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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2021

PRONOUNCED ON : 02.08.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.1032 of 2016

and C.M.P.No.13497 of 2016

The Tahsildar
Coimbatore North
Coimbatore District.

...Appellant

-vs-

1.R.Sennimalai Gounder (Deceased)
2.Ganesan
3.Subramanian

...Respondents

(RR2 & 3 brought on record as LR's of the deceased R1 vide order of this Court dated 16.10.2019 made in C.M.P.No.14021 of 2019.)

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order dated 16.09.2014 made in W.P.No.16396 of 2013.

Prayer in W.P.No.16396/2013:

The Writ Petition filed under Article 226 of the Constitution of India, Praying that in the circumstances of the case that High Court is to be pleased to call for the records in respect of the impugned order Na.Ka. No.10598/ 2012/a1 and quash the same consequently direct the respondent herein to issue patta in respect of the property existing in S.F.No.290/4 of Vellanaipatti Village, Coimbatore North Taluk , Coimbatore District in the name of the petitioner herein.

For Appellant : Mr.T.Arunkumar
Government Advocate
For R2 & R3 : Mr.G.Murugendran
For R1 : Died

JUDGMENT

(V.SIVAGNANAM, J.,)

This Writ Appeal has been filed as against the order dated 16.09.2014 made in W.P.No.16396 of 2013.



Facts of the case runs as follows:-

2.Originally the property existing in S.F.No.290/4 at Vellanaipatti Village of Coimbatore North, now in Annur Taluk, was assigned to one Vayyapur, on 12.03.1939, by assignment order. After the death of the said Vayyapuri, the property came under the enjoyment of his sons, viz., V.David and V.Samson. They sold the property to one Pazhaniammal on 24.08.1950. Again the said Pazhaniammal sold the property to the 1st respondent herein by a sale deed dated 08.02.1973. After purchasing the said land, the 1st respondent herein gave requisition to the Tahsildar on 10.04.2012 for issuance of patta. The same was rejected by the Tahsildar by his order dated 31.05.2012 on the ground that the property was assigned land to one Vayyapuri and there was a prohibition for alienation of assigned land. Aggrieved by the rejection order for issuance of patta, the 1st respondent herein preferred Writ Petition in W.P.No.16396 of 2013 to quash the proceedings of the Tahsildar and for a direction to issue patta in respect of the land comprised in S.F.No.290/4 at Vellanaipatti Village of Coimbatore North, now in Annur Taluk.

3.Learned Single Judge by his impugned order dated 16.09.2014 directed the Tahsildar to consider the case of the 1st respondent herein on merits and on verification of the documents produced by him and also ascertain the veracity of the documents from the Sub Registrar Office, where the documents have been registered. Further directed to complete the whole exercise within a period of three months from the date of that order.

4.Aggrieved by the order of the learned Single Judge in W.P.No.16396 of 2013, the Tahsildar, Coimbatore North, filed the present Writ Appeal.

5.Learned counsel for the appellant would submit that the land measuring an extent of 3.77 acres in S.F.No.290/4 of Vellanaipatti Village of Coimbatore North, now in Annur Taluk is a 'Panchami' land assigned to a Harijan by name "Vayyapuri" and the one Pazhaniammal purchased the land from the legal heirs of assignee, who in turn sold the said property to the 1st respondent (died) herein as against the special conditions laid down in the "D" Patta given to the deceased Vayyapuri. It is submitted that in para 9 of the condition patta given to Vayyapuri, it is stated that if the land is alienated to any person within a period of 10 years from the date of the grant by way of Sale, Gift, Mortgage or Lease of any kind or after that period to any person who is not a member of the Scheduled Caste, the grant will be liable to be resumed by the Government, who will be entitled to re-enter and take possession of the land



without payment of any compensation and even after 10 years the grantee or the legal heirs of the grantee have no legal rights to dispose of the "Panchami Land".

6. It is submitted that during the several enquiries conducted by the Tahsildar, the 1st respondent herein was informed that he had purchased the land in violation of the condition of 'D' Patta and his request to grant Patta to the land, in his name was rejected and further, in support of the Government Order, a board has also exhibited in the land announcing that the land is a "Panchami Land" and this by itself is sufficient to announce to all that nobody should purchase the land. Therefore resumption of the land was in accordance with the provisions laid down by the Board standing order No.15. Further, it is submitted that the documents produced by the respondent were verified and found that they have no merits to substantiate his claim and it was also found that the lands were Panchami lands and the transaction is a violation of conditions of the assignment.

7. It is pertinent to submit that this Court in its order dated 05.04.2010 made in W.A.Nos.1446 to 1448 of 2008 has held that Panchami lands given away under certain conditions cannot be sold or leased or gifted or pledged for the first ten years.

8. Further the learned counsel for the appellant submitted that the assigned lands could be transferred only to persons belonging to the depressed classes and any breach of these conditions would entail cancellation of the assignment. The conditions were imposed, bearing in mind, that it would be easy to exploit persons belonging to the depressed classes. The learned Single Judge failed to consider the nature of the assigned land and erred in directing the Tahsildar to issue Patta and thus pleaded to set aside the order of the learned Single Judge by allowing this Writ Appeal.

9. Learned counsel for the respondents supported the order of the learned Single Judge and further contended that the appellant did not file the copy of the assignment order issued to Vayyapuri on 12.03.1939. The 1st respondent purchased the property only in the year 1973, i.e., after a period of 34 years of alleged assignment. The appellant have not filed any material to show that the condition of assignment given to Vayyapuri. Under these circumstance, it cannot be held that the condition has been violated. The learned Single Judge has rightly directed the Tahsildar to consider the 1st respondent case and to issue Patta. Thus he pleaded to dismiss the Writ Appeal.

10. We have heard the learned counsel for the parties and perused the material available on record.



11. Admittedly, the property existing in S.F.No.290/4 at Vellanaipatti Village of Coimbatore North, now in Annur Taluk, was assigned to one Vayyapuri, on 12.03.1939, by assignment order. After the death of the said Vayyapuri, the property came under the enjoyment of his sons, viz., V.David and V.Samson. They sold the property to one Pazhaniammal on 24.08.1950. Again the said Pazhaniammal also sold away the property to the 1st respondent herein by a sale deed dated 08.02.1973.

12. We have considered the contentions of the learned counsel for the respondent, on the aspect that whether the said land is assigned land. In this regard the appellant had filed Adangal for the Pasali 1424, 1425, 1426 for the corresponding years 1964, 1965 and 1966 with regard to the disputed land. On perusal of the same will evidence that the land in Survey No.290/4 was mentioned as "Assigned land to Scheduled Castes". Further, we have perused the 1st sale deed executed by the legal heirs of Vayyapuri, i.e., V.David and V.Samson to one Pazhaniammal on 24.08.1950. In the sale deed, it has been mentioned as follows:-

"எங்கள் தகப்பனாருக்கு வையாபுரிக்கு கிரயதர்க்காஸ்து முலமாய்பாத்யப்பட்டதும் அவர் அனுபவகபாதீனத்தில் உள்ளதும் பின்னால் ஷைடி வையாபுரி காலஞ்சென்றுவிட்டபடியால் 12.03.1939 ல் தாசில்தார் அவர்கள் உத்திரவப்படி எங்கள் பேரில் பட்டாவாகி எங்கள் அனுபவகவாதீனத்தில் உள்ளதும் "

13. Besides the Government of Tamil Nadu had issued Revenue Standing Orders on how to deal with Darkhasts lands. The Standing Order runs as follows:-

"Darkhasts how dealt with:-Darkhast for land in such areas will be dealt with in accordance with the general rule above, but no application will be considered unless it is in the name, and genuinely on behalf of a member of the scheduled castes or of an approved society acting on behalf of the scheduled castes, such as a missionary or philanthropic or co-operative society. Assignment to societies by Tahsildars require the previous approval of the Collector.

G.O.Ms.1934, Rev. dt.11.08.2020 B.P.66,
dt 20.08.2020

G.O.Ms.118, Rev. dt 07.06.1929
B.P.Ms.1723, dt 17.06.1929

Restrictions to be imposed on alienation:-
Assignments whether of ordinary land or of valuable land in these areas, will be subject to the condition that the lands shall not be alienated to any person



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(whether a member of the Scheduled castes or not) in any manner before the expiry of ten years from the date of grant not even thereafter, except to other members of these castes. However, in cases when the assignees offer to give such conditionally assigned lands to Gramdan Sarvodaya Co-operative Societies within 10 years from the date of assignment or even thereafter, the Tamil Nadu State Bhoodan Yagna Board is permitted to accept such gift of lands. The Collectors of the districts concerned are, authorised to relax the conditions of assignment of lands on receipt of a joint question from the Bhoodan Board and the donor."

14.It evidenced that the land in Survey No.290/4 was an assigned land to the harijans. Admittedly, the 1st respondent not belonging to Scheduled Caste. Further, the alienation is in contravention of conditions relating to the transfer of assigned land.

15.In State of U.P. v. Zahoor Ahmad, reported in (1973) 2 SCC 547, the Supreme Court held in para 16 thus:-

"16. Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter what the general law of the land be. The meaning of Sections 2 and 3 of the Government Grants Act is that the scope of that Act is not limited to affecting the provisions of the Transfer of Property Act only. The Government has unfettered discretion to impose any conditions, limitations, or restrictions in its grants, and the rights, privileges and obligations of the grantee would be regulated according to the terms of the grant, notwithstanding any provisions of any statutory or common law."

16.The Hon'ble Supreme Court in Manchegowda -vs- State of Karnataka, reported in (1984) 3 SCC 301, dealt with the assigned land to Scheduled Castes and Scheduled Tribes and observed as follows:-

"11. Legislature in its wisdom and in pursuance of its declared policy of safeguarding, protecting and improving the conditions of these weaker sections of the community, thought it fit to bring about this change in the legal position by providing that any such transfer except in terms of the provisions of the Act will be null and void and not merely voidable. The Legislature no doubt is perfectly competent in pursuance of the



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aforesaid policy to provide that such transactions will be null and void and not merely voidable. Even under the Contract Act, any contract which is opposed to public policy is rendered void. The State, consistently with the directive principles of the Constitution, has made it a policy and very rightly, to preserve, protect and promote the interests of the Scheduled Castes and Scheduled Tribes which by and large form the weaker and poorer sections of the people in our country. This may be said to be the declared policy of the State and the provisions seeking to nullify such transfers is quite in keeping with the policy of the State which may properly be regarded as public policy for rendering social and economic justice to these weaker sections of the society.

12. In pursuance of this policy, the Legislature is undoubtedly competent to pass an enactment providing that transfers of such granted lands will be void and not merely voidable for properly safeguarding and protecting the interests of the Scheduled Castes and Scheduled Tribes for whose benefit only these lands had been granted. Even in the absence of any such statutory provisions, the transfer of granted lands in contravention of the terms of the grant or in breach of any law, rule or regulation covering such grant will clearly be voidable and the resumption of such granted lands after avoiding the voidable transfers in accordance with law will be permitted. Avoidance of such voidable transfers and resumption of the granted lands through process of law is bound to take time. Any negligence and delay on the part of the authorities entitled to take action to avoid such transfers through appropriate legal process for resumption of such grant may be further impediments in the matter of avoiding such transfers and resumption of possession of the granted lands. Prolonged legal proceedings will undoubtedly be prejudicial to the interests of the members of the Scheduled Castes and Scheduled Tribes for whose benefit the granted lands are intended to be resumed. As transfers of granted lands in contravention of the terms of the grant or any law, regulation or rule governing such grants can be legally avoided and possession of such lands can be recovered through process of law, it must be held that the Legislature for the purpose of avoiding delay and harassment of protracted litigation and in furthering its object



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of speedy restoration of these granted lands to the members of the weaker communities is perfectly competent to make suitable provision for resumption of such granted lands by stipulating in the enactment that transfers of such lands in contravention of the terms of the grant or any regulation, rule or law regulating such grant will be void and providing a suitable procedure consistent with the principles of natural justice for achieving this purpose without recourse to prolonged litigation in court in the larger interests of benefiting the members of the Scheduled Castes and Scheduled Tribes.

17. The granted lands were not in the nature of properties acquired and held by the grantees in the sense of acquisition, or holding of property within the meaning of Article 19(1)(f) of the Constitution. It was a case of a grant by the owner of the land to the grantee for the possession and enjoyment of the granted lands by the grantees and the prohibition on transfer of such granted lands for the specified period was an essential term or condition on the basis of which the grant was made. It has to be pointed out that the prohibition on transfer was not for an indefinite period or perpetual. It was only for a particular period, the object being that the grantees should enjoy the granted lands themselves at least for the period during which the prohibition was to remain operative. Experience had shown that persons belonging to the Scheduled Castes and Scheduled Tribes to whom the lands were granted were, because of their poverty, lack of education and general backwardness, exploited by various persons who could and would take advantage of the sad plight of these poor persons for depriving them of their lands. The imposition of the condition of prohibition on transfer for a particular period could not, therefore, be considered to constitute any unreasonable restriction on the right of the grantees to dispose of the granted lands. The imposition of such a condition on prohibition in the very nature of the grant was perfectly valid and legal.

18. The transferees of the granted lands from the original grantees, acquired the lands improperly and illegally in contravention of the condition imposed on such transfers. Such transferees must have been aware and must in any event be deemed to have been aware of the condition regarding the



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prohibition on transfer and they cannot be considered to be bona fide transferees for value. Such persons acquired in the granted lands only a voidable title which was liable to be defeated and possession of such lands could be resumed from such transferees. Such a person who only acquires a defeasible legal right cannot make a grievance of any violation of Article 19(1)(f) of the Constitution, when the defeasible legal right is, in fact, defeated by appropriate legal action or by any suitable provision enacted in an Act passed by the competent Legislature. It may further be noted that in most cases such transferees have after the transfer, which is liable to be avoided in accordance with law, enjoyed for a sufficiently long period the benefits of lands transferred to them before the lands could be recovered from them. Article 19(1)(f), therefore, did not invalidate Section 4 of the Act."

15. Subsequently, in dealing with Maharashtra legislation, the Supreme Court had an occasion to consider the submissions which are raised herein in the decision relating to Lingappa Pochanna Appelwar v. State of Maharashtra, (1985) 1 SCC 479. It is necessary to refer to the following passages found in paragraphs 16 and 29:-

16. The present legislation is a typical illustration of the concept of distributive justice, as modern jurisprudence know it. Legislators, Judges and administrators are now familiar with the concept of distributive justice. Our Constitution permits and even directs the State to administer what may be termed "distributive justice". The concept of distributive justice in the sphere of law-making connotes, inter alia, the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principle: "From each according to his capacity, to each according to his needs". Distributive justice comprehends more than achieving lessening of inequalities by differential taxation, giving debt relief or distribution of property owned by one to many who have none by imposing ceiling on holdings, both agricultural and urban, or by direct regulation of contractual transactions by forbidding certain



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transactions and, perhaps, by requiring others. It also means that those who have been deprived of their properties by unconscionable bargains should be restored their property. All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative control of unfair agreements.

29. ...In the first place, the appellants who are transferees from members of Scheduled Tribes cannot possibly plead the cause of members of Scheduled Castes. That apart, members of Scheduled Tribes i.e. tribals who are mostly aboriginals constitute a distinct class who need a special protection of the State. "

16. In K.T.Huchegowda v. Deputy Commissioner, the Supreme Court had an occasion to consider the impact of the Karnataka Legislation vide its decision reported in (1994) 3 SCC 536. Para 9 of the said judgment may be usefully extracted below:-

'9. There is no dispute that so far as the Act with which we are concerned, no special period of limitation has been prescribed, in respect of lands which have been granted to the members of the Scheduled Castes and Scheduled Tribes with absolute ownership by the State Government. In this background, when this Court in the case of Sunkara Rajayalakshmi v. State of Karnataka said that the period of limitation, which has to be taken into account for the purpose of determining, whether the title has been perfected by prescription, shall be that which runs against the State Government and therefore it would be 30 years and not 12 years, has to be read in context with the lands, the ownership whereof, has not been transferred absolutely, to the members of the Scheduled Castes and Scheduled Tribes; the lands having been only allotted to them, the title remaining with the State Government. The cases where the transfer by the State Government by way of grant has been absolute, then unless there is an amendment so far the period of limitation is concerned, it is not possible to apply the special limitation of 30 years, so far such grantees are concerned, when the question to be determined, is as to whether a transferee in contravention of the terms of the grant, has perfected his title by remaining in continuous and adverse possession. The transferee, who has acquired the land from the



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grantee, in contravention of the terms of the grant shall perfect his title by adverse possession by completing the period of 12 years. When this Court said in its main judgment, in the case of Manchegowda v. State of Karnataka that in cases where granted lands had been transferred before the commencement of the Act in violation of the condition, regarding prohibition on such transfer and the transferee

who had initially acquired only a voidable title, in such granted lands had perfected his title in the granted lands by prescription by long and continuous enjoyment thereof in accordance with law before the commencement of the Act, has to be read, for purpose of determining the period of limitation in respect of lands granted with absolute ownership, to mean 12 years and grant by way of allotment without transfer of the ownership in favour of the grantee, to mean 30 years.

17. A further question came up for consideration arising out of the Karnataka legislation in R.Chandevappa v. State of Karnataka, reported in (1995) 6 SCC 309. The following passages found in paragraphs 6 and 8 may be reproduced below :

'6. Having given our anxious consideration to the respective contentions, the first question that arises for determination is what would be the nature of the right given to the assignee Dasana Rangaiah Bin Dasaiah. Article 39(b) of the Constitution of India envisages that the State shall in particular direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Admittedly, Scheduled Castes

and Scheduled Tribes are the weaker sections of the society who have been deprived of their economic status by obnoxious practice of untouchability and the tribes living in the forest area far away from the civilised social life. To augment their economic status and to bring them on a par into the mainstream of the society, the State with a view to render economic justice envisaged in the Preamble and Articles 38 and 46 of the Constitution distributed the material resources, namely, the land for self-cultivation. It is an economic empowerment of the poor. It is common knowledge that many a member of the deprived classes live upon the agriculture either by cultivation on leasehold basis or as



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agricultural labour. Under these circumstances, the State having implemented the policy of economic empowerment to do economic justice assigned lands to them to see that they remain in possession and enjoy the property from generation to generation".

'8. It was, therefore, held that the State is enjoined to provide adequate means of livelihood to the poor, weaker sections of the society, the dalits and tribes and to distribute material resources of the community to them for common welfare etc. Therefore, civil, political, social, economic and cultural rights are necessary to the individual to protect and preserve human dignity, social and economic rights are sine qua non concomitant to assimilate the poor, the depressed and deprived, i.e., the dalits and tribes in the national mainstream for ultimate equitable society and democratic way of life to create unity, fraternity among people in an integrated Bharat. Property is a legal institution the essence of which is the creation and protection of certain private rights in wealth of any kind. Liberty, independence, self-respect, have their roots in property. To denigrate the institution of property is to shut one's eyes to the stark reality evidenced by the innate instinct and the steady object of pursuit of the vast majority of people. The economic rights provide man with freedom from fear and freedom from want, and that they are as important if not more, in the scale of values. The effect of social and economic legislation was held thus:

"In fact, the cumulative effect of social and economic legislation is to specify the basic structure. Moreover, the social system shapes the wants and aspirations that its citizens come to have. It determines in part the sort of persons they want to be as well as the sort of persons they are. Thus an economic system is not only an institutional device for satisfying existing wants and needs but a way of creating and fashioning wants in the future. The economic empowerment, therefore, to the poor, dalits and tribes as an integral constitutional scheme of socio-economic democracy is a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, dalits and tribes."



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The prohibition from alienation is to effectuate the constitutional policy of economic empowerment under Articles 14, 21, 38, 39 and 46 read with the Preamble of the Constitution. Accordingly it was held that refusal to permit alienation is to effectuate the constitutional policy. The alienation was declared to be void under Section 23 of the Contract Act being violative of the constitutional scheme of economic empowerment to accord equality of status, dignity of persons and economic empowerment".

18. Once again the same issue came to be considered by the Supreme Court in *Papaiah v. State of Karnataka*, vide its decision reported in (1996) 10 SCC 533. The following passage found in paragraph 8 may be reproduced below:-

'8. It is seen that Article 46 of the Constitution, in terms of its Preamble, enjoins upon the State to provide economic justice to the Scheduled Castes, Scheduled Tribes and other weaker sections of the society and to prevent their exploitation. Under Article 39(b) of the Constitution, the State is enjoined to distribute its largess, land, to subserve the public good. The right to economic justice to the Scheduled Castes, Scheduled Tribes and other weaker sections is a fundamental right to secure equality of status, opportunity and liberty. Economic justice is a facet of liberty without which equality of status and dignity of person are teasing illusions. In rural India, land provides economic status to the owner. The State, therefore, is under constitutional obligation to ensure to them opportunity giving its largess to the poor to augment their economic position. Assignment of land having been made in furtherance thereof, any alienation, in its contravention, would be not only in violation of the constitutional policy but also opposed to public policy under Section 23 of the Contract Act, 1872. Thereby, any alienation made in violation thereof is void and the purchaser does not get any valid right, title or interest thereunder. It is seen that Rule 43(8) specifically prohibits alienation of assigned land. It

does not prescribe any limitation of time as such. However, it is contended that the appellant has obtained

land by way of sale in 1958 long before the Act came into force and thereby he perfected his title



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by adverse possession. We find no force in this contention."

19. So far as the submission that the condition of restriction on alienation is violative of the provisions of the Transfer of Property Act is concerned, a Division Bench of this Court in *Sisili Ammal -vs- Sundararaja Naidu* (AIR 1946 Mad 52) while dealing with a condition, similar to the one contained in clause (9) under the Crown Grants Act, 1895 held that though such a condition would be invalid if the grant was made by a private individual, the condition was perfectly valid in the case of a Crown grant. It was held by the Bench that the prohibition against alienation was not violative of the provisions of the Transfer of Property Act."

17. Hence, the prohibition for alienation of assigned land always remained. Further, the ratio relied by the learned Single Judge has no application for the assigned land to the Scheduled Castes.

18. In the light of the above, we find that the order of the learned Single Judge is unsustainable. Hence, we set aside the order dated 16.09.2014 made in W.P.No.16396 of 2013 and the Writ Appeal is allowed. No costs. Consequently connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

Jer
To

The Tahsildar
Coimbatore North
Coimbatore District.

+1 CC to Mr.G. Murugendran, Advocate sr 37348
+1 CC to The Government Advocate sr 37737.

W.A.No.1032 of 2016
and C.M.P.No.13497 of 2016

RGN (CO)
SP (18/08/2021)