



W.A.No.908 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.09.2023

Delivered on: 27.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.908 of 2020
and
CMP No.11170 of 2020

K.S. Anandan S/o. Subramaniya Naidu
Vs.

.. Appellant

1. The Revenue Divisional Officer,
Ponneri, Tiruvallur District.

2. Raju, Secretary, Nethaji Nagar,
Burma Thamizhargal Munnetra
Nala Sangam.

3. Maria Antony S/o. Michel,
4. N. Muthammal W/o. Late S. Natarajan

.. Respondents

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside the order passed by this Court in W.P.No.21935 of 2013 dated 03.02.2020.

For Appellant : Mr. V. Ragavachari, Senior Counsel
for Mrs. V. Srimathi.



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For Respondents : Mr. Geetha Thamaraiselvan, Special
Government Pleader [for R1],

Mr. R.S. Anandan [for R2]

Mr. S.N. Ravichandran [for R3]

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The unsuccessful Writ petitioner is the appellant before us.

2. The appellant filed W.P. No.21953 of 2013 seeking issuance of a Writ of Certiorari to quash the proceedings dated 10.05.2012 and consequential order dated 02.08.2013 on the file of the 1st respondent, the Revenue Divisional Officer, Ponneri. The sum and substance of challenge to the said impugned proceedings as well as the consequential order was that the petitioner was not offered any opportunity and he had no notice of the proceedings initiated under Section 145 of the Code of Criminal Procedure. The further grievance of the petitioner was that he had purchased lands in question, from his vendors, who had directly purchased the same from the Burma Repatriates, for valid consideration. Therefore, the impugned proceedings as well as the order were vitiated and also in



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violation of principles of natural justice. Before the Writ court, no counter was filed by the statutory respondents. However, the 2nd respondent alone filed a counter claiming to be the Secretary of Nethaji Nagar, Burma Thamizhargal Munnetra Nala Sangam, Ponneri. The Writ petition was contested by the 2nd respondent on the ground that the petitioner had created false documents as if he has purchased 95 cents of land through Power Agents of his vendors, who, in turn, had allegedly purchased plots from the original Burma Repatriates. According to the 2nd respondent, the petitioner has grabbed the lands by creating false documents. It is further contended that the petitioner was directed to appear before the District Superintendent of Police, Tiruvallur for the offence of land grabbing indulged in, by the petitioner. According to the 2nd respondent, the Revenue Divisional Officer issued notice to the petitioner and the petitioner also appeared on 5 hearings apart from submitting his reply and only thereafter, the proceedings dated 10.05.2012 and consequential order dated 02.08.2013 came to be passed. It is further contended that even a copy of the final order passed by the 1st respondent was sent to the Writ petitioner and therefore, the allegations made by the Writ petitioner in the affidavit in support of the Writ petition were all false and baseless. Under



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such circumstances, the 2nd respondent sought for dismissal of the Writ petition.

3. Before the Writ Court, the respondents 2 to 4 were impleaded in and by order dated 16.01.2015. The stand of the impleaded third respondent was that the 3rd and 4th respondents were Burma repatriates (husband and wife) and according to them, Plot No.79 was allotted to the 3rd respondent and sale deed was also executed by the respondents 3 and 4 in her favour, duly registered in Doc. No.1146/1977 on the file of the Sub-Registrar, Ponneri and they have also sanctioned financial assistance for construction of a house. However, because of compelling circumstances, they moved to Chennai for their livelihood and taking advantage of their absence, several land grabbings were indulged in fabrication of records with a view to develop and deprive poor Burma repatriates including the respondents 3 and 4. According to the 3rd and 4th respondents, the Writ petitioner has formed fraudulent lay out and blocked the entry of the respondents 3 and 4 to their plot by erecting a compound wall by enclosing a portion of the land consisting of about 28 plots, not belonging to the Writ



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petitioner. It is also stated by the respondents 3 and 4 that the sale deeds in favour of land grabbers have been cancelled by the 1st respondent. It is also stated that though Criminal R.C. No.562 of 2012 was filed by the Writ petitioner challenging the Section 145 proceedings, the same was withdrawn on 14.08.2013. On the very same grounds, the Writ petitioner has chosen to approach this Writ Court and therefore, according to the respondents 3 and 4, Writ petition was liable to be dismissed.

4. The Writ court after examining the submissions advanced by the petitioner as well as the respondents upheld the order of the 1st respondent and disposed of the Writ petition with a direction to the District Collector, Tiruvallur District and the 1st respondent namely the Revenue Divisional Officer, Ponneri and the Tahsildar, Ponneri to demolish the compound wall and dispossess the petitioner within 10 days from the date of receipt of the copy of the order of the Writ petition. A further direction was also issued to the Superintendent of Police, Tiruvallur to implement the said direction to demolish the compound wall and dispossess the Writ petitioner. Apart from this, the Writ Court also directed the Principal Secretary to



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Government of Tamil Nadu, Revenue Department to probe into the charge of illicit sand mining and bring to book the perpetrators of illegality, whether it is the Writ petitioner or private parties or Government officials and also directed that such action shall be initiated and concluded within four months from the date of receipt of the copy of the order.

5. We have heard Mr. V. Raghavachari, Senior Counsel appearing for Mrs. V. Srimathi, counsel for appellants and Mrs. Geetha Thamaraiselvan, Special Government Pleader for the 1st respondent, Mr. R.S. Anandan, counsel for the 2nd respondent and Mr. S.N. Ravichandran, counsel for the 3rd respondent. We have also perused the records produced before us in form of voluminous typed sets. We have also carefully gone through the order of the Writ Court.

6. It is not in dispute that originally the lands were earmarked for Burma repatriates. It is also not in dispute that in order to benefit such Burma repatriates, the lands were plotted out and sale deeds were executed in favour of individual Burma repatriates. However, it is seen that most of



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the Burma repatriates did not occupy the plots and had migrated to different parts of the country. The appellant claims under the registered Sale deeds and according to him, his vendors were all the direct buyers from the Burma repatriates, in whose favour, sale deeds had been executed by the original land owners. Though the allegations of fabrication of documents and illegal construction of compound wall and also formation of an unapproved lay out are alleged, we are called upon to answer the questions as to whether the impugned proceedings and consequent order, that were challenged before the Writ Court are liable to be set aside or as to whether the order of the Writ court is to be upheld.

7. For the above purposes, it is sufficient to go into the facts as to whether the petitioner has made out any ground warranting interference under Article 226 of the Constitution of India. It is the specific case of the appellant that he was not put on notice about the proceedings, though the 1st respondent was well aware of the registered owner as on the relevant date and further, the consequent order passed, was also behind his back and in violation of principles of natural justice. Despite specific allegations to



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this effect in the affidavit filed in support of the Writ petition, the 1st respondent did not choose to file in counter denying the said allegations made by the appellant. Though the 2nd respondent has filed a counter denying such claims of the appellant that he was not put on notice and also specifically stating in the counter affidavit that the appellant had knowledge of the proceedings and he has also appeared before the 1st respondent, in view of these disputed facts, we deem it fit to peruse the impugned proceedings and the consequent order.

8. In the proceedings dated 10.05.2012, the subject is mentioned as "Section 145 of the Code of Criminal Procedure - Ponneri Taluk..... issued to Burma repatriates - resale - action sought for". The said proceedings are styled as an order. It is seen from the references cited that there is nothing to indicate that the appellant was put on notice before the said order came to be passed. Even on a reading of the entire order, we are able to see that though there is a specific reference that the appellant and others had indulged in land grabbing activities, there is no material whatsoever in the said order to indicate that the appellant was put on notice and that he was



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heard before the said order came to be passed. Even the copies were marked only to the 1) Tahsildar, Ponneri, 2) Special Tahsildar, Repatriates Rehabilitation, Tiruvallur and three private individuals, namely Raji, N. Selvakumar and C.Murali. Further, the counsel for the 2nd respondent would invite our attention to summons dated 21.03.2012 said to have been issued to the appellant. We have perused the said notice and no doubt, the copy of the same has been marked to the appellant, fixing the date of enquiry u/s.145 of Code of Criminal Procedure proceedings to 02.04.2012. Further, in the proceedings dated 10.05.2012, there is no reference or whisper that the said preliminary summons dated 21.03.2012 was said to have been issued to the appellant, leave alone being served on him.

9. Coming to the subsequent order dated 02.08.2013, in and by the proceedings on the file of the 1st respondent, it is seen that referring to a petition given by the appellant on the same date i.e., 02.08.2013, the order came to be passed holding that the appellant can approach the District Revenue Officer in respect of the cancellation of patta or approach an appropriate court and get the relief. At the outset, we are surprised to note



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that when the petition itself came to be submitted by the appellant only on 02.08.2013 stating that the patta was cancelled without any notice, on the very same day, the order has been passed. Again in the said order, there is no reference to any personal hearing said to have been given to the appellant. The 1st respondent has summarily concluded that the appellant was fully aware of all the facts and therefore his remedy was only by way of an appeal before the District Revenue Officer or before the Civil Court.

10. The said order has been passed purely on the strength of the earlier order dated 10.05.2012 under which the patta issued to the appellant was ordered to be cancelled. The 1st respondent is also unable to produce any material to substantiate the fact that the appellant was in receipt of the summons issued, calling upon him to appear for enquiry under Section 145 of Code of Criminal Procedure. Further, one another issue that concerns us is that admittedly, the order dated 10.05.2012 came to be passed under Section 145 of the Code of Criminal Procedure. The scope of Section 145 proceedings is only to look into the complaint and take action if it is found that there is any breach of peace or likelihood of the same.



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Section 145 of Code of Criminal Procedure is extracted hereunder for ready reference:

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"145. Procedure where dispute concerning land or water is likely to cause breach of peace.—

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, pursue the



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statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to subsection (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted there from in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may



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restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of powers of the Magistrate to proceed under section 107".

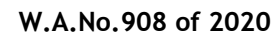


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Unfortunately, in such proceedings, the 1st respondent has proceeded to cancel the patta issued to the appellant and others, that too behind the back of the appellant. We are unable to find any application taken out by either the respondents 2 to 4 or any one else in that matter, seeking cancellation of patta and under the Patta Passbook Act. Therefore, we have no hesitation to hold that the impugned proceedings as well as the consequent order are clearly without jurisdiction, besides being in violation of principles of natural justice, depriving the appellant of a fair opportunity to appear and object to the same.

11. At the same time, we are also conscious of the fact that after the disposal of the Writ petition, the 1st respondent has proceeded to comply with the 1st respondent's order, namely direction to demolish the compound wall and dispossess the appellant. In fact, the Sub Collector has filed a communication in Rc. No.05/2021/A4 dated 13.09.2023, from which, it is seen that the compound wall has been demolished and the land is lying vacant. It is also brought to our notice that the sale deeds in favour of the appellant have also been cancelled. However, the Senior Counsel



b) The respondents 2 to 4, if so advised, are at liberty to file a petition before the 1st respondent seeking cancellation of patta issued in favour of the appellant within a period of 2 (two) weeks from the date of receipt of the copy of this judgment.



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c) If any such application is made by the respondents 2 to 4, then the 1st respondent shall call for objections from the appellant and after providing a personal hearing to the parties concerned, shall enquire into the matter and decide such application for cancellation of patta within a period of 8 (eight) weeks from the date of receipt of copy of this judgment.

d) The 1st respondent shall conduct the enquiry in accordance with law following the principles of natural justice.

With the above directions, this Writ appeal is allowed. The order passed by this Court in W.P.No.21935 of 2013 dated 03.02.2020 is set aside. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(D.K.K.J) & (P.B.B.J)
27.09.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
mjs

To

The Revenue Divisional Officer,
Ponneri, Tiruvallur District.



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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J.

(mjs)

Pre-delivery judgment in
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