IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-08-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.17814 of 2021
And
WMP Nos.19016 and 19017 of 2021

Zuari Cement Limited,
S.No.87/1,2,3,90,93/5,112/3,115/9 etc.,
Athipattu Village,
Chennai-600 120,
Represented by its Plant Head,
Mr.Y.Nagendraprasad. ... Petitioner

Vs.

1.Revenue Divisional Officer,
Ponneri,
Thiruvallur District.

2.Tahsildar,
Ponneri,
Thiruvallur District.

3.Mr.Ulaganathan ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, after calling for the records from the first respondent dated nil.07.2021 passed in Na.Ka.No.886/2016/A1 and quash the same.

For Petitioner : Mr.Srinath Sridevan,
Senior Counsel for Mr.S.Rajmakesh.

For Respondents-1 and 2: Mr.J.Ravindran,
Additional Advocate General
Assisted by Mr.T.Venkatesh Kumar,
Special Government Pleader.

For Respondent-3 : Mr.M.Elumalai

ORDER

The writ on hand has been instituted to quash the order passed by the first respondent in proceedings dated nil.07.2021, directing the Revenue Authorities to cancel the patta granted in favour of the writ petitioner-Company and to grant patta in favour of Tmt.Annalakshmi and Mr.Natesan.

2, The petitioner is a Cement Company purchased certain extent of lands by way of various Sale Deeds and through Government leases. The total extent of the Plant is 28 Acres and 85 Cents. The petitioner-Company states that they are in possession of the subject property and had mutated the revenue records in their name.

3. The petitioner-Company has established Grinding Unit in the entire extent, which is under dispute before the respondents 1 and 2, had been purchased by the petitioner-Company from Mr.S.Durai and others viz., Tmt.Nagammal, Tmt.Parvathyammal and Mr.Natesan.

4. During the year 2013, the third respondent Mr.Ulaganathan filed a petition before the second respondent claiming to be the title holder of the portion of the property under occupation of the petitioner herein. The second respondent made recommendation stating that the petitioner-Company has purchased an extent of 0.32 cents excess from one of the vendor Tmt.Nagammal and accordingly patta to that extent was directed to be cancelled.

5. In the year 2013, the first respondent-Revenue Divisional Officer sent a notice stating that the petitioner-Company has to attend a

hearing based on the recommendation passed by the second respondent. The petitioner-Company attended the hearing and the first respondent asked the petitioner-Company to file counter to the petition filed by the third respondent-Mr.Ulaganathan.

6. The petitioner-Company, vide letter dated 06.05.2013 addressed to the first respondent, has requested to furnish certain documents. Several hearings were conducted and the petitioner-Company's Representative along with the counsel for the petitioner attended the hearings. But the copy of the petition filed by the third respondent Mr.Ulaganathan has not been furnished to the petitioner-Company. However, the first respondent furnished documents relied on by the third respondent Mr.Ulaganathan. The petitioner-Company filed a response based on the orders passed by the second respondent-Tahsildar, but the copy of the petition filed by the third respondent was not furnished. The petitioner thereafter filed WP No.23776 of 2016 and this Court directed the first respondent therein to complete enquiry and pass orders on merits.

7. The first respondent issued notice of hearing and the petitioner-Company attended the hearings and the impugned order was passed cancelling the patta stood in the name of the petitioner-Company.

8. The learned Senior Counsel appearing on behalf of the petitioner mainly contended that the copy of the complaint given by the third respondent Mr.Ulaganathan to cancel the patta was not even furnished to the petitioner-Company. The order of the third respondent passed in proceedings dated 15.04.2016 was not communicated to any person. The petitioner-Company was put to dark and unable to initiate any further action. However, in the year 2017, the first respondent has sent a communication to the second respondent and the Head Surveyor, Ponneri, directed the second respondent to furnish certain details with regard to Survey Field No.95. An action was subsequently taken through Assistant Director of Land Survey Department, Thiruvallur to survey the land and submit a report in a time bound manner. The said proceeding was sent to the petitioner-Company. An Officer who heard the submissions of the petitioner-Company one Mr.V.Muthusamy had not passed orders. The

impugned order has been passed by one Mr.P.Selvam, Revenue Divisional Officer. The impugned order dated nil.07.2021, which was signed on 16.07.2021, was passed by one Mr.P.Selvam, Revenue Divisional Officer, Ponneri, who had not heard the matter during the hearing of the case. Mr.P.Selvam, the new incumbent to the office of the first respondent, has confirmed the order passed by the Tahsildar.

9. The learned Senior Counsel for the petitioner contended that the Officer, who heard the petition, is not the Officer who passed the impugned order. The petitioner was not afforded with fair hearing and the copy of the petition given by the third respondent Mr.Ulaganathan has not been furnished to the petitioner-Company. Thus the impugned order is liable to be set aside.

10. On behalf of the petitioner, the order passed in **M/s.GMMCO Limited vs. Government of Tamil Nadu [2011 SCC OnLine Mad 2499]**, was relied upon. The learned Single Judge of this Court held that the Revenue Divisional Officer, Tambaram conducted after giving notice to the petitioner and submitted a report stating his inability to

pass orders. Since the successor Revenue Divisional Officer without conducting any enquiry passed an order, which is in violation of the principle that "a person hears must decide". Thus on the basis of the said principle, the present writ petition is to be considered.

11. The petitioner has relied upon the judgment of the High Court of Kerala in the case of **Union of India vs. E.K.Andrew in Writ Appeal No.906 of 1992 dated 05.01.1996**. The principle has been considered by the Hon'ble Supreme Court of India in the case of **Gullapalli Nageswara Rao and Others vs. Andhra Pradesh State Road Transport Corporation and Others [AIR 1959 SC 308]**.

12. Relying on the above judgments, the learned Senior Counsel appearing on behalf of the petitioner mainly contended that the Revenue Divisional Officer, who heard the matter, has not passed the order and his successor passed the orders and on that ground also, the impugned order is to be set aside.

13. The third respondent disputed the contentions raised on behalf of the petitioner. The third respondent has stated that the lands comprised in (1) Survey No.95/2C, which was subsequently sub-divided as Survey No.95/2C1 measuring 0.51 Acres, (2) Survey No.95/2C2 measuring 0.68 Acres and (3) Survey No.95/2C3 measuring 1 Acre 22 Cents situated in Athipattu Village, Ponneri Taluk, Thiruvallur District belonged to the family of the third respondent herein. As there was dispute among the family members in apportioning the lands, a suit in OS No.717 of 1992 was filed before the Sub Court, Ponneri, which culminated in filing AS No.21 of 2021 before the Appellate Court and ultimately in Second Appeal No.1208 of 2003 as well as Cross-Objection AS No.20 of 2004 filed before this Court, a Compromise Decree was passed on the basis of the compromise entered into between the parties to the Second Appeal.

14. In the year 1992, the Tamil Nadu Electricity Board, as requisitioning body, sought for acquiring the land comprised in Survey No.95/2C2 measuring 68 Acres for the purpose of establishing Electricity Generation Centre and for formation of a Railway Road for transporting

coal and accessories leading to the Centre. Accordingly, the land in Survey No.95/2C2 was acquired and compensation was paid to us by the District Munsif Court at Ponneri.

15. Subsequently, in the year 1996, Indian Oil Corporation has acquired the land in Survey No.95/2C3 measuring 1 Acre 22 Cents for the purpose of setting up Bottling Plant and Award Nos.3 and 4 of 1996 was passed and the compensation amount was determined and paid to us by the Corporation for having acquired the land.

16. As far as the disputed land is concerned, namely, the land in Survey No.95/2C1 measuring 51 Acres, it was purchased by Zuari Cement Limited for the purpose of establishing a Grinding Unit not from the petitioner or his family members but from one Mrs.Nagammal, who has no title to the said land. The family members of the third respondent were the real owner of the land in Survey No.95/2C1. In fact, this land in Survey No.95/2C1 is also part of the Compromise Decree passed by this Court in Second Appeal. However, one Mrs.Nagammal, wife of Mr.Chellakutti had executed a forged and fabricated Power of Attorney in favour of one

Mr.P.Babu Reddy to deal with the aforesaid property and on the basis of the same, the land in Survey No.95/2C1 belonged to the family of the third respondent was acquired by Zuari Cements Limited. It also came to light that Mr.P.Babu Reddy had executed a Deed of Conveyance registered as Document No.5049 of 2006 dated 09.08.2016 on the file of Sub Registrar, Thiruvottriyur and thereby valuable property belonged to the family of the third respondent was taken over by Zuari Cement Limited for which compensation was paid to the abovesaid Mr.P.Babu Reddy, Power Agent of Mrs.Nagammal.

17. On coming to know the acquisition of land belonged to the family of the third respondent and the compensation paid to Mrs.Nagammal, they preferred a complaint to the General Manager of Zuari Cements Limited stating that their family members are the real owners of the land in Survey No.95/2C1 and compensation has to be paid to them. However, the General Manager of Zuari Cements Limited has not taken any action thereof. Therefore, a complaint was given to the Tahsildar, Ponneri Taluk specifically complaining that patta in respect of land in Survey No.95/2C1 was transferred in favour of Zuari Cement Limited, who has got no right

over the said land. The Tahsildar, Ponneri, upon arriving at a subjective satisfaction as regards forgery and fabrication of documents, forwarded the matter to the Revenue Divisional Officer, Ponneri with his recommendation to cancel the patta. The Revenue Divisional Officer, Ponneri conducted an enquiry in which the family members of the third respondent as well as the representatives of the petitioner were participated. The Revenue Divisional Officer, Ponneri upon considering the forgery and fabrication of documents, cancelled the patta issued in favour of Zuari Cement Limited and directed to issue patta in favour of the third respondent.

18. In spite of the above, M/s.Zuari Cements Limited is claiming a right over the land based on the Deed of Conveyance dated 09.08.2006 registered as Document No.5049 of 2006 on the file of Sub Registrar, Thiruvottriyur registered in their favour. In other words, the encumbrance in respect of the disputed property reflects the name of Zuari Cements Limited after the registration of the focus and fabricated document in the year 2006 without verifying any revenue records and encumbrance certificate. For having acquire the disputed property, they have not received any compensation till date. Thus, the conveyance of the property in favour

of M/s.Zuari Cements Limited is not proper and the person who conveyed the property has no conveyable right over the said property.

19. The learned counsel for the third respondent mainly contended that the petitioner-Company has not challenged the Compromise Decree passed in SA No.1208 of 2003 passed by this Court. The Compromise Decree covers the land in Survey No.95/2C1 as well. When the Compromise Decree among the family members was in existence, the alienation of the same property in favour of the petitioner-Company by some third persons, who has no title, will not bind the third respondent in any manner. The first respondent conducted an elaborate enquiry, perused documentary evidence, heard the representatives of the petitioner-Company as well as the third respondent and thereafter cancelled the patta stood in the name of the petitioner-Company and to grant patta in favour of the third respondent.

20. The learned Additional Advocate General, appearing on behalf of the respondents 1 and 2, mainly contended that sufficient opportunity was granted to the parties. Several hearings were conducted by

the Revenue Divisional Officer. The copy of the recommendation by the Tahsildar was furnished to the petitioner, the counsel appeared on behalf of the petitioner along with the representative of the petitioner-Company. When the petitioner-Company participated in the enquiry, submitted their defence statements, they cannot now turn around and claim that no opportunity was granted to them. Even in case, if the petitioner-Company is aggrieved, by the order of the Revenue Divisional Officer, Ponneri, the order itself stipulates about the right of appeal before the District Revenue Officer, Thiruvallur. The petitioner-Company has not chosen to prefer an appeal as contemplated under the Act. Therefore, the present writ petition itself is not maintainable.

21. The principles of natural justice cannot be an empty formality. Even presuming that the copy of the application submitted by the third respondent to cancel the patta was not furnished to the petitioner, the Court has to consider whether such non-production of application caused prejudice to the petitioner-Company for the purpose of defending their case. Mechanical approach, in this regard, would cause prejudice to either of the parties. Remanding the matter would do no service to the cause of justice.

The litigants will come back again to the High Court by filing another writ petition. The petitioner-Company has failed to file any appeal as contemplated under the Act, which was clearly stated in the order impugned passed by the Revenue Divisional Officer.

22. The application submitted by the third respondent was entertained by the Tahsildar, who in turn verified the revenue records and made a recommendation to the Revenue Divisional Officer for conducting an enquiry. The Revenue Divisional Officer conducted an enquiry by affording opportunity to all the parties concerned.

23. The issue dealt with by the Revenue Divisional Officer was, whether patta granted in favour of the petitioner-Company is to be cancelled or not ?. When patta was originally granted in the name of the petitioner-Company based on the Sale Deed executed in their favour and thereafter, the third respondent filed complaint stating that an excess portion of the land has been sold in a fraudulent manner in favour of the petitioner-Company.

24. The third respondent conducted an enquiry by furnishing the copy of the report of the Tahsildar and all other documents relied on by the third respondent-complainant.

25. Mere non-production of the application submitted by the third respondent, no doubt, had not caused any prejudice to the writ petitioner-Company. The petitioner-Company was aware of the entire issues as well as the facts and furnished their documents and more-so, the documents relied on by the third respondent to establish their title was also furnished to the petitioner-Company represented by its counsel. Therefore, the said ground deserves no merit consideration.

26. As far as the other ground that the successor Revenue Divisional Officer passed the impugned order is concerned, the enquiry was in progress for several years. The third respondent had given a complaint long back, which was recommended by the Tahsildar.

27. The Compromise Decree in SA No.1208 of 2003 was passed on 13.04.2010. The second respondent passed an order in February

2013 and the first respondent on the first occasion passed an order on 15.04.2016 and thereafter, this Court passed an order on 12.07.2016 in WP No.23776 of 2016, directing the first respondent to consider the representation of the petitioner submitted on 26.05.2016 on merits and in accordance with law.

28. Pursuant to the directions issued by this Court on 12.07.2016, enquiry proceedings commenced. Though this Court fixed statutory time limit of six weeks, the petitioner represented by the counsel also took time during the enquiry proceedings. On several dates enquiry was conducted and the petitioner represented by their counsel participated in the hearings, and furnished their defence statements. That being the factum, the successor Revenue Divisional Officer passing orders, cannot be a ground to vitiate the entire order passed by the Revenue Divisional Officer, which is quasi judicial in nature. When the proceedings are pending for several years and the Government Officials are being transferred periodically, one cannot expect the same Officer, who heard the matter, at the initial stage will pass final orders. The only point to be considered is, whether the Authority, who passed the impugned order, has considered the issues raised between the

parties and passed a speaking order or not ?. Even if the issues raised between the parties are concerned, based on the documents and evidences available on record, such ground raised by the petitioner that the Officer, who heard, not passed the orders, cannot be entertained.

29. In the present case, the petitioner has not clearly stated when the enquiry proceedings were completed and on what date Mr.P.Selvam, Revenue Divisional Officer assumed the charge. In the absence of all such clear details, this Court cannot form an opinion that the Revenue Divisional Officer, who passed the order, had not gone through the files.

30. Perusal of the impugned order reveals that the Revenue Divisional Officer considered the issues raised between the parties. The main ground considered by the Revenue Divisional Officer for cancelling patta granted in the name of the petitioner-Company is that Smt.Nagammal had not purchased the portion of the land measuring 0.35 cents from Tmt.Parvathyammal. Verification of the document revealed that the said Tmt.Nagammal, who had not purchased the portion of the property from

Smt.Parvathyamml, had sold the said portion in favour of the petitioner-Cement Company. As per the document, 0.35 cents of land has been sold in excess by Smt.Nagammal for which she had no detail.

31. In this regard, the learned counsel for the third respondent has stated that there was some fraudulent activities took place through one Mr.P.Babu Reddy, who had executed the Deed of Conveyance. The said Mr.P.Babu Reddy was the Power of Attorney and Tmt.Nagamal, wife of Mr.Chellakutti had executed forged and fabricated Power of Attorney in favour fo Mr.P.Babu Reddy to deal with the subject properties.

32. The documents were verified by the Revenue Authorities and they found excess land has been fraudulently transferred. Thus, the petition filed by the third respondent was allowed and consequently the patta granted in favour of the petitioner was cancelled through the impugned order.

33. Therefore, this Court do not find any infirmity or perversity in respect of the findings made by the first respondent in the impugned

order dated nil.07.2021. Consequently, the present writ petition stands dismissed. However, there shall be no order as to costs. The connected miscellaneous petitions are also dismissed.

29-08-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

1.Revenue Divisional Officer,
Ponneri,
Thiruvallur District.

2.Tahsildar,
Ponneri,
Thiruvallur District.

S.M.SUBRAMANIAM, J.

Svn

WP 17814 of 2021

29-08-2023