



W.P. No.819/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
04.07.2022	08.07.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NO.819 OF 2017
AND
W.M.P. NO. 28834 OF 2018**

Mrs. K.Devaki

.. Petitioner

- Vs -

1. The Revenue Divisional Officer
Tiruppur, Tiruppur District.

2. The Tahsildar
Tiruppur Taluk, Tiruppur District.

3. The Village Administrative Officer
Thonguttpalayam Village
Tiruppur Taluk, Tiruppur District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying
this Court to issue a writ of certiorarified mandamus to call for the records
pertaining to the impugned order passed by the 1st respondent herein in



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Na.Ka.4440/2010/A1 dated 09.11.2016 and quash the same and consequently direct respondents 1 and 2 herein to issue patta in the petitioner's name.

For Petitioner : Mr. G.Karthikeyan

For Respondents : Mr. G.Krishnaraja, AGP

ORDER

The petitioner avers that she purchased the property in SF Nos.12/1d, 12/1h, 12/1f, 12/1e, 12/1g, 9/1a, 9/1c and 12/1c vide Document No.1387/2002, from one Sulochana, which was duly registered before the Joint 1st Sub Registrar, Tiruppur and since the date of the said purchase, the petitioner has been in possession and enjoyment of the said lands. It is the further averment of the petitioner that when she applied to the revenue authorities for mutation of patta by submitting application dated 5.10.2002, the 2nd respondent herein, directed the 3rd respondent to conduct enquiry and submit report, but no order was passed by the respondents, which prompted the petitioner to send a legal notice to the respondents, which was received by the 2nd respondent on 27.2.2008 and by the 3rd respondent on 7.3.08, yet no steps were taken to dispose of the application. Therefore, the petitioner filed W.P. No.8098/08 before this Court in



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which this Court, by order dated 11.4.08, directed the respondents therein to pass appropriate orders within a period of four weeks.

2. It is the further averment of the petitioner that pursuant to the said order, as no action was taken, the petitioner filed Contempt Petition No.841/08 during which time, the 2nd respondent produced order dated 23.9.08 in and by which the request of the petitioner for change of name in the patta was rejected, which copy was also served on the petitioner and the contempt petition was closed, vide order dated 7.11.08, recording the aforesaid fact.

3. It is the further averment of the petitioner that the said rejection order was passed on the ground that the lands having been assigned under the Tamil Nadu Land Reforms Act, No Objection Certificate from the Assistant Commissioner of Land Reforms is necessary for the purpose of effecting name change in the patta.

4. It is the further averment of the petitioner that in view of the aforesaid order, the petitioner preferred W.P. No.7616/09 assailing the aforesaid order of



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the 2nd respondent and for a further direction to the 2nd respondent to change the name in the patta as requested by the petitioner. However, the said appeal was dismissed by this Court on the ground that appeal remedy is available and pursuant to the said order, appeal was filed by the petitioner on 6.6.09. In spite of the filing of the appeal, which was not taken up for a long time, in spite of oral requests, the petitioner filed W.P. No.6168/10 for a direction to consider the appeal and pass orders in which this Court directed the respondents therein to pass orders within a time frame. In spite of the said direction, as no orders were passed, the petitioner filed Contempt Petition No.1169/10 and during the pendency of the said contempt, the Joint Commissioner, Land Reforms, Erode District passed an order in Na. Ka. No.2545/2004/C2 dated 20.01.2009 cancelling the very assignment, aggrieved by which the petitioner filed W.P. No.7757/09 on the file of this Court, which was dismissed by this Court vide order dated 27.04.09 directing the petitioner to file appeal before the appropriate authority. Pursuant to the said direction, the petitioner preferred revision before the Appellate Authority for Land Reforms (Commissioner, Land Reforms, Chepauk, Chennai) in R.P. No.6/2011 and upon hearing the counsel for the petitioner and also the written arguments of the petitioner, the appellate authority set aside the order of



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cancellation of assignment and directed the Assistant Commissioner, Land Reforms, Erode, to rehear the matter and pass orders on merits.

5. It is the further case of the petitioner that inspite of the said order, no enquiry was conducted and orders passed for a long number of years and due to the continuous requests of the petitioner, it came to the knowledge of the petitioner that Contempt Petition No.1169/10 is pending on the file of this Court and only upon withdrawal, orders can be passed in the matter, which resulted in the petitioner withdrawing the contempt, which was closed vide order dated 21.10.16. Pursuant to the said withdrawal, the 1st respondent herein passed the order impugned confirming the cancellation of the assignment against which the present writ petition has been filed.

6. Learned counsel appearing for the petitioner, reiterating the grounds raised in the petition submitted that the condition not to sell the subject property is imposed on the assignee only for a period of 10 years, whereinafter, the assignee is free to sell the said property. Further, it is submitted that no unilateral condition can be imposed on the other party to the assignment. It is



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the further submission of the learned counsel that the even if there is any violation of the conditions of assignment, however, the long period between the said assignment and the sale and the cancellation at this distant point of time is wholly impermissible, as much water would have flown between the time assignment was granted and the sale of the subject lands.

7. It is the further submission of the learned counsel that the delay on the part of the revenue authorities to cancel the assignment, having allowed it to subsist for such a long period is detrimental to the case of the respondents and as such the cancellation cannot be sustained. It is further submitted that the respondents having accepted the sale of the subject property to the petitioner's vendors as early as on 26.5.1995 and issued all the revenue records, such as Patta, Chitta and Adangal in the name of the vendor of the petitioner, the respondents, all of a sudden, cannot go back and cancel the assignment.

8. Learned counsel appearing for the petitioner placed reliance on the following decisions :-



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- i) *T.Tirumalai Gounder & Anr. – Vs – State of T.N. & Ors. (2010 (5) LW 289); and*
- ii) *R.Ramanathan & Ors. – Vs – State of T.N. & Anr. (1997 MLJR 406)*

9. Per contra, learned Addl. Government Pleader appearing for the respondents submit that the land was initially allotted in the year 1985 to eight different persons, belonging to depressed community, out of the surplus lands available with the Government, on condition that no alienation shall be made of the said lands before the period of 20 years. However, after the passage of 10 years, the aforesaid persons, alienated the property in favour of one Sulochana, also belonging to depressed class, which alienation was done without obtaining prior permission or paying the requisite charges towards the trees, etc., on the said land. However, the revenue authorities, without properly verifying the assignment conditions had erroneously transferred the revenue records in favour of the said Sulochana. It is the submission of the learned Addl. Government Pleader that the alienation of the subject lands before the completion of the mandatory period of 20 years is against the conditions of assignment, infraction of which would lead to cancellation of the assignment. The said Sulochana had, thereafter, after a period of seven years, alienated the properties in favour of the



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petitioner, who belongs to non-depressed class. It is the submission of the learned Addl. Government Pleader that the said alienation to a person belonging to undepressed class is impermissible as per Revenue Standing Order No.15. In view of the aforesaid infringement of assignment conditions, the assignment was cancelled, which cannot be held to be bad or perverse or unreasonable and, therefore, he prays for dismissal of the writ petition.

10. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

11. Assignment of surplus lands is given to persons from the depressed class on certain conditions, one of which is that the lands should not be alienated before the period as provided under the Conditions of Assignment u/s 9 and sub-clause (a) of clause (iii) of the Tamil Nadu Land Reforms (Disposal of Surplus Land Rules), 1965. For better clarity, the relevant sub-clause (a) of clause (iii) is quoted hereunder :-



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“(iii) (a) The land will vest absolutely in the assignee only after the value of the land and the building 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].”

12. From the aforesaid provision, it is amply evident that the assigned lands would vest with the assignee only after the value of the land and building and trees thereon is paid or after the expiry of a period of twenty years from the date of assignment and no alienation can be made before the period of twenty years if the value is not paid to the Government in respect of the said lands.

13. It is evident from the materials available on record that the lands were assigned in the year 1985, which were alienated to the vendor of the petitioner in the year 1995, which is within a period of ten years from the date of assignment. No material has been placed before this Court to show that the value towards the land and building and trees thereon was paid to the Government so as to enable the assignee to wriggle out of the mandated twenty years term. Therefore, without paying the value aforesaid, no alienation is permissible before the completion of the period of twenty years.



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14. Be that as it may. It is the further stand of the respondents, without admitting, that even if alienation could be made, such alienation could be made only to depressed class persons and any alienation to undepressed class persons would be against the conditions of assignment, which would render the assignment fit for cancellation.

15. It is not disputed by the petitioner that she belongs to undepressed class. It is to be pointed out that RSO 15 (3) prescribes the persons to whom surplus lands can be assigned by the Government, which provides that only landless and poor persons, who are likely to engage themselves in direct cultivation shall be eligible for assignment of land free of land value subject to the conditions of assignment. In the case on hand, the petitioner is neither a landless nor a poor person and also not a person belonging to the depressed class, to whom alone, assignment is permissible. Such being the case, the infringement of the conditions on the part of the original assignee as also on the part of the vendor of the petitioner has resulted in the cancellation of patta.



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16. Though it is the contention of the petitioner that the lands having been alienated before the period prescribed under the assignment and the revenue records having been mutated in favour of the petitioner's vendor, the revenue authorities as also the respondents have accepted the violation, which would be nothing but a deemed grant of relaxation and, therefore, cancelling the assignment is impermissible. However, it is to be pointed out that not only in the first leg of alienation there is infraction, even in the subsequent leg, viz., the sale to the petitioner, there is infraction of condition, in that the land has been alienated in favour of undepressed class person, which is against the Revenue Standing Orders and, therefore, the cancellation of assignment by the respondents cannot be found fault with.

17. In this regard, useful reference can be had to the decision of the Hon'ble Supreme Court in ***Lingappa Kochanna – Vs – State of Maharashtra (AIR 1985 SC 389)***, wherein the Hon'ble Apex Court has held that alienation of land given to depressed community to any other person other than persons belonging to Adi-Dravida class is in violation of the conditions of assignment and the said assignment is liable for cancellation, as the same is constitutionally not valid.



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18. Reliance has been placed on the decision of the Division Bench of this Court in *Tirumalai's case (supra)*. In the said case, the mutation of revenue records was made in favour of the first appellant therein, but later the assignment was cancelled, which was interfered with by the Division Bench on the ground that assignment cannot be permitted to be cancelled by the revenue authorities on the ground that there was no prior permission for transfer, as mutation of revenue records have been permitted. However, the said decision is not applicable to the facts of the present case merely because the mutation therein to the revenue records was made in favour of the appellant therein, who had questioned the cancellation. However, the petitioner before this Court is seeking mutation of revenue records and, therefore, the said decision, factually, would not be applicable to the case of the petitioner. Further, in the said case, the question of the lands having been alienated to undepressed class persons was not an issue, whereas in the present case, the lands have been alienated in favour of the petitioner, who belongs to undepressed class.



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19. Insofar as the decision relied on in *Ramanathan's case (supra)* is concerned, the main ground on which the cancellation had been set aside is on the question of delay when proceedings which were initiated by the respondents for resumption was dropped by the respondents on their own accord and, therefore, it was held that the respondents are estopped from resuming the lands after a lapse of more than 32 years. In the case on hand, the facts are totally different and there is no delay attributed on the part of the respondents nor there is delay in the act of the respondents in cancelling the assignment. Further, in this case as well, alienation was not in favour of any undepressed person. Therefore, this decision would also be of no use to the petitioner.

20. However, the present case is squarely covered by the decision of the Hon'ble Supreme Court in *Lingappa Kanchana's case (supra)* and in view of the ratio laid down aforesaid, on the facts of the present case, there being clear violation of the terms of assignment, the same renders the assignment liable for cancellation. The act of the respondents in acting in accordance with the conditions of assignment as also Revenue Standing Orders, though belated, cannot be found fault with, as once it came to the notice of the respondents



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about the violation of the assignment conditions, the respondents have acted upon by cancelling the assignment. Therefore, the order impugned herein does not warrant any interference.

21. For the reasons aforesaid, this writ petition fails and the same is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

08.07.2022

Index : Yes / No

Internet : Yes / No

GLN

To

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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
W.P. NO.819 OF 2017**

**Pronounced on
08.07.2022**