BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.11.2022
DELIVERED ON : 15.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)Nos.8831, 11719 & 13011 to 13015 of 2015
and
M.P(MD)Nos.1, 1, 1, 1, 1, 1, 2, 2, 2, 2, 2, 2, 2, 3, 3, 3, 3, 3, 3 & 3 of 2015

W.P(MD)No.8831 of 2015

P.Rajappa ... Petitioner

Vs.

The Revenue Divisional Officer,
Tanjore. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the impugned order of the respondent, dated 16.05.2015, in Na.Ka.No. 2073/2015/A2 and quash the same.

For Petitioner : M/s.R.Sundar Srinivasan

For Respondent : M/s.M.Lingadurai
Special Government Pleader

COMMON ORDER

The present Writ Petitions have been filed challenging an order passed by the Revenue Divisional Officer, Tanjore on 16.05.2015, under which, he has cancelled the order of assignment granted in favour of 44 persons, who are the ancestor in title of the writ petitioners.

2. According to the learned Counsel for the petitioner, 44 persons were granted an order of assignment in the year 1970. The said assignees after the expiry of 10 year ban period for alienating the property, had sold the same in favour of the writ petitioners. The writ petitioners relying upon the mutation of the revenue records and the order of assignment had purchased the property. After purchasing the property, revenue records were also mutated in the name of the writ petitioners. Suddenly, in the year 2014, the respondent had chosen to send notices to the original assignees for cancellation of assignment and has cancelled the order of assignment granted in favour of the petitioners' vendors. The said cancellation order is under challenge in the present writ petition.

3. According to the learned Counsel for the petitioner, alienations have been effected after the ban period in the year 1993 to 1995. Thereafter, some of the vendors with the help of anti social elements started blackmailing the purchasers and demanded more money. Some of the vendors had also lodged a police complaint. Though the said request of the vendors was not tenable in the eye of law, in order to settle the issue, the petitioners have parted with some money. Thereafter, the complaints were withdrawn and the issue was resolved. However, the respondent herein suddenly initiated *suo motu* proceedings to cancel the assignment order. Without issuing any notice to the writ petitioners, the respondent had proceeded to cancel the order of assignment, on the ground that, assignees themselves have appeared before him and admitted about the alienation of the property. The order impugned in the writ petition further states that the original assignees have not brought the land under cultivation within a period of three years from the date of assignment and they have alienated the property, without obtaining prior permission from the Government. Based upon the above said grounds, the order impugned in the writ petition

was passed, cancelling the order of assignment in favour of the petitioners' vendors.

4. The learned Counsel for the petitioner has further submitted that the order impugned in the writ petition is liable to be set aside for violation of principles of natural justice. The lands were sold to the petitioners in the first half during 1993 / 1994 and revenue records were also mutated in the name of the writ petitioners. However, without issuing any notice to the writ petitioners, the order impugned in the writ petition has been passed. He further contended that as per the Revenue Standing Orders, the power to resume the land, which was assigned prior to 14.05.1973, lies only with the Commissioner of Land Administration or the Government. However, the present impugned order has been passed by the Revenue Divisional Order and hence, it is without jurisdiction.

5. The learned Counsel for the petitioner has further contended that G.O.Ms.No.2555 Revenue, dated 14.05.1973, was passed conferring powers upon the appropriate official to cancel the order of assignment, without

reference to any time limit. This Court has interpreted the said Government Order to the effect that it has got only prospective effect. In other words, the assignments granted after 14.05.1973 alone can be cancelled, without reference to any time limit. As far as the assignments granted prior to 14.05.1973 are concerned, they can be cancelled only within a period of three years from the date of order of assignment. In the present case, the order of assignment is of the year 1970 and any proceedings for cancellation of the said assignment ought to have been initiated within a period of three years. The present proceeding initiated in the year 2014 is clearly barred by limitation and without jurisdiction. Hence, he prayed for allowing the writ petition.

6. Per contra, the learned Special Government Pleader appearing for the respondent had contended that the lands were assigned in favour of Gipsies for their welfare and upliftment. No alienation can be effected in favour of third parties, without obtaining prior permission of the Government. In the present case, the alienations have been effected admittedly, without prior permission of the Government. He further

contended that whenever an order of assignment is cancelled, it has to be challenged only by the assignees. The present writ petition filed by the purchasers is not maintainable.

7. The learned Special Government Pleader further contended that as far as the contention, that no notice was issued to the writ petitioners are concerned, the original assignees alone are entitle to a notice and not the purchasers. Admittedly, neither the assignees nor the petitioners have obtained any prior permission from the Government as contemplated under the Revenue Standing Orders before alienating the properties.

8. The learned Special Government Pleader further contended that the assignees have appeared in person before the competent authority. The assignees have categorically admitted that they have sold the land in favour of third parties. Therefore, the issue of violation of the conditions imposed in the order of assignment order have been admitted by the original assignees themselves. Therefore, the learned Special Government Pleader

prayed for sustaining the impugned order and for dismissing the writ petition.

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

10. Admittedly, the petitioners have purchased the property from the original assignees after the ten year ban period imposed in the order of assignment. When the petitioners have purchased the property, the revenue records were standing in the name of the original assignees. Thereafter, at the request of the petitioners, the revenue records were mutated in the name of the purchasers by the concerned Tahsildar.

11. The assignments have been granted in the year 1970 and the alienations have been made in the year 1993. The *suo motu* proceedings for cancellation of the order of assignment have been initiated by the respondent in the year 2014. The impugned order of cancellation of assignment has been passed mainly on two grounds, namely, the original assignees have not brought the land into cultivation within a period of three

years from the date of assignment and they have alienated the property, without obtaining the permission of the Government.

12. The above narrated dates and events will clearly indicate that the proceedings for cancellation of the order of assignment have been initiated after a period of 44 years by the respondent herein. As rightly contended by the learned Counsel appearing for the petitioner, this Court in a judgment reported in ***2022 (6) MLJ 411 (K.S.Jarina Vs. Commissioner of Land Administration, Ezhilagam, Chennai and Others)*** in paragraph No.16 after relying upon three judgments of this Court has held as follows:

> *"**16**. In view of the above said judgment, it is clear that the order of assignment which is granted prior to 14.05.1973 can be cancelled only within a period of three years from the date of order of assignment. That apart, even on the ground of misrepresentation, the said order of assignment cannot be considered after a lapse of few decades. In the present case, the order of assignment is sought to be cancelled after a period of 40 years. The reason that are assigned for cancelling the order of assignment have already been found to be not legally sustainable in the previous paragraphs. Hence, the impugned order also suffers from lack of authority to*

cancel the order of assignment apart from the merits."

13. Immediately after purchase of the property, the petitioners have approached the revenue authorities for mutation of revenue records. The revenue records have been mutated in the name of the purchasers. The learned Counsel for the writ petitioner had relied upon the Division Bench judgment of this Court reported in ***2010 (5) LW page 289 (T.Tirumalai Gounder and another Vs. The State of Tamil Nadu, Represented by its Secretary to Government, Land Administration, Fort St. George, Chennai and others)*** in paragraph No.13 has held as follows:

*"**13**. There is no dispute that the property could be transferred with the permission of the revenue authorities. When the revenue authorities own their own motion and by accepting the sale deed, dated 16.05.1967, endorsed the ownership of the first appellant and mutated the revenue entries in his name, such transfer should be considered to be an act of permission for assigning the land. The revenue authorities having passed orders for mutation of revenue records, cannot be permitted subsequently to cancel the very assignment on the ground that there was no prior permission from the revenue authorities for*

transfer of assignment. Therefore, the Revenue Divisional Officer, Virudhachalam was not justified in cancelling the assignment in favour of the first appellant."

14. In the present case, the assignment is of the year 1970 and hence, any proceeding for cancellation could be initiated only within a period of three years. The impugned proceedings having been initiated in the year 2014 is clearly without jurisdiction. That apart, in all the cases, the revenue authorities have accepted the alienation and mutated the revenue records in favour of the purchasers. In view of the Division Bench judgment cited supra, the mutation of patta by the revenue authorities should be deemed to be the permission granted by the Government for alienation of the properties. In the present case, the sale deeds have been accepted and mutation of revenue records have taken place. Hence, the finding in the impugned order that the alienations have been effected, without permission of the Government is not legally sustainable.

15. The learned Counsel for the writ petitioner further relied upon the Revenue Standing Order 15(xi)(c) to contend that the power to resume land

on violation of conditions of assignment vests only with the Commissioner of Land Administration / Government, for the lands assigned prior to 14.05.1973. In the present case, admittedly the order of assignment has been granted in the year 1970. The impugned order has been passed by the Revenue Divisional Officer. Hence, it is clear that the respondent does not have any jurisdiction whatsoever to initiate either *suo motu* or on complaint any proceedings for cancellation of an order of assignment that was granted prior to 14.05.1973. Hence, the order impugned in the writ petition is without jurisdiction and the same is liable to be set aside.

16. In view of the above said discussion, the order impugned in the writ petition has been passed without jurisdiction and hence, the same is set aside. All the writ petitions stand allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

15.11.2022

Index : Yes / No
Internet : Yes / No
btr

To

The Revenue Divisional Officer,
Tanjore.

R.VIJAYAKUMAR, J.

btr

Order made in
W.P(MD)Nos.8831, 11719 & 13011 to 13015 of 2015

15.11.2022