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W.P.No.15200/2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 10-08-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.15200 of 2018

V.Sundari ... Petitioner

-vs-

1.The Special Secretary (Revenue) – cum
The District Collector,
Puducherry.

2.The Deputy Collector (Revenue) South,
Revenue Complex,
Villianur,
Puducherry – 605 110.

3.Tahsildar,
Office of the Collectorate,
Villianur,
Puducherry – 605 110.

4.Superintending Engineer,
Electricity Board,
Villianur,
Puducherry.

5.Pitchaiyammal,

6.Pandurangan ... Respondents



Petition under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus to direct the respondents 1 to 3 to demolish/remove the encroachment made by 5th and 6th respondents in the land belonging to the petitioner in R.S.No.94/38 of Eripakkam Revenue Village, measuring an extent of 00.01.38 Hectare, issued vide LGR 1326/1978 (assignment patta) and hand over the land to the petitioner.

For Petitioner : Mr.R.Venkatesulu

For Respondents 1 to 4 : Mr.V.Vasanth Kumar,
Addl.Govt.Pleader.

For Respondents 5 & 6 : Mr.T.Sai Krishnan,
for Mr.V.Kamala Kumar.

ORDER
(By *S.Vaidyanathan,J.*)

Petitioner – V.Sundari, wife of Vellikannu, has approached this Court by way of this Writ Petition, seeking for a direction to respondents 1 to 3 to demolish/remove the encroachment made by 5th and 6th respondents in the land belonging to the petitioner in R.S.No.94/38 of Eripakkam Revenue Village, measuring an extent of 00.01.38 Hectare, issued vide LGR 1326/1978 (assignment patta) and hand over the land to her.

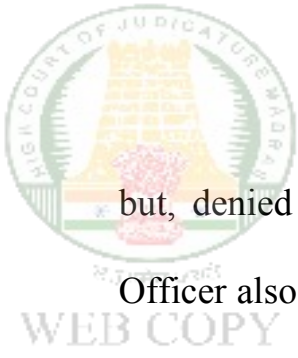


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2. Vellikannu was the son of Egambaram and Egambaram was the son of Seenan. Both Egambaram and Seenan are no more. Originally, the land in question was assigned in favour of Egambaram, son of Seenan, on 20.03.1979. It has been stated that by means of an unregistered sale deed, Velliakannu, son of Egambaram, bequeathed the property in favour of sixth respondent, who, in turn, settled the property in the name of fifth respondent. Fifth and sixth respondents are sister and brother, which means, brother has settled the property in the name of sister. Fifth respondent claims to be the wife of Egambaram. Egambaram, referred to as the husband of fifth respondent-Pitchaiyammal, is a different person.

3. Petitioner contends that she was a bonded labourer under sixth respondent and he took all the pattas of the bonded labourers and retained them for having favoured loan to the bonded labourers. According to her, a complaint was given to the authority under the Bonded Labour System Abolition Act, 1976, in short, "the Act", and the Sub-Divisional Magistrate, South, who was the Revenue Divisional Officer under the Act, conducted an inquiry, recorded the statements and held that there should be no harassment to the petitioners and others, whose names were referred to in the order of the Revenue Divisional Officer, dated 08.04.2013. Petitioner accepted the fact that she was employed as a bonded labourer for two years between 1998 and 2010,



but, denied that the advance amount taken was not settled. The Revenue Divisional Officer also held that if any advance amount was due, it was open to Pandurangan, sixth respondent herein, to approach appropriate Civil Court for the relief. However, he rendered a finding that there was no bonded labour system. Transfer of assignment to Pitchaiyammal, wife of Egambaram, was cancelled by an order, dated 13.02.2014. After the demise of Egambaram, son of late Seenan, his daughter-in-law, namely, the petitioner herein, obtained transfer of assignment on 13.02.2014. Aggrieved over the said order of Director of Survey and Land Records, dated 13.02.2014, an appeal was filed, wherein the Appellate Authority/District Collector confirmed the order cancelling patta in the name of the appellant therein and reassigned the Patta No.1326/1978 in the name of V.Sundari, by proceedings, dated 10.04.2017. There was also a Suit filed by Sundari and others in O.S.No.1956 of 2014 on the file of Principal District Munsif, Puducherry, and vide judgment and decree, dated 10.02.2015, Vellikannu, son of late Egambaram, was declared the sole legal heir of Egambaram, son of late Seenan, who died on 18.06.1985. The Civil Court held that the plaintiff was the legal heir of the deceased Vellikannu, son of Egambaram, who died on 16.11.2007, which has attained finality. Based on that, assignment patta, as stated supra, had been issued/transferred in favour of Sundari, petitioner herein.



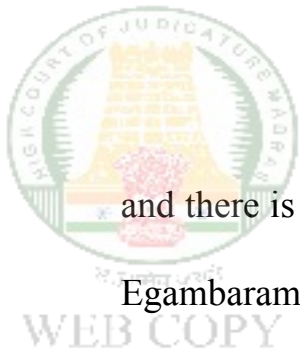
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4. Mr.T.Sai Krishnan, learned counsel for the contesting respondents 5 and 6, would vehemently contend that in terms of Rule 12 (1) (iii) of the Pondicherry Land Grant Rules,1975, in short, "the Rules", which is extracted below, the land shall not be sold or alienated for a period of ten years only from the date of assignment and that the assignment that had been granted in 1979 was sold by an unregistered sale deed in 1998. According to him, even though such condition is not reflected in the assignment order, the conditions cannot run counter to the Rules mentioned supra :

"Rule 12 (1) (iii) : the land shall not be sold or alienated for a period of ten years from the date of assignment; but may be hypothecated to Government for the purposes of securing a loan or to a Cooperative Society, or to a scheduled bank authorized by the Government for affording credit to the agriculturists."

He would further contend that there are disputed questions of fact and that the petitioner had already married one Abimanyu and given birth to a child, by name, Aruldas, as could be seen from the Birth Certificate, dated 15.02.2019, issued by the Sub-Registrar, Pondicherry Municipality, Pondicherry, and that the child was born on 22.11.2007 through Abimanyu; Vellikannu died on 16.11.2007 and, within a period of six days thereafter, Sundari delivered a male child. Hence, she was living with another person



and there is a dispute as to whether Sundari is the actual legal heir of Vellikannu, son of Egambaram, who was the son of Seenan. The learned counsel would also submit that against the order of the Appellate Authority/District Collector, dated 26.07.2016, a revision lies to the Government and there is still time for the same.

5. We have heard the learned counsel for the parties and also gone through the records.

6. Even assuming for the sake of argument that from the facts narrated supra there are disputed questions of fact, the undisputed fact is that through an unregistered sale deed, sixth respondent claims title, and by means of an unregistered settlement deed, fifth respondent claims title to the property. The assignment has been issued in favour of the petitioner in the year 2014 after various proceedings and the same has attained finality. We are not going to render a finding as to whether the petitioner is the actual legal heir of Vellikannu, who was the son of Egambaram, son of Seenan. In the counter affidavit filed by fifth respondent in this Writ Petition, it has been stated that Egambaram was the son of Seenan and that there is a typographical error in Paragraph 4 (b). Fifth respondent's husband's name was Egambaram, who was the son of Veeran, and the typographical error to be taken note of is the submission of the learned counsel for fifth and sixth respondents.



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7. In view of the overall discussion as above, the fact remains that the property cannot be conveyed by means of an unregistered sale deed and also by means of an unregistered settlement deed as has been done herein in favour of sixth respondent and thereafter fifth respondent, who is the sister of sixth respondent. Therefore, we are of the view that there is an encroachment and the same has got to be removed. That apart, there is already a notice issued for removal of the encroachment. It is contended that no final orders have been passed under Section 5 even though notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, has been issued.

8. Government/Second respondent also filed a Counter Affidavit, wherein the relevant Paragraphs 9 and 12 read as under :

"9. I submit that as per the conditions stipulated in assignment of Form 19 issued under Pondicherry Land Grant Rule under 1975, which is stipulated "as below"

3. (i) the assigned house site may be enjoyed Generation-wise and should not be sold. It can be used for mortgaging in a Government or to Co-operative Society, or to a scheduled bank authorized by the Government for Housing Scheme;

3. (ii) 3 (i) On contravention of any of the above conditions the grant shall be liable to be cancelled and resumed to Government free from all encumbrance by the authority granting the assignment. In the



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event of the assignment, the assignee shall not be entitled to compensation for any improvements or buildings constructed on the site.

8. The assignment is liable to cancellation if it be found that it was grossly inequitable or was made under a mistake of fact or owing to misrepresentation or fraud; the assignment may be cancelled."

"12. I submit that this Office has issued notice in Form AA to the encroachers Thiru Dhandapani S/o. Egambaram and Tmt.Pitchaiammal W/o.Egambaram under the Public Premises (Eviction of Unauthorised Occupants) Act,1971 to remove the thatched house before 15.12.2018 or to show cause why it should not be removed on or before the above mentioned date. In the event of refusal or failure to comply with the said notice within the period specified above, the said thatched house shall be removed by the Estate Officer authorised by him and the cost of such removal shall be recovered from the encroachers as arrears of land revenue."

9. In view of the above, we are of the considered view that the encroachment will have to be removed and the orders of the Authorities, which have force as on date, have to be enforced, unless the same are set aside by the higher authority/forum.

10. We direct the officials to adhere to the decision in W.P.(MD) No.16120 of 2023, dated 30.08.2023, (N.Sankar v. The Principal Secretary, Town and Country Planning, Government of Tamil Nadu and three others) to avoid disciplinary proceedings being initiated against them.



11. Writ Petition is allowed. No costs.

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(S.V.N.,J.) (K.R.S.,J.)
10-08-2023

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