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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K. ILANTHIRAIYAN

W.P. No.2591 of 2012

and

M.P Nos. 2 & 3 of 2012

1.T.V.Nandagopal Naidu (deceased)

2.M.Usha Rani

3.Uma Mohan Choudary

4.N.Vanaja

(P4 substituted as LRs of deceased

P1 vide order dated 08.03.2021

made in WMP No.3745 of 2021

in W.P.No.2591 of 2012)

...Petitioners

-Vs-

1.The Commissioner of Land Reforms,
Govt. of Tamilnadu,
Chepauk,
Chennai 600 005.

2.The Asst. Commissioner (Land Reforms),
Govt.of Tamilnadu,
Villupuram District,
Villupuram.

3.The Tahsildar,
Tambaram Taluk,
Chennai 600 005.

4. S.Pakkiri

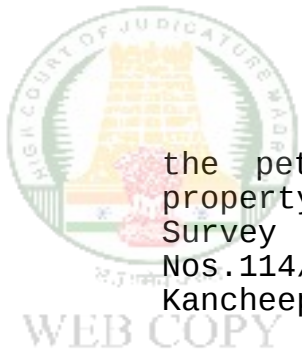
5. M.Dhamotharan

6. R.Ponnusamy

7. Palayam

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings under Ref.No.A1/MR.4/437/17-70 dated 10.11.1998 of the 2nd respondent herein and quash the same and consequently, forbearing the respondents herein, their men, agents, servants, subordinates or any other person or persons claiming through them or authorized by them from, in any manner, interfering with



the petitioners' peaceful possession and enjoyment of their property measuring to an extent of 1.51 acres comprised in Survey No.114, which was subsequently sub-divided as Survey Nos.114/1 and 114/2 in Agaram then Village, Tambaram Taluk, Kancheepuram District.

For Petitioners : Mr.AR.L. Sundresan,
Senior Counsel for
M/s.AL.Ganthimathi

For R1 to R3 : Mr.M.R.Gokul Krishnan,
Government Advocate.

For R4 to R7 : Mr.D. Senthil Kumar

O R D E R

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings under Ref.No.A1/MR.4/437/17-70 dated 10.11.1998 of the 2nd respondent herein and quash the same and consequently, forbearing the respondents herein, their men, agents, servants, subordinates or any other person or persons claiming through them or authorized by them from, in any manner, interfering with the petitioners' peaceful possession and enjoyment of their property measuring to an extent of 1.51 acres comprised in Survey No.114, which was subsequently sub-divided as Survey Nos.114/1 and 114/2 in Agaramthen Village, Tambaram Taluk, Kancheepuram District.

2. The case of the petitioner is that the petitioners are the legal heirs of T.V.Lakshmipathy Naidu and T.V.Nandagopal Naidu who are the brothers born to late T.N. Varadarajulu Naidu. By a "Koor Chit" dated 15.01.1959, the property comprised in Survey No.114 of Agaramthen Village to an extent of 1.51 acres was allotted to them. In pursuant to the said 'Koor Chit', patta was issued to an extent of 0.33.50 hectares in favour of the 4th petitioner's husband i.e., T.V. Nandagopal Naidu in Patta No.137, sub-divided as Survey No.114/1. In respect of the remaining extent of land ad-measuring 0.27.50 hectares sub-divided as Survey No. 114/2 was allotted to the father of the petitioners 2 and 3 herein and they were also issued patta. Accordingly, the petitioners 2 and 3 are entitled to the land comprised in Survey No.114/2 to an extent of 68 cents and the fourth petitioner is entitled to the land comprised in Survey No.114/1 to an extent of 83 cents situated at Agaramthen Village. While being so, all the land holdings of their father's i.e., T.V.Nandagopal Naidu and T.V.Lakshmipathy Naidu were subject matter of the land ceiling proceedings under the provisions of Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act,1961.



3. After finalisation of the proceedings under the aforesaid act, the following lands were declared as surplus holdings and acquired under Section 18(1) of the said Act. It was issued on 03.02.1975.

Village	Survey Number	Extent in cents	Compensation awarded to
Agaram then	77/1	88 cents	T.V. Nandagopal Naidu
	64	54 cents	T.V. Lakshmipathy Naidu
	237/2A	78 cents	
	231	67 cents	
	Total	199 cents	

4. The said land, i.e., comprised in Survey No. 114, was not declared as surplus land. The only extent of 1.51 acres comprised in Survey No.114 was treated as their holdings and the same was allotted to the petitioners father. While being so, the respondents 4 to 7 filed a Writ Petitions in W.P.Nos.7249 to 7251 of 2009 before this Court, for direction directing the second respondent to consider the representation dated 09.07.2008 in respect of the subject property is re-allotted to them ad-measuring to an extent of 25 cents each comprised in Survey No.114, Agaramthen Village, Tambaram Taluk, Kancheepuram District.

5. This Court by an order dated 05.01.2011, disposed of the Writ Petitions directing the respondents to proceed the matter and concluding the proceedings within a period of 16 weeks from the date of the receipt of a copy of the order. As directed by this Court, the second respondent had taken steps to pass orders and the petitioners were issued a notice. Thereafter, the petitioners came to understand about the impugned order dated 10.11.1998 thereby assigned the land comprised in Survey No.114 to an extent of 25 cents each to the respondents 4, 6, 7 and the father of fifth respondent herein was allotted in Survey No.114 has been given in lieu of land comprised in Survey No.113, Agaramthen Village, which had earlier been wrongly allotted to the said persons by wrongly treating the same as surplus land acquired from Mr.Vittalnatha Naidu.

6. The father of the fourth petitioner herein and his another brother T.V.Srinivasan challenged the assignment order in favour of the respondents 4 to 7 herein in Special Revision Petition No. 56 of 1993, in which the Tamil Nadu Land Reforms Special Appellate Tribunal, by its order dated 31.03.1994 passed the following order.

'' 1. The Learned counsel for the petitioners submits that one acre of land in Survey No.113 has been



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sub-divided as Survey Nos.113/2A, 113/2B, 113/2C and 113/2D and assigned in favour of respondents 4 to 7 herein. It is not the land of Vittalanatha but is the petitioners' land. The learned Standing Counsel submits that the inclusion of the said one acre comprised on Survey No.113/2A to 113/2D as if owned by Vittalanatha was by a mistake.

2. In view of the above admission made by the Standing Counsel, the orders of assignment made in favour of respondents 4 to 7 who have chosen to appear neither in person nor through counsel in MR/IV/437/10/I dated 14.04.1981 on the file of the special Tahsildar (Land Reforms), Kanchipuram stand set aside. It is clear that the said extent of one acre is not to be treated as surplus land in the holding of Vittalanatha.

3. So far as the assignees are concerned, it is stated before us that though the orders of assignment were made as early as in April 1981, possession of lands assigned was not given to the respondents 4 to 7 in spite of the fact that annual instalments towards the value of the land had been collected from them. This is very unfortunate and shocking.

4. Even though the orders of assignment made in favour of respondents 4 to 7 are cancelled for no fault of theirs, yet they are eligible for preferential treatment as and when surplus lands are available for distribution. The Special Revision Petition is allowed in the above terms. If and when lands are assigned in favour of respondents 4 to 7, the money already collected from them would be adjusted towards the value of the land.''

7. It reveals that the land comprised in Survey No.113 was never declared as surplus in the holding of Vittalanatha and was set aside the proceedings dated 15.06.1993 by the Land Commissioner. However, the tribunal observed that the respondents 4 to 7 herein are eligible for preferential treatment as and when surplus lands are available for distribution. Accordingly, the respondents 4 to 7 were allotted in respect of the property comprised in Survey No.114 situated at Agaramthen Village.

8. A perusal of the order of acquisition i.e., the final notification was issued under Section 18(1) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 was never declared as surplus from the holdings of the petitioners father or their predecessors.

9. As stated supra, the only land comprised in Survey No.77/1, 64, 237/2A and 231 situated at Agaramthen Village were declared as surplus. The respondents 1 to 3 when application of



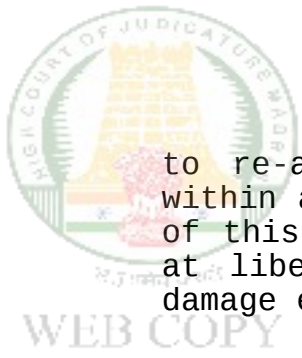
mind mechanically assigned the land comprised in Survey No.114 situated at Agaramthen Village in favour of the respondents 4 to 7 herein by the impugned proceedings.

10. On perusal of the counter filed by the third respondent, there is no whisper about the declaration of the land comprised in Survey No.114 situated at Agaramthen Village as surplus from the holdings of the petitioners' father or their predecessors. They simply re-iterated the averments made in the affidavit and not even whispered about the declaration of the subject property as surplus from the holdings of the petitioners' father. Therefore, the counter filed by the respondents is no way useful for this Writ Petition.

11. The learned Senior Counsel rightly pointed out that the order of assignment dated 10.11.1998 issued by the second respondent herein in favour of the respondents 4 to 7 is arbitrary, illegal, unjust and unsustainable in law and the second respondent has no jurisdiction to pass the impugned order. Since, the said land was never declared as surplus from the holdings of the petitioners' father. The land comprised in Survey No.114 at Agaramthen Village was never declared as surplus and the land was never acquired by respondent 1 to 3 herein or another authority under the provision of Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961. In fact, already the assignment of land was assigned in favour of the respondents 4 to 7 herein, in respect of the land comprised in Survey No.113, Agaramthen Village, was set aside by the Tamil Nadu Land Reforms Tribunal by an order dated 31.03.1994 in Special Revision Petition No.56 of 1993.

12. However, the Tribunal directed the respondents 1 to 3 herein to assign any other land which was acquired by them and which was available in their control. Therefore, the respondents 1 to 3 without even declare the subject property as surplus land from the holdings of the petitioners' father mechanically assigned the land in favour of the respondents 4 to 7 herein. In fact, the possession of the said land is very much with the petitioners and the possession of the said land never handed over to the respondents 4 to 7 herein. The respondents 4 to 7 also without even taking possession of the subject land, they paid the instalment amount for the subject property towards the value of the land. Therefore, the impugned order cannot be sustained and it is liable to be set aside.

13. In view of the above, the proceedings dated 10.11.1998 passed by the second respondent in Ref.No.A1/MR.4/437/17-70 is hereby set aside. However, the respondents 4 to 7 herein already paid the value of the land cost and as such, they are entitled for assignment of other land in their favour. Therefore, the respondents 1 to 3 are directed



to re-allot the land, which was already declared as surplus within a period of four weeks from the date of receipt of a copy of this order, failing which, the respondents 4 to 7 herein are at liberty to proceed as against the respondents 1 to 3 for damage etc., in the manner known to law.

14. Accordingly, the Writ Petition stands allowed. Consequently, the connected Miscellaneous Petitions are Closed. No costs.

Sd/-
Assistant Registrar (C0)

// True Copy //

Sub Assistant Registrar

Lpp/mn

To

1.The Commissioner of Land Reforms,
Govt. of Tamilnadu,
Chepauk,
Chennai 600 005.

2.The Asst. Commissioner (Land Reforms),
Govt.of Tamilnadu,
Villupuram District,
Villupuram.

3.The Tahsildar,
Tambaram Taluk,
Chennai 600 005.

+1cc to M/s.AL.Ganthimathi, Advocate SR.No.43617

+1cc to M/s.D.Senthil Kumar, Advocate SR.No.43583

W.P. No.2591 of 2012
and
M.P Nos. 2 & 3 of 2012

CP(C0)
RVM(21/09/2021)