

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.No.10456 of 2018
and
WMP.Nos.12406 & 31018 of 2018

- 1.K.Siva Shanmugam (deceased)
- 2.Mathurambal
- 3.S.Ezhilmaran
- 4.S.Tamilvanan

(P-2 to P4 were substituted as LRs
of the deceased sole petitioner vide
order dated 18.03.2021 made in
WMP.No.6026 of 2021 in
W.P.No.10456 of 2018 by SSSRJ)

... Petitioners

Vs.

1. The District Collector of Tiruvannamalai,
Collector Office,
Vengikal,
Tiruvannamalai.
2. The District Revenue Officer,
Collector Office,
Vengikal,
Tiruvannamalai.
3. The Revenue Divisional Officer,
Tiruvannamalai Taluk,
Tiruvannamalai District.
4. The Executive Engineer,
Public Works Department,
Tiruvannamalai.
5. The Tahsildar,
Kalasapakkam Taluk,
Tiruvannamalai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records and quash the order dated 10.04.2018 passed by the second respondent vide Se.Mu.No.AA4/15084/2017 which cancelled the petitioner's assignment patta for the property situated at Old Survey No.195/1A/1A/1 and new Survey No.259/1 and also direct the respondents to hand over the patta land to the petitioner.

For Petitioners : Ms.S.Suseela Devi

For Respondents : Ms.A.Madhumathi, Spl.GP

O R D E R

Today, the matter is listed through Video Conferencing. By consent of both the parties, the Writ Petition is taken up for final disposal.

2.This Writ Petition has been filed to quash the order passed by the second respondent in Se.Mu.No.AA4/15084/2017 dated 10.04.2018, cancelling the petitioner's assignment patta for the property situated at Old Survey No.195/1A/1A/1 and new Survey No.259/1 and also to direct the respondents to hand over the patta land to the petitioner.

3.Heard Ms.S.Suseela Devi, learned counsel for the petitioners and Ms.A.Madhumathi, learned Special Government Pleader appearing on behalf of the respondents.

4.The brief facts as seen from the affidavit filed in support of the petition are as follows:-

a)The petitioner states that the land comprised in Survey No.195/1A/1A is a grama natham and that the petitioner has been in continuous possession and enjoyment of the property for an extent of 2 cents. It is also stated that the petitioner had put up a thatched hut and residing there along with his family members from the year 1956.

b)It is the specific case of the petitioner that he was given assignment for an extent of 2 cents in Survey No.195/1A/1A in his name and the home site assigned to the petitioner was sub divided as Survey No.195/1A/1A/1. The petitioner states that he had put up construction in that land and is in continuous possession and enjoyment of the land as pattadhar

from 1968 without any interruption and that he was also paying house tax regularly.

c)The petitioner submitted that he received summons dated 14.12.2017 from the third respondent, calling upon the petitioner to appear before him on 21.02.2017 for an enquiry relating to the cancellation of patta which was already issued to the petitioner. The petitioner appeared in person on 21.02.2017. However, on 15.05.2017, without prior intimation or notice to the petitioner, the third respondent with the assistance of the Highways Department arbitrarily demolished the construction put up by the petitioner in the patta land and thrown out the movables from the property. It was stated that thereafter on 16.05.2017, the petitioner received the order dated 30.03.2017 signed by the third respondent. Against the proceedings of the third respondent dated 30.03.2017, the petitioner preferred a further appeal before the second respondent/ the District Revenue officer, Tiruvannamalai, who had also dismissed the same by the impugned order dated 10.04.2018. In the meanwhile, the petitioner also approached this Court by filing a Writ Petition in W.P.No.2954 of 2018, seeking a direction to the second respondent to consider the appeal preferred by the petitioner as against the order of the third respondent and to direct the respondents not to put up any super structure till the disposal of the appeal by the second respondent. The said Writ Petition was allowed by this Court by order dated 12.02.2018, by issuing a direction to the second respondent to dispose of the appeal within a period of eight weeks and by directing the third respondent to maintain status quo. Thereafter, the petitioner attended the enquiry and the second respondent by impugned order dated 10.04.2018, confirmed the order passed by the third respondent.

5.Aggrrieved by the impugned order dated 10.04.2018 passed by the second respondent, this Writ Petition is filed as stated supra.

6.The learned counsel for the petitioner submitted that cancellation of assignment patta was without assigning any reason and that the order of the third respondent and the second respondent are liable to be quashed for the simple reason that the petitioner was never put on notice or a show cause notice as to how and why his patta should be cancelled. Admittedly, there was an assignment in 1968 and the petitioner is in possession and enjoyment of the subject land for more than six decades. The learned counsel further stated that the impugned order without considering the merits of the petitioner's claim and his long enjoyment is liable to be quashed.

7. Though there are various other grounds raised in the Writ Petition, this Court is of the view that the orders passed by the third respondent as well as the second respondent are also liable to be quashed on the short ground of violation of Principles of Natural Justice. The petitioner was given assignment of a small piece of land in Survey No.195/1A/1A and the assignment produced before this Court shows that the land was classified as grama natham. Therefore, it is revealed that the petitioner's possession and enjoyment was recognised by the respondents while giving patta. The land which is classified as grama natham does not vest with the Government and therefore, it should be taken that the patta granted in favour of the petitioner was in recognition of the petitioner's enjoyment of the property for his residence. The order passed by the third respondent clearly shows that the property is classified as village natham. However, without any notice to the petitioner, the third respondent appears to have passed the order on 30.03.2017. Though the petitioner appeared for enquiry, he was not aware of the reason for which the assignment was cancelled or the reason for which the original patta furnished to the petitioner was cancelled. Hence, the appearance of the petitioner in the course of enquiry alone is not sufficient compliance of the Principles of Natural Justice. The assignment was cancelled on the ground that a portion of the land which was assigned to the petitioner was used for non residential purpose. The second respondent also fell in line with the third respondent while considering the appeal preferred by the petitioner. When the appeal was pending, it is also brought to the notice of this Court that a small residential construction put up by the petitioner in the subject property was demolished by the respondents even before serving the copy of the order of the third respondent on the petitioner. It is not seriously disputed by the respondents. In such circumstances, the respondents have acted arbitrarily and high handedly by taking possession and demolishing the construction put up by the petitioner in the subject property even without serving the order of third respondent cancelling patta earlier given to the petitioner.

8. In the present case, it is not disputed that the property is classified as grama natham and therefore, this Court cannot assume that the Government is the owner of the property. Unless the property is a Government land or a poramboke land, the Government cannot initiate summary proceedings for evicting anyone by cancelling the patta. In the present case, the assignment patta was in favour of first petitioner in the year 1968 and it is also seen that the cancellation of assignment patta was initiated beyond the period of three years. In the

present case, the proceedings were initiated only in the year 2017 and the petitioner was dispossessed without following due process or complying with the Principles of Natural Justice. The second respondent has confirmed the order of the third respondent mechanically without independently considering the grounds raised by the petitioner in the memorandum of appeal. When the property is classified as Grama Natham and the petitioner given assignment and the patta treated as a grant from Government, patta for residential property in respect of the land classified as grama natham must be in recognition of person's enjoyment. If the assignment patta granted in favour of the petitioner is not a grant but just an acknowledgement of the petitioner's independent right then the impugned order cancelling the assignment patta for violation of the conditions, cannot be sustained. As indicated by this Court in several judgments, the cancellation of assignment patta beyond the period of 3 years, in cases, where the original assignment was given prior to 1973 is also illegal. Therefore, this Court is of the firm view that the impugned order passed by the second respondent, confirming the order of the third respondent is illegal, arbitrarily and unconstitutional and the same is liable to be set aside.

9. Accordingly, the impugned orders passed by the second and third respondents are set aside and consequently, the Writ Petition is allowed. The respondents are directed to issue patta in favour of the petitioner in respect of the land which was assigned to the petitioner in the year 1968, within a period of twelve weeks from the date of receipt of a copy of this order. The petitioner should be put back in possession. For the high handed and arbitrary manner in which the petitioner was dispossessed, he is entitled to compensation. Since the petitioner has not prayed for compensation, this Court is unable to give further direction. However, taking responsibility for the injustice done to the petitioner and his family, the second respondent is directed to see that the petitioner gets back possession within two weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. There shall be no orders as to costs.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

1. The District Collector of Tiruvannamalai,
Collector Office,
Vengikal,
Tiruvannamalai.
2. The District Revenue Officer,
Collector Office,
Vengikal,
Tiruvannamalai.
3. The Revenue Divisional Officer,
Tiruvannamalai Taluk,
Tiruvannamalai District.
4. The Executive Engineer,
Public Works Department,
Tiruvannamalai.
5. The Tahsildar,
Kalasapakkam Taluk,
Tiruvannamalai District.

+1cc to M/s.Suseela Devi, Advocate, S.R.No.19540

+1cc to the Government Pleader, S.R.No.19706

W.P.No.10456 of 2018 and
WMP.Nos.12406 & 31018 of 2018

JPL(CO)

TE (30/04/2021)

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