



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.23067 OF 2014

AND

W.M.P.NOS.1 AND 2 OF 2014

1. Riyaz
2. Ziaullah
3. Mumtaj
4. Parveen Taj
5. Shabana
6. Bharshana

... Petitioners

-vs-

1. State represented by its
Secretary to Government,
Revenue Department,
Fort St.George,
Chennai - 600 009.
2. The Principal Secretary and Commissioner
of Land Administration,
Ezhilagam, Chepauk,
Chennai - 600 005.
3. The Joint Commissioner,
Land Reforms,
Jawan Road, Erode.
4. The District Revenue Officer,
District Collectorate,
Krishnagiri.
5. The Sub Collector,
Sub Collector Office,
Hosur, Krishnagiri District.
6. The Tahsildar,
Hosur Taluk Office,
Hosur.

7. Smt.Neelamma

... Respondents



PRAYER :

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorified Mandamus calling for the records of the third respondent relating to M.R4/79/17-70/C1 dated 31.06.2011 quash the same and consequently direct the respondents 4 to 6 to cancel the patta issued in favour of the seventh respondent and enter the petitioners name in the revenue records in respect of land measuring an extent of 2 acres comprised in Survey No.56/2, New Survey No.56/2C subsequently subdivided as 56/2C2 of Rangopanditha Agraharam Village, Hosur Taluk, Krishnagiri District within the time to be stipulated by this Honb'le Court.

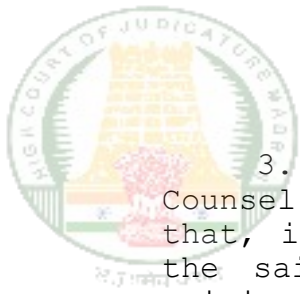
For Petitioners : Mr.R.Bharathkumar

For Respondents : Ms.Akila Rajendran
Counsel for Govt for R1 to R6
Ms.R.Poornima for R7

O R D E R

The two acres of land comprised in S.No.56/2 of Rangopanditha Agraharam Village, Hosur Taluk, Krishnagiri District is the subject matter herein.

2. The case of the petitioners is that, the said land had been assigned under the provisions of Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 to the assignee one Pappanna. From the said Pappanna, the property was purchased in 1982 by one Simon from whom the petitioners' mother purchased the property in 1992. Therefore, the petitioners, who are the legal heirs have become owner of the property and after having purchased the property, when they have been enjoying the same, it is the case of the petitioners that, they came to know that subsequently, the land had been assigned in favour of the seventh respondent and further enquiry made reveals that, the assignment given in favour of the original assignee Pappanna was subsequently cancelled without giving notice to the original assignee Pappanna and after cancelling the assignment against the said Pappanna, reassignment had been given in favour of the seventh respondent and this factor have come to the light of the petitioners only when they sought for such information through Right to Information Act, 2005, where, a proceedings issued by the third respondent dated 31.06.2011 was made available, wherein, the assignment issued in favour of the seventh respondent, had been disclosed or furnished. Therefore, challenging the said proceedings dated 31.06.2011, the present writ Petition had been filed with the aforesaid prayer.



3. Reiterating the aforesaid, Mr.R.Bharathkumar, the learned Counsel appearing for the petitioners would vehemently contend that, if at all, the land in question is an assigned land under the said Act, before cancelling such assignment against the original assignee Pappanna, notice should have been given to him and proper opportunity of being heard should have been given to him, by giving notice to the said original assignee. If at all, any cancellation has been made pursuant to which, subsequent assignment is made in favour of any third party, that would not bind either the original assignee or the subsequent purchaser from the original assignee. Therefore, the impugned order and the consequential impugned action on the part of the respondents in assigning or reassigning the land in favour of the third parties may not be justifiable, as it amounts to violation of principles of natural justice and therefore, the said proceedings have to be cancelled and the land in question shall be issued patta in favour of the petitioners, who are the genuine purchasers of the land in question from the predecessors in title, who purchased the same from the original assignee, i.e., Pappanna.

4. Per contra, Ms.Akila Rajendran, learned counsel for the Government appearing for the official respondents, by relying upon the detailed averments made in the counter affidavit filed on behalf of the respondents 1 to 6 has submitted that, the land in question, i.e., the two acres comprised in S.No.56/2, as referred to above, was declared to be surplus land from the holdings of one K.R.Sarangapani.

5. After taking over the said surplus land of total 7.95 acres, two acres, i.e., the subject land in the said survey number had been assigned to and in favour of one Pappanna S/o Nallappan on 28.02.1979 under the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, hereinafter referred to as 'the Rules'.

6. On remittance of first installment of land value, the Deed in Form 'F' was executed in favour of the said Pappanna. One of the important conditions that was imposed on the assignment was that, the assigned lands should not be alienated in favour of third persons before the expiry of twenty years from the date of assignment.

7. When that being so, it came to light to the respondents, especially the third respondent through a report of the Special Revenue Inspector (Land Reforms), Dharmapuri dated 04.09.1990



that, the assignee Pappanna sold the land assigned to him to one Simon through a sale deed dated 19.11.1982.

8. Therefore, it had come to light to the third respondent that, the original assignee, in violation of one of the important conditions of assignment, had sold the property to third party within a period of three years and nine months from the date of assignment. The said sale made by the original assignee within twenty years period as imposed as an assignment condition, is a direct violation of the conditions stipulated in this regard under Rule 9(1)(i) of the Rules.

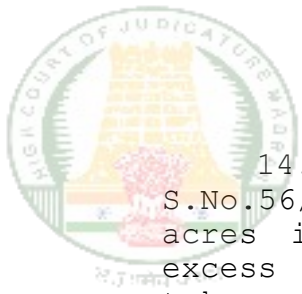
9. Therefore, the third respondent issued a show cause notice to the original assignee Pappanna on 11.09.1990 to show cause, why the assignment shall not be cancelled. The original assignee Pappanna received the notice on 20.02.1991, for which he had not preferred to make response or reply. Therefore, since the said original assignee had not responded despite the show cause notice served on him, by invoking the conditions imposed under the Rules referred to above, the third respondent has cancelled the assignment against the said original assignee on 26.03.1991 and the cancellation of assignment order itself, was served on him on 18.04.1991.

10. Thereafter, the third respondent after finding the beneficiaries had subdivided the said land and assigned the said land of 7.95 acres in S.No.56/2 by subdividing into four subdivisions by giving two acres each, to and in favour of four individuals namely, Kalavathy, Narayanamma, Lakshmiammal and Neelammal, who is the Seventh respondent herein.

11. Only in this context, the petitioners claims that, whose mother purchased the property in question from one Simon, who in turn, purchased the same from Pappanna, i.e., within three years and nine months of the assignment. By thus, since the condition was violated the cancellation has been effected, therefore, the present challenge made by the petitioners, according to the learned counsel for the Government, is untenable. Therefore, the Writ Petition is deserved to be dismissed, she contended.

12. Ms.R.Poornima, learned Counsel appearing for the seventh respondent has also supported the said contentions made by the learned counsel for the Government.

13. I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.



14. Insofar as the land in question, i.e., the two acres in S.No.56/2 is concerned, it is part of the total land of 7.95 acres in the said survey number which was considered to be excess hold of one K.R.Sarangapani from whom the land has been taken and it was assigned, i.e., two acres was assigned to and in favour of the original assignee Pappanna, where, the condition has been imposed that, within twenty years period, he shall not sell or create any encumbrance in favour of any third parties.

15. This condition has been imposed by the Land Reforms Authorities in consonance of Rule 9 of the said Rules, which reads thus:

"9.Conditions of assignment:- (1) The assignment of land shall be, subject to the following conditions, namely:-

(i)The land assigned shall not be sold or otherwise alienated before the expiry of the period specified in sub-clause (a) of clause (iii) below.

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(iii) (a) The land will vest absolutely in the assignee after the value of the land and the buildings and trees thereon is paid in full or after the expiry of a period of twenty years from the date of assignment whichever is later"

16. On reading of Rule 9(1)(i), it makes clear that, the land assigned shall not be sold or alienated before the expiry of the period specified in sub-clause (a) of clause (iii). The sub-clause (a) of clause (iii) makes it clear that, the land will vest with the assignee, only after the value of the land is paid in full or after the expiry of a period of twenty years from the date of assignment whichever is later.

17. Therefore, even if the value of the land and the buildings and trees are paid by the assignee, he has to wait for twenty years, within which, the land will not vest absolutely on the assignee.

18. When that being the legal position in view of the Rule 9 (1)(i) and sub-clause (a) of clause (iii) as referred to above, since the land has been assigned to original assignee on 28.02.1979, it would become the absolute property or the land will vest with him absolutely, only on 27.02.1999, i.e., on expiry of twenty years from the date of assignment.



19. Therefore, on 19.11.1982, the original assignee Pappanna did not have alienable rights in respect of the property to any third party. Therefore, the sale executed by the original assignee to and in favour of one Simon on 19.11.1982 is absolutely unlawful, even though the said sale was registered in the concerned Registrar office.

20. When the very sale dated 19.11.1982 itself is unlawful, the subsequent sale effected in 1992 in favour of the petitioners' mother by the said Simon also is equally unlawful or illegal. Therefore, based on these transactions neither the predecessors in title as claimed by the petitioners, i.e., one Simon nor the petitioners' mother, through her, the petitioners, have no right or title over the property in question.

21. Insofar as the contention raised by the learned counsel that, as per the said Rule, the assignee should have been given an opportunity by way of show cause notice before cancelling the assignment is concerned, it has been clearly spelt out by the respondents that, on 20.02.1991, show cause notice has been served on the original assignee Pappanna, who on receipt of the same not responded or not given any reply. Therefore, the cancellation of assignment was made on 26.03.1991 and the said cancellation order also was served on him on 18.04.1991.

22. Having receipt of all these notices, the original assignee Pappanna has not responded to the official respondents who issued show cause notice.

23. The reason, probably be, well before the proceedings was initiated against the original assignee since the original assignee sold the property on 19.11.1982 itself, he might not have taken any care to defend his case, that is why, despite the notice having been served on him, the original assignee did not come forward to respond.

24. Therefore, the petitioners cannot take a ground now that, the original assignee had not been given an opportunity of being heard.

25. First of all, the cancellation order had been made against the original assignee in the year 1991, i.e., on 26.03.1991, admittedly, the second sale that is from Simon to the petitioners' mother, had been effected only in 1992. Therefore, as on 1992, the vendor of the petitioners' mother did not have the proper title for sale, as before which, the original assignment itself has been cancelled against the original assignee on 26.03.1991. Therefore, if any subsequent sale is effected in favour of the petitioners' mother, that would not confer title on them. Therefore, viewing from any



angle, the petitioners have no prosecutable case to seek indulgence of this Court against the order which are impugned herein.

26. In view of the aforesaid, this Court feels that, the petitioners have no case to make out to have a successful challenge of the impugned order and the consequent action including the assignment made in favour of the seventh respondent. Therefore, the prayer sought for herein is untenable and cannot be granted. Hence, this Writ Petition fails and it is liable to be dismissed. Accordingly, it is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vji

To

1. The Secretary to Government,
Revenue Department,
Fort St.George,
Chennai - 600 009.
2. The Principal Secretary and Commissioner
of Land Administration,
Ezhilagam, Chepauk,
Chennai - 600 005.
3. The Joint Commissioner,
Land Reforms,
Jawan Road, Erode.
4. The District Revenue Officer,
District Collectorate,
Krishnagiri.
5. The Sub Collector,
Sub Collector Office,
Hosur, Krishnagiri District.



6. The Tahsildar,
Hosur Taluk Office,
Hosur.

+1cc to Ms.R.Poornima, Advocate, S.R.No.32704

+1cc to Mr.R.Bharathkumar, Advocate, S.R.No.33205

+1cc to the Government Pleader, S.R.No.33275

W.P.No.23067 of 2014

and

W.M.P.Nos.1 and 2 of 2014

PVS (CO)

CS/18/08/2021