BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.09.2022**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.5138 of 2013
and
M.P(MD)Nos.2 & 3 of 2013

1.Khushroo Burjor Bandrawalla
2.Mani Khushroo Bandrawala ... Petitioners

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary,
Revenue Department,
Fort St.George,
Chennai-600 009.

2.The District Collector,
Dindigul District,
Dindigul.

3.The Revenue Divisional Officer,
Kodaikanal.

4.The District Revenue Officer,
Dindigul.

5.The Tahsildar,
Kodaikanal Taluk,
Kodaikanal.

6.V.Saraswathi
7.Subramani alias Subburaj ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the second respondent, dated 26.11.2010 made in Ni.Mu.47814/06/(P4) and quash the same and consequently direct the respondent to modify the revenue records as stood before 26.11.2010 in respect of the lands in survey No.859/2 measuring an extent of 73 cents in Vilpatty Village, Kodaikanal Taluk, Dindigul District.

For Petitioners	: M/s.P.Thiagarajan
For R-1 to R-5	: M/s.M.Lingadurai Special Government Pleader
For R-6	: No appearance
For R-7	: Mr.T.Antony Arulraj

ORDER

The present Writ Petition has been filed challenging an order passed by the second respondent herein, under which, the order of assignment granted in favour of the writ petitioners' vendor were cancelled.

2. According to the learned Counsel for the petitioner, one Veeraiah Asari was granted an order of assignment for 1.18 hectares in R.S.No.859/2 in Vilpatty Village, Kodaikanal. As per the conditions imposed in the said order of assignment, the property should not be alienated within a period of ten years and it should not be alienated to any foreigner, without obtaining any prior permission from the revenue authorities.

3. After the death of said Veeraiah Asari, the property had devolved upon her wife V.Saraswathi. The said sixth respondent and other children of the sixth respondent's legal heirs of Veeraiya Asari have executed a registered sale deed in favour of the petitioners 1 and 2 on 21.03.2006. Pursuant to the said sale deed, patta was also mutated in the name of the writ petitioners and the adangal extracts also reflected the name of the writ petitioners.

4. When the matter stood thus, another order of assignment was granted in favour of the sixth respondent herein for Survey No.859/1 for an extent of 0.88.0 hectares in the year 1985. The revenue records got

mutated in the name of the sixth respondent, based upon the said order of assignment. However, by some means, the seventh respondent got his name mutated in the place of the sixth respondent herein. Hence, the sixth respondent lodged a complaint before the second respondent herein for transferring the said patta in the name of the sixth respondent.

5. The second respondent conducted a detailed enquiry and passed the present impugned order on 26.11.2010. A perusal of the operative portion of the impugned order indicates that the second respondent has cancelled the order of assignment in favour of the sixth respondent with regard to Survey No.859/1, which was granted in the year 1985 on the ground that when already an order of assignment has been granted in favour of the sixth respondent's husband in the year 1979, a second assignment cannot be granted in favour of the wife also. The second respondent has further held that the name of the seventh respondent has been incorporated in the revenue records for survey No.859/1, without any authority. The second respondent has directed to delete the name of the seventh respondent herein. If the impugned order had stopped, with these two directions, the present writ petition would not have been filed.

However, the second respondent proceeded to cancel the order of assignment granted in the year 1979 in favour of the sixth respondent's husband. According to the learned Counsel for the petitioner, the said order of assignment has been cancelled on the ground that the sixth respondent and other legal heirs of deceased Veeraiah Asari have sold it to a person who is an income tax assessee, without obtaining any prior permission from the revenue authorities. This portion of the order is under challenge in the present writ petition.

6. According to the learned Counsel for the petitioner, he has purchased the property, after verifying the revenue records and encumbrance certificate, by way of a registered sale deed, dated 21.03.2006. After purchase, the revenue records also got mutated in the name of the writ petitioners. When such being the case, without even issuing any notice to the writ petitioners, the order impugned in the writ petition has been passed, cancelling the order of assignment granted in favour of the sixth respondent's husband. The learned Counsel for the petitioner has further contended that no such condition has been imposed at the time of granting order of assignment on 26.05.1979 that the prior

permission of the revenue authorities have to be obtained for alienating the property even after a period of ten years. He further contended that there is no such condition that a purchaser should not be an income tax assessee. Hence, he prayed for allowing the writ petition.

7. Per contra, the learned Special Government Pleader appearing for the second respondent herein had filed a counter and contended that G.O.Ms.No.2485 Revenue Department, dated 09.11.1979 has been passed to the effect that even for alienation, beyond a period of ten years, prior permission of revenue authorities have to be obtained. That apart, the alienation can be made only for the purpose of cultivation and it cannot be made for commercial purposes. In view of these two violations, the authorities have got powers to cancel the order of assignment. Hence, invoking these powers, the order of assignment has been cancelled. The learned Special Government Pleader further contended that the writ petitioners, who are the purchasers of the said land have already put up a palatial bungalow and the said land is not been used for any cultivation purposes. Hence, he prayed for sustaining the order impugned in the writ petition.

8. I have carefully considered the submissions made on either side.

9. A perusal of the impugned order clearly indicates that the sixth respondent herein has lodged a complaint before the second respondent with regard to the illegal mutation of the revenue records in favour of the seventh respondent with regard to Survey No.859/1. The said enquiry was connected only with Survey No.859/1 and not with Survey No. 859/2. That apart, the said Survey No.859/1 was covered by an order of assignment in favour of the sixth respondent herein in the year 1985. The petitioners have purchased the property that was originally assigned in favour of the sixth respondent's husband, namely, Veeraiah Asari and the Survey Number is 859/2. Hence, the scope of enquiry conducted by the second respondent herein was restricted only to Survey No.859/1. In such circumstances, the second respondent ought not to have considered the allegations and counter allegations relating to Survey No.859/2, which was clearly outside the scope of the enquiry.

10. That apart, the petitioners have purchased the property in the year 2006 and revenue records have also been mutated in their name in the year 2006 itself. Without issuing any notice to the present purchaser, namely, the writ petitioners, the impugned order has been passed, cancelling the order of assignment, even in relation to Survey No.859/2 for which no enquiry was sought for. In view of the above said facts, the order impugned in the writ petition with regard to Survey No.859/2 alone is set aside. The rest of the order is confirmed. The second respondent is directed to conduct a fresh enquiry with regard to Survey No.859/2, after giving due opportunity to the writ petitioners and the sixth respondent herein. The said exercise shall be completed within a period of four (4) months from the date of receipt of a copy of this order. The writ petition stands allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

22.09.2022

Index : Yes / No
Internet : Yes / No
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To

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The Government of Tamil Nadu,
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2.The District Collector,
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5.The Tahsildar,
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Kodaikanal.

R.VIJAYAKUMAR, J.

btr

Order made in
W.P(MD)No.5138 of 2013

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