

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2021

DELIVERED ON :12.02.2021

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

W.P.No.20085 of 2016
and WMP.No.17310 of 2016

Y.Suviseshamuthu

..Petitioner

Vs.

1.The Secretary to Government,
Department of Land Administration,
Ezhilagam, Chepauk,
Chennai.

2.The District Collector,
Erode District.

3.The Tahsildar,
Perundurai Taluk,
Erode District.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the proceedings dated 08.12.2015 bearing NaKa/8085/2015/Oo1 on the file of the second respondent and to quash the same as illegal and without jurisdiction.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.R.Vijaya Kumar,
Additional Government Pleader

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M.SATHYANARAYANAN, J.

The writ petitioner, in the affidavit filed in support of the writ petition, would aver as follows:

1.1. The petitioner is in possession and enjoyment of a landed property situated at Old Survey No.1056/2, New Survey No.1192/1, admeasuring an extent of 3 Acres and 2 Cents at Vellode Village in Perundurai Taluk for several decades and recognizing the possession of his family, his grandfather, namely Thiru.Nachi was issued with conditional patty by the Government of Tamil Nadu. Statutory levies have also been regularly paid in respect of the said property.

1.2. In the year 1997, the respondents 2 and 3 as well as the Superintendent of Police, Erode District attempted to interfere with the petitioner's peaceful possession and enjoyment of the said property and therefore, he filed O.S.No.585 of 1998 on the file of the Court of Principal Sub-Judge, Erode, praying for a Declaration and for Permanent Injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the property. The Trial Court, vide judgment and decree dated 09.02.2001, has dismissed the Suit as to the prayer for Declaration of Title and however, granted a decree for permanent injunction restraining the respondents/defendants from interfering with the petitioner's peaceful possession and enjoyment of the Suit property except by following due process of law and the said judgment and decree has become final.

1.3. The respondents 2 and 3 along with the Superintendent of Police, Erode District and the General Manager, BSNL, once again sought to interfere with the petitioner's peaceful possession and enjoyment of the said landed property and therefore, he filed W.P.No.22237 of 2010, praying for issuance of a Writ of Mandamus, forbearing the respondents not to interfere with the petitioner's peaceful possession and enjoyment of the said land and the said writ petition came to be allowed, vide order dated 18.10.2011. The respondents 1 to 3 in the said writ petition, aggrieved by the said order, filed an appeal in W.A.No1951 of 2012.

1.4. A Division Bench of this Court, vide judgment dated 06.01.2015, having noted the fact that proceedings were initiated under the Tamil Nadu Land Encroachment Act, 1905 [in short "TNLE Act"], observed that the learned Single Judge, without reference to the respondent's/petitioner's right of appeal by invoking Section 10 of TNLE Act, has held that remedy open to the respondent/petitioner is to file an appeal before the Appellate Authority. The Division Bench further observed that the first respondent/writ petitioner has filed W.P.No.22237 of 2010 after a delay of 9 years i.e., in the year 2010 and the same was allowed on 18.10.2011 and even before filing the writ petition, 0.06.0 hectares of land were transferred to Police Department, by order dated 08.06.1999 and possession was handed over on 20.03.2001 and the said portions were also utilized by the said Department and in respect of the remaining area, it is open to the first respondent/writ petitioner to file an appeal, if he is so advised, within a period of four weeks from the date of receipt of a copy of the order with a further direction directing the Appellate Authority to decide the matter on merits and in accordance with law, if such an appeal is filed.

1.5. The petitioner herein, in pursuant to the liberty granted by the Division Bench of this Court, vide judgment dated 06.01.2015 in W.A.No.1951 of 2012, has filed an appeal dated 02.03.2015 before the second respondent/Appellate Authority. The petitioner, Revenue Assistant, Village Administrative Officer, Firka Surveyor as well as Advocate of the petitioner had participated for enquiry and based on the materials

produced, the appellate authority, namely the second respondent has formulated six questions for determination and on consideration of the materials produced and arguments advanced on behalf of the appellant/petitioner, the second respondent has dismissed the said appeal, vide impugned order dated 08.12.2015. Challenging the legality of the same, the present writ petition is filed.

2. The learned counsel appearing for the petitioner would submit that in the light of the findings given by the Civil Court, vide judgment and decree dated 09.02.2001 made in O.S.No.585 of 1998, the third respondent ought to have followed due process of law, but he has failed to do so by not following Rule 26(7) of the Standing Orders of the Board of Revenue. It is the further submission of the learned counsel appearing for the petitioner that admittedly, patta standing in the name of the petitioner's grandfather, namely, Thiru.Nachi having been cancelled alleging violation of the conditions of patta and as such, invocation of the provisions of the TNLE Act is per se unsustainable and without jurisdiction. The learned counsel appearing for the petitioner further submitted that though the third respondent claim that notice was affixed on the electric pole on 02.03.2001 granting 7 days time to show cause as to the initiation of proceedings under Section 6 of TNLE Act, the original impugned order dated 09.03.2001 came to be passed within 7 days, that too without affording reasonable opportunity and despite sufficient materials placed, the appellate authority, namely the 2nd respondent, has failed to apply its mind independently and by citing untenable and unsustainable reasons, has dismissed the appeal and prays for interference.

3. Mr.R.Vijaya Kumar, learned Additional Government Pleader appearing for the official respondents has drawn the attention of this Court to the counter affidavit of the second respondent dated 11.07.2016 and would submit that lands admeasuring an extent of 1.22.5 hectares in R.S.No.1192 /1 of Thenmugam Vellode Village, Perundurai Taluk, Erode District was assigned in favour of Thiru.Nachi, S/o.Muthan subject to certain conditions in the form of Conditional Patta and after his demise, the land was not at all in the enjoyment of his heirs and was in the possession of some third parties and thereby, violated the conditions of Assignment and the Revenue Divisional Officer, Erode having noted that the conditions of assignment having been violated, has cancelled the assignment granted in favour of Thiru.Nachi, vide proceedings in R.C.No.12319/1986/A10 dated 14.11.1986 and the classification of the land was also changed as "Assessed Waste Land" and since then the land was kept vacant as Government Poromboke Land and no challenge has been made to the proceedings of the Revenue Divisional Officer, Erode, it has become final.

4. The learned Additional Government Pleader appearing for the officials respondents has further submitted that enter upon permission was also issued in respect of lands admeasuring 0.28.5 Hectares to the Police Department for construction of Police Station and Police Quarters and in the interregnum, the

petitioner herein has filed the Civil Suit in O.S.No.585/1998, on the file of the Court of Principal Sub Judge, Erode, which came to be decreed partly, vide judgment and decree dated 09.02.2001, by rejecting the prayer for Declaration and granted the decree for Permanent Injunction to proceed against the petitioner by resorting to due process of law and hereagain, no challenge has been made to the portion of the decree in and by which the relief of declaration was rejected. It is further submitted by the learned Additional Government Pleader that in pursuant to the liberty granted, the third respondent has initiated proceedings under TNLE Act by issuing notices under Sections 6 and 7 of the said Act and without challenging the said notices, the petitioner has merely filed a Writ of Mandamus after a lapse of 9 years from the said notices dated 01.03.2001 and 09.03.2001 respectively by filing W.P.No.22237 of 2010, which came to be allowed without appreciating the factual aspects and on appeal by the official respondents 1 to 3 in W.A.No.1951 of 2012, it came to be disposed of holding that the learned Single Judge without reference to the alternative remedy available under Section 10 of the TNLE Act and also having failed to note that no challenge has been made to the notices under Sections 6 and 7 of the TNLE Act, granted liberty to the writ petitioner to file an appeal before the second respondent under Section 10 of the TNLE Act and accordingly, an appeal was filed on 02.03.2015 before the first respondent.

5. The learned Additional Government Pleader would further submit that the first respondent after providing opportunity of hearing to the learned counsel for the petitioner/appellant, has formulated six issues and on thorough appreciation of the arguments advanced by the petitioner/appellant and on consideration of materials, has rightly rejected the appeal and though the petitioner is having an effective alternative remedy by way of revision before the Commissioner of Land Administration, for the reasons best known, did not choose to do so. In sum and substance, it is the submission of the learned Additional Government Pleader that since the second respondent is a quasi judicial authority and after adhering to the principles of natural justice, had elaborately considered the materials and rightly reached the conclusion to dismiss the appeal, the scope of interference by this Court under Article 226 of the Constitution of India in respect of the said order is very limited and therefore, prays for dismissal of this writ petition with exemplary costs.

6. The learned counsel appearing for the petitioner, in response to the said submission, has drawn the attention of this Court to the petitioner's rejoinder affidavit and would submit that the uncommunicated order cancelling the assignment granted dated 14.11.1986 has no legal recognition and with regard to the issuance of Section 7 Notice dated 01.03.2001, it has not at all been raised before the Civil Court in O.S.No.585 of 1998 on the file of the Principal Sub Judge, Erode. The learned counsel appearing for the petitioner sought to assail the judgment dated 06.01.2015 made in W.A.No.1951 of 2012 by submitting that a false representation was made as if there was no assignment and

the Division Bench which disposed of the writ appeal was also swayed by the same and once again reiterated his submissions.

7. This Court paid it's best attention to the rival submissions and also perused the materials placed before it.

8. The sheet-anchor projected by the petitioner is based upon the judgment dated 09.02.2001 made in O.S.No.585 of 1998 on the file of the Court of Principal Sub Judge, Erode. Even as per the plaint averments, the petitioner claims to be the brother's son of Thiru.Nachi, in whose favour conditional assignment was given and it is not clear either from the said judgment or from the averment made in the affidavit filed in support of the writ petition as to the existence of such relationship. Curiously, the petitioner, as a plaintiff in O.S.No.585 of 1998, did not produce the patta and in the event of admission made by DW1 that Thiru.Nachi was issued with patta, the Trial Court proceeded on that basis.

9. It is to be noted at this juncture that the declaratory relief sought for by the petitioner in O.S.No.585 of 1998 came to be negatived, vide judgement and decree dated 09.02.2001 by the Trial Court and no appeal has been filed by the petitioner/plaintiff challenging the rejection or dismissal of the said prayer. It is very pertinent to point out at this juncture that the Trial Court, in para 13 of the judgment, having taken note of the evidence of recommendation made for issuance of patta in favour of the plaintiff, has once again made a recommendation to the Government to issue patta in favour of the petitioner/plaintiff. In the considered opinion of the Court, such a recommendation by a Civil Court, in the absence of any specific prayer, that too after rejecting the prayer for declaration, is unknown to law.

10. Be that as it may, in the light of the liberty granted, the third respondent has invoked the provisions of the TNLE Act and issued Notice under Sections 6 and 7 of the said Act dated 01.03.2001 and 09.03.2001 respectively and with regard to the notice issued under Section 7 of the said Act dated 01.03.2001, in the counter affidavit, the second respondent took a stand that there was no objection and in respect of the notice issued under Section 6 of the said Act dated 09.03.2001, it was received by the petitioner on 19.03.2001. The petitioner, without making a challenge to the notices issued under Sections 6 and 7 of the TNLE Act, dated 01.03.2001 and 09.03.2001 respectively, after a lapse of nearly 9 years, has filed W.P.No.22237 of 2010, praying for issuance of a Writ of Mandamus directing the respondents not to interfere with the petitioner's peaceful possession and enjoyment at Old S.No.1056/2, New S.No.1192/1, admeasuring an extent of 3 acres and 2 cents at Vellodu Village, Perundurai Taluk, Erode District.

11. The learned Single Judge of this Court, while allowing the said writ petition, appears to have misread the judgment passed in O.S.No.585 of 1998 on the file of the Principal Sub Judge at Erode. The official respondents 1 to 3 in the said

writ petition, filed W.A.No.1951 of 2012 and the Division Bench, vide judgment dated 06.01.2015, has noted about the issuance of notices under Sections 6 and 7 of the TNLE Act and despite that, it was not at all put to challenge by filing an appeal under Section 10 of the said Act before the jurisdictional District Collector. The Division Bench of this Court, in para 4 of the said judgment, has observed that "The learned Single Judge, without reference to the first respondent's right to appeal under the Statute, entertained the writ petition. Even though there was no challenge made in respect of the order passed under Section 6 of the Act, this Court allowed the writ petition, since the order passed under Section 6 of the Act dated 09.03.2001 is an appealable order under Section 10 of the Act, the remedy open to the first respondent is to file an appeal before the Appellate Authority".

12. The Division Bench, in para 5 of the judgment, also noted that the petitioner has filed W.P.No.22237 of 2010 nearly after 9 years and it was allowed on 18.10.2011 and even prior to filing the said writ petition, 0.06.0 hectares of land were transferred to Police Department by order dated 08.06.1999 and possession was handed over on 20.03.2001 and the said portions were also utilized by the said departments. The Division Bench however granted liberty to the writ petitioner to file an appeal in respect of remaining area within a stipulated time frame.

13. The petitioner, in para 6 of the rejoinder affidavit dated 13.08.2016, would aver as follows:

"6.Before the learned Single Judge none of the allegations made in counter affidavit were ever projected. A false representation was made by the Government before the Division Bench that there was no assignment in respect of this land, the Division Bench was swayed by such misrepresentation. It had therefore called upon me to prefer an appeal before the District Collector, challenging the encroachment proceedings".

(emphasis supplied)

In the considered opinion of the Court, the said averment made is nothing but a false one for the reason that it is not even the case of the petitioner before the Civil Court in O.S.No.585 of 1998 that the conditional assignment was granted to him and since the conditional assignment was granted in favour of one Thiru.Nachi and the petitioner being the brother's son of Thiru.Nachi, is in possession and enjoyment of the same. Therefore, the observation made by the Division Bench in para 3 of the judgment in W.A.No.1951 of 2012 represents correct facts.

14. The second respondent, before passing the impugned order on the appeal dated 04.03.2015, filed by the petitioner, granted opportunity of personal hearing to him and to his counsel, namely, K.Manickam, representing on his behalf to made the submissions. The second respondent having taken note of the grounds of appeal and written arguments, formulated the following six issues viz.,

(i) Whether it is correct that the third respondent (Tahsildar-Perundurai) did not initiate action in terms of the TNLE Act ?

(ii) Whether the third respondent without passing Order No.26 (7) of the Standing Orders of the Board of Revenue, has issued Notice under Section 6 of the TNLE Act and the same is sustainable?

(iii) Whether the affixture of Notice under Section 7 of TNLE Act in the Electrical Lamp Post is sustainable?

(iv) Whether the order passed under Section 6(1) of TNLE Act dated 10.03.2001 within 7 days of the notice issued under Section 7 of the said Act dated 02.03.2001 is sustainable?

(v) Whether the third respondent has correctly proceeded under Section 6(2) of the TNLE Act?

(vi) Whether the nomination/authorization given to the Revenue Inspector is sustainable in law?

The second respondent having formulated six questions/issues, had given answers/reasons in respect of the said six issues/questions formulated by taking into consideration the grounds of appeal and arguments advanced on behalf of the appellant/petitioner.

15. It is a well settled position of law that judicial review is not against the decision, but as against the decision making process. Even as per the case of the petitioner, he is not the direct descendant/Class-I legal heir and claims to be the brother's son of Thiru.Nachi. The Civil Court in Para 10 of the judgment dated 09.02.2001 made in O.S.No.585 of 1998, has also noted the fact that in respect of very same property, the daughter of Thiru.Nachi / original assignee has instituted a Suit in the very same Court in O.S.No.415 of 1999 and it was dismissed as not pressed on 06.12.1999 and curiously, the said judgment has not been marked.

16. Thus the contents of para 10 of the judgment, makes it very clear as to the claim of the petitioner that by virtue of being the grandson of Thiru.Nachi, he is having right over the land is unsustainable. It is also to be noted at this juncture that in para 2 of the affidavit filed in support of the writ petition, the petitioner would claim that his grandfather was issued with conditional patta by the State and suppressed the material fact that he is the brother's son of Thiru.Nachi.

17. In the considered opinion of the Court, the grounds urged by the writ petitioner before the Appellate Authority, namely the second respondent have been considered and so also the arguments advanced by his Lawyer engaged by him and the Appellate Authority, has formulated six issues/questions and decided the same objectively and in accordance with law.

18. This Court, on an independent application of mind to the entire materials, is of the considered view that there is no error apparent on the face of record in the impugned order and the reasons assigned therein cannot said to be perverse.

19. In the result, this Writ Petition is dismissed, confirming the order of the second respondent dated 08.12.2015 made in Na.Ka.8085/2015/Oo1. No costs. Consequently, connected miscellaneous petition is also dismissed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

Jvm

To

1.The Secretary to Government,
Department of Land Administration,
Ezhilagam, Chepauk, Chennai.

2.The District Collector,
Erode District.

3.The Tahsildar,
Perundurai Taluk,
Erode District.

+1cc to Mr.V.Raghavachari, Advocate, SR.No.8174

+1cc to Government Pleader, SR.No.8484

Order
in W.P.No.20085 of 2015

CA(CO)
KKV/09/03/2021

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