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W.P.No.24160 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.24160 of 2012

Annai J.J.Nagar Kudiyiruppor
Nalavazhvu Sangam
Rep. by its President
Mr.B.Edwin
No.316, Sembium Road
Kathirvedu
Chennai 600 066

... Petitioner

Vs.

1.State of Tamil Nadu
Rep. by Revenue Secretary
Fort St. George
Chennai 600 009

2.The District Collector
Thiruvallur District
Thiruvallur

3.The District Revenue Officer
Thiruvallur District
Thiruvallur

4.The Tahsildar
Madhavaram



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5.The Village Administrative Officer
No.53, Kathirvedu
Madhavaram
Thiruvallur District

6.The Revenue Divisional Officer
Ambattur, Chennai

7.Mr.D.K.Seethapathy (died)
8.S.araswathi
9.K.S.Sabarinath
10.K.S.Dhuvaraganath
11.K.S.Regadevi

(R8 to R11 impleaded in the place of deceased
7th respondent as per order dt.12.12.12 by DHPJ
in MP.1/12 in WP.24160/2012)

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the 2nd respondent to conduct enquiry in assignment of land in favour of the 7th respondent as per the proceeding in Na.Ka.No.1776/2012/A1 dated 24.05.2012 and further direct the respondents 1 to 6 to allot the land at Survey No.4/1, Annai Indira Nagar, (J.J.Nagar) Kathirvedu Village, Ambattur Taluk, Thiruvallur District to an extent of 4.89 Acres to the members of the Petitioner's Sangam.

For Petitioner : Mr.S.Parthasarathy

For Respondents : Mr.D.Gopal,G.A for R1 to R6
R7 - died
Mr.V.Anil Kumar for R8 R11



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ORDER

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The Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the 2nd respondent to conduct enquiry in assignment of land in favour of the 7th respondent as per the proceeding in Na.Ka.No.1776/2012/A1 dated 24.05.2012 and further direct the respondents 1 to 6 to allot the land at Survey No.4/1, Annai Indira Nagar, (J.J.Nagar) Kathirvedu Village, Ambattur Taluk, Thiruvallur District to an extent of 4.89 Acres to the members of the Petitioner's Sangam.

2.It is the case of the writ petitioner that, 4.80 acres of Government land comprised in Survey No.4/1, Kathirvedu Village, Ambattur Taluk, Thiruvallur District, has been classified as Natham Poramboke out of which 2.60 acres of land was encroached by about 73 landless labourers, members of the petitioner's Sangam. They have put up thatched huts and were living there with their families from 1995 onwards. The members of the petitioner Sangam have been evicted from the property by the 7th respondent (deceased) and 143 proceedings also initiated against them.



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3.It is the contention of the learned counsel for the petitioner that, though the land was originally assigned in favour of the 7th respondent (deceased) vide G.O.Ms.No.637 dated 23.03.1967 in respect of 4.80 acres of land comprised in Survey No.4/1, Kathirvedu Village, Ambattur Taluk, Thiruvallur District on payment of Rs.85/- per cent, since the 7th respondent had failed to make payment in full and paid only Rs.6,410/- alone, the assignment was not given effect. Thereafter, in the month of September 2008, a sum of Rs.16,51,233/- was demanded by the respondents and accordingly it appears that the 7th respondent paid it only in the year 2008. Before the assignment could be transferred fully in his name, the property has been transferred to various other 3rd parties without any valid title. Hence action was sought in the writ petition.

4.Counter affidavit has been filed by the 3rd respondent, the District Revenue Officer and also on behalf of the respondents 1 to 6. Though, the respondent has denied the rights of the petitioner, it is the contention that as early as in the year of 1967, the Government has ordered that the land measuring 4.00 acres in S. No. 4/1 of Kathirvedu Village then in Saidapet



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Taluk of the erstwhile Chengalpattu District was assigned in favour of Sreepathy Chemicals for the establishment of an industry on collection of Land value at Rs. 85/- per cent, sub-division for of Rs. 4/- and the stone value of Rs. 6/- and subject to the usual conditions of assignment in G.O.Ms.No.637, Revenue Department dated: 23.03.1967. Thereafter, the 7th respondent filed W.P.No.9360 of 2006 to consider his representation, in that Writ Petition, the Tahsildar, Ambattur was directed to pass appropriate orders on the representation of the 7th respondent dated 17.10.2005. When that being the case, the encroachers in and around the area of 4.00 acres in Survey No. 4/1 of Kathirvedu Village, for which assignment was ordered in favour of the 7th respondent's company in G.O.Ms.No. 637 by the Revenue Department on 23.03.1967 were evicted in the month of February 2007.

5.It is further contended in the counter affidavit that though the Government has ordered assignment of the extent of 4.00 acres of land in S.No. 4/1 of Kathirvedu Village on collection of land value as early as in the year of 1967 in favour of the 7th respondent's company, the assignment process has not been finalised for want of remittance of the entire cost of



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land under assignment by the 7th respondent's company. The 7th respondent without having any valid orders issued by the Competent Authority for the said 4.00 acres in S.No. 4/1, in pursuant to the orders issued in G.O. Ms.No. 637 dated 23.03.1967, executed a power of attorney in favour of one Deva Jawahar in respect of the land measuring 1.00 acre in S. No. 4/1 classified as Village site poramboke through a registered document No.732 of 2007 on 16.02.2007. The 7th respondent has also executed another Power of Attorney through the registered document No.529 of 2007 on 9.2.2007 in favour of one Parthiban, for an extent of 0.55 acre in S. No. 4/1. Subsequently, Deva Jawahar, the holder of Power of Attorney document No. 732 of 2007 has alienated the land measuring 1.00 acre in S.No. 4/1 to V.G. Rajendran through the registered sale document No. 13564/2007 on 5.9.2007 for the sale amount of Rs.1,11,18,000/-. Parthiban, the holder of Power of attorney document No.579 /2007 has also sold the extent of 0.55 acre in S.No. 4/1 to Deva Jawahar and V.G. Rajendran through the registered document No.1658/2007 on 13.2.2007 for the sale amount of Rs.55,15,400/-. At the time of above registration of Power of Attorney document No. 579/2007 on 9.2.2007 and 737/2007 on 16.2.2007 and the



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sale document No.1658/2007 dated: 13.2.2007 and 13564/2007, dated: 5.9.2007, the ownership of the extent of 1.00 acre and 0.55 acre in S. No. 4/1 involved in the above registered documents was exclusively vested with the Government and the said extent of 1.55 acre in S.No. 4/1 has not all been conveyed or assigned properly to the 7th respondent by the Competent Revenue authority in pursuant to G.O.Ms. No. 637, Revenue Department dated: 23.3.1967. Since the 7th respondent has failed to remit the entire cost of the land of 4.00 acres at the time of execution of the above questionable documents of Power of attorney and conveyance.

6.The 3rd respondent has further averred that the 7th respondent's company has remitted only a sum of Rs.6,410/- and it has failed to remit the balance amount of Rs.27,600/- from the date of issue of the Government order (i.e.) 23.03.1967 to 18.09.2008. Only after a period of 41 years from the date of issue of the assignment orders from the Government and at the period on which the value of the land in question raised to Crores fold, the 7th respondent has remitted Rs.16,51,223/- as per the direction of the 3rd respondent vide letter No. R.Dis.11947/2008/B3, dated: 6.10.2008. The



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then Tahsildar, Ambattur without considering irregular activities of the 7th respondent in disposing 1.55 acres of the land in the year of 2007 before issuing the required D-Form assignment patta, has issued assignment order in this R.C.17656/2003/C1 on 31.10.2008 for an extent of 1.58.0 hectare in S.No. 4/1B, inclusive of 1.55 acre (0.62.5 hectare) unauthorisedly disposed by the 7th respondent's company to Deva Jawahar and V.G. Rajendran in 2007 before the issuance of assignment patta in patta No. 3156 by changing the classification of Village site poramboke to Dry. The Tahsildar, Ambattur is not at all a competent authority to order the change of classification of Poramboke land village site to Dry. The Government is the only competent authority to transfer of classification of Poramboke lands, since the Kathirvedu Village lies in belt area. Further, the Revenue standing order No. 15(3)(c) Contemplate the following;-

“(c) Where the Standing orders have to be relaxed provided that the market value of the land does not exceed Rs. 1 Lakh in each case. All cases in which the value of the land exceeds Rs. 1 lath and the exceptional cases specified above, should be submitted to the Government for sanction.”

7. Therefore, the Tahsildar, Ambattur before issuing assignment order



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in Rc.No.17656/2003/C1 on 31.10.2008 must have invariably obtained orders from the Government as per the Revenue Standing Order 15(3)(c), since the value of the land of Rs.16,37,223/- exceeds the prescribed value of Rupees one lakh. The then Tahsildar, Ambattur in his proceedings Rc.No. 1958/2009/C1, dated: 15.4.2009 without considering the fact that in the year of 2007, the 7th respondent has sold 1.55 acres in S.No. 4/1 to Deva Jawahar and V.G. Rajendran before the remittance of balance amount on 16.9.2008 and the issuance of assignment patta in 2008 has erroneously ordered Sub-division patta transfer for an extent of 0.40.5 hectare in favour of V.G. Rajendran and for 0.22.0 hectare in favour of Deva Jawahar and V.G.Rajendran jointly. At present, the extent of 1.58.0 hectare erroneously assigned by the Tahsildar, Ambattur.

8.In the above back-drop, the Revenue Divisional Officer, Ponneri has submitted proposals for cancellation of unauthorisedly alienated extent of 1.55 acres in S.No. 4/1 in 2007 in Rc. No. 2701/2011/A1, dated: 13.09.2011. A show cause notice was issued to the 7th respondent, V. G.Rajendran and Deva Jawahar as to why the assignment for the



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unauthorised extent of 1.55 acre proved not be cancelled, was issued by the 3rd respondent to the above show cause notice dated: 9.3.2012. Since the 7th respondent expired on 11.12.2011, in view of the pending enquiry initiated in the show cause notice dated: 9.3.2012 by the 3rd respondent, the petitioner has been informed in Rc. No. 1776/2012/B1, dated: 24.5.2012 that since an enquiry is pending as to the violation of conditions in the assignment granted to 7th respondent's company in 2008, the request for assignment of the house site pattas in S. No. 4/1 of Kathirvedu Village in favour of 73 families could not be considered. Aggrieved on this endorsement dated: 24.5.2012, the petitioner has filed this writ petition. In the meantime, the writ petition No. 23450 of 2012 filed by the petitioner challenging the G.O. Ms. No. 657, Revenue Department was withdrawn on 28.8.2012. The Revenue Divisional Officer, Ambattur in Rc. No. 1513/2012/ A2, dated: 25.4.2013 has submitted proposals for cancellation of the assignment granted to 7th respondent's company for the unauthorised alienation of 1.55 acres by the 7th respondent in 2007, that is before the issuance of assignment patta to him in 2008. In pursuant to filing of this W.P. No. 24160/2012, the petitioner, K.S. Sabarinath, V.G.Rajendran and



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Deva Jawahar were called on to attend enquiry on 26.7.2013, 1.11.2013 and 27.12.2013. K.S.Sabarinath has sought two month's time to implead himself as one of the respondents in this writ petition and to get appropriate orders from this Court vide individual representations. For violation of the conditions of assignment in unauthorisedly alienated land to an extent of 1.55 acres by the 7th respondent to V.G. Rajendran and Deva Jawahar, an enquiry has already been initiated. The said enquiry is pending disposal with DRO, Tiruvallur, and now directions were given to the RDO, Ambattur to cancel the assignment order issued by the Tahsildar, Ambattur in RC.17656/2003/C1 dated: 31.10.2008. Enquiry was already initiated by the 3rd respondent. The RDO, Ambattur was directed to cancel the assignment order issued by the Tahsildar, Ambattur, in RC.17656/2003/ C1 dated 31.10.2008. Necessary action will be pursued by the Government respondents. Hence opposed the writ petition.

9.Learned counsel for the petitioner would submit that, as the assignment fee has not been paid, the property is vested with Government. The petitioner's Sangam members encroached certain portion of the land,



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however, they were illegally removed from the above said property. It is his further contention that, the assignment itself is not complete and only after 41 years, the Tahsildar has issued proceedings and collected the balance amount, which is not valid in the eye of law. Hence the writ petition.

10. Whereas, it is the contention of the 7th respondent in his counter that, it is the Writ Petition filed against the dead person. The petitioner has also filed a Suit in O.S.No.14960 of 1996, which came to be dismissed on 14.07.1999. It is the contention that the land has been assigned to their grand father viz. the 7th respondent (deceased) herein and the amount has also been collected. Hence, objected the writ petition.

11. Learned counsel for the 7th respondent submitted that this writ petition is nothing but only an abuse of process of law. The 7th respondent (deceased) also filed another W.P.No.8445 of 2006, wherein, this Court had directed the respondents to pass appropriate orders on the representation of the 7th respondent dated 17.10.2005, confirming the possession to an extent of the entire four acres, thereby eliminate any scope to interfere with the



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possession of the land assigned as per the G.O.Ms.No.657 dt.23.03.1967 and directed the 2nd respondent, Tahsildar, Tiruvallur District to issue orders only in the light of the observations made in the above writ petition and proceedings have also been initiated by the respondents. Hence submitted that the writ petition is not maintainable.

12.perused the entire materials. The petitioner who claims to be an encroacher was evicted from the property, filed the present writ petition. There are several Suits filed subsequent to filing of this writ petition. Therefore, this Court is of the view that the prayer of the petitioner's Sangam cannot be decided in this issue. However, taking note of the specific stand of the Government that though assignment of four acres was originally given in the year 1967 to the 7th respondent company, the entire assignment proceeding has not been completed and the amount has also not been remitted by the 7th respondent company. Therefore, the assignment has not been fructified in legal form and the 7th respondent has no right to alienate the property.

13.



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13.It is relevant to note that in the earlier W.P.No.8445 of 2006, the 7th respondent was seeking for a direction to the Tahsildar to pass appropriate orders. This Court considering the assignment order had directed the Tahsildar to issue necessary proceedings in the Writ Petition. However, the fact remains that many particulars about the assignment has never been brought to the notice of this Court. Therefore, this Court taking note of the very same assignment order, proceeded as if there was a valid assignment and issued directions.

14.Therefore, this Court is of the view that when the assignment amount has not been paid, the assignment is not fructified as a legal transfer of sale, such property cannot confer any title to the present purchaser. After 41 years of the Government order, the so called assignment fee has been paid only based on some orders obtained by the 7th respondent in a writ petition and an amount of Rs.16,51,223/- has been paid only in the year 2008 on 19.09.2008.

15.It is also relevant to note that when the assignment has not been



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fructified and when there were no legal transfer, mere payment of some amount that too after 41 years, will not give any valid assignment. If at all any amount is paid further, the market value of the amount has to be paid and if the value of the property exceeds from Rs.1 lakh, necessary orders ought to have been obtained from the Government as per the Revenue Standing Order No.15(3)(C). No such orders have been passed to that effect.

16. Such view of the matter, this Court taking note of the fact that the manner in which the impleading respondents have tried to establish a title over the land without proper assignment and they have also sold some property, this Court is of the view that the Government should take appropriate action and accordingly this Court directs the Commissioner Land Administration to initiate suo motu enquiry as per R.S.O. and pass orders on merits after hearing the impleaded respondents. The Commissioner shall, independently decide the validity of the title without referring to the observations made by this Court in this petition. As the Commissioner is directed to conduct enquiry, it will not give any right to the



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writ petitioners to seek an allotment automatically. It is for the Government to decide the matter on considering the merits of the case.

17.This Writ Petition stands disposed of accordingly. No costs.

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Index : Yes / No

Internet : Yes / No

Speaking / Non speaking order

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To

1.State of Tamil Nadu
Rep. by Revenue Secretary
Fort St. George
Chennai 600 009

2.The District Collector
Thiruvallur District
Thiruvallur

3.The District Revenue Officer
Thiruvallur District
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