nadu
Revenue Department,
Fort St. George, Chennai-600 009.
- 4.The District Revenue Officer,
Salem, Salem District.
- 5.The Tahsildar,
Sangagiri Taluk, Salem District.
- 6.The Deputy Collector,
Sangagiri Taluk, Salem District.

+1cc to Mr.M.Elango, Advocate, S.R.No.34596
+1cc to the Government Pleader, S.R.No.34644

W.A.No.2545/2012
and W.A.No.2546/2012

BR(CO)
CT(13/09/2021)