



W.P.(MD)No.3754 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.10.2023

CORAM

**THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

W.P.(MD)No.3754 of 2020  
and  
W.M.P.(MD)No.3184 of 2020

K.Venkateshwaran

.. Petitioner

Versus

- 1.The Additional Chief Secretary /  
The Commissioner of Land Administration,  
Chepauk,  
Chennai – 600 005.
- 2.The District Collector,  
O/o. the District Collector,  
Theni.
- 3.The Revenue Divisional Officer,  
O/o. the Revenue Divisional Officer,  
Periyakulam,  
Theni District.
- 4.The Tahsildar,  
O/o. the Tahsildar,  
Periyakulam,  
Theni District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent's impugned order in R.O.C.No.2321/98, dated 28.07.1998, quash the same and further direct the respondents to cancel the classification of the



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land as Government vacant land in respect of Survey No.1233, situated at Vadaveeranayackenpatti Village, Periyakulam Taluk, Theni District and to issue Patta in favour of the petitioner.

For Petitioner : Mr.K.Anandan  
For Respondents : Mr.A.K.Manickam  
Special Government Pleader

### **ORDER**

This Writ Petition has been filed challenging the proceedings of the third respondent in R.O.C.No.2321/98, dated 28.07.1998, and for a direction to the respondents to cancel the classification of the land with respect to Survey No.1233, situated at Vadaveeranayackenpatti Village, Periyakulam Taluk, Theni District.

2. Heard Mr.K.Anandan, learned counsel for the petitioner and Mr.A.K.Manickam, learned Special Government Pleader for the respondents.

3. The background of this case has been captured in the earlier order passed by this Court in W.P.(MD)No.14331 of 2015, dated 23.01.2015 and for proper appreciation, the relevant portions are extracted hereunder:-

*"2.The brief facts that are necessary for the disposal of this Writ Petition are as follows:*



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2.1. *An extent of 1.41 acres in Survey No.1233 in Vadaveeranaickenpatty Village, Periyakulam Taluk, Theni District was in the holding of one Navaneethan, S/o.Thangam Asari. Though the petitioner states that the property belong to the said Navaneethan by inheritance, it is stated that an assignment was made in favour of Navaneethan in the year 1970.*

2.2. *The said Navanatheen sold the land to Mrs.Shakunthala Arunagiri, W/o.Arunagiri under registered sale deed dated 28.04.1982. Thereafter, the said Shakunthala Arunagiri through her Power of Attorney Agent entered into an agreement of sale with one Rajangam, S/o.Ponnaiah Thevar, on 05.11.1988. It is admitted that the said Rajangam filed a suit for specific performance in O.S.No.104 of 2007 and obtained a decree for specific performance. It is also stated that the decree was executed in E.P.No.124 of 2007 before the Sub Court, Periyakulam and the sale deed was executed by the learned Subordinate Judge in favour of the said Rajangam on 31<sup>st</sup> July, 2008 before the Sub Registrar, Theni. The petitioner states that he purchased the property from the said Rajangam by a registered sale deed dated 14.09.2012. Though the petitioner's sale deed was produced before the respondents for mutation of revenue records, it appears that the respondents have not considered the representation of the petitioner. The petitioner thereafter filed a Writ Petition in W.P.No.5821 of 2014 and this Court, by order dated 04.04.2014 directed the sixth respondent to consider the petitioner's representation dated 16.09.2013 on merits within a stipulated time. The representation of the petitioner was thereafter rejected on the ground that the property in Survey No.1233 has been classified in the*



village record as Government vacant land. The sixth respondent advised the petitioner to submit a representation before the District Revenue Officer/fourth respondent herein to get an order to cancel the classification as Government vacant land in the village records. The petitioner admit that the fifth respondent has cancelled the assignment in favour of Navaneethan by proceedings dated 28.07.1998 as the assignee had violated the terms and conditions of the assignment. Some of the purchasers of the land from the assignee appears to have filed a suit in respect of Survey No.1232 and obtained a decree in a batch of suits filed against the State. Though the decree was challenged subsequently by filing appeals before the Sub Court, Periyakulam, the appeals were dismissed and the respondents 2 and 3 herein preferred Second Appeal in S.A.No.1129 of 2011 and this Court dismissed all the Second Appeals filed by the respondents 2 and 3 confirming the judgment and decree passed by the Courts below. The petitioner, citing the judgment of Civil Court, submitted that the title of petitioner's predecessor-in-interest has been upheld by this Court in the civil suit and that the classification of the land as Government vacant land should be cancelled in view of the Civil Court's decree.

3.The learned Counsel appearing for the petitioner relied upon paragraph 15 of the judgment of this Court in the second appeal which was decided on 11.01.2012. Since paragraph 15 of the judgment is relevant, the same is extracted below for convenience:

"15.The sale deed alleged to have been executed by Navaneethan in favour of Sakunthala has been marked as Ex.A1, wherein it has been clearly stated that the suit survey number is the ancestral property of the vendor Navaneethan.



*The sale deed which stands in the name of Dhanalakshmi has been marked as Ex.A2 and patta which stands in the name of the said Dhanalakshmi has been marked as Ex.A3. Except the assignment order dated 20.11.1970, on the side of the defendants 1 and 2, no document has been filed for the purpose of showing that prior to 20.11.1970, the suit survey number belonged to the Government. Therefore, considering the recitals found in Ex.A1 and also considering the fact that no document has been filed prior to assignment order dated 20.11.1970 on the side of the defendants 1 and 2, the Court can unflinchingly come to a conclusion that the plaintiffs are the absolute owners of the suit properties since they purchased the same from its rightful owner viz., Dhanalakshmi."*

*4.No doubt it is true that in the batch of Civil Suits and the appeals, some of the purchasers, who also derived title from Navaneethan, contented that the property is the property of Navaneethan not by virtue of the assignment but by virtue of his prior title through proper source. In other words, the title of the said Navaneethan was projected as if the property is the ancestral property of Navaneethan. Relying upon the said portion of the judgment of Civil Court, the learned Counsel appearing for the petitioner contended that the suit property is not the property of Navaneethan by virtue of the assignment made in favour of the Navaneethan in the year 1970 but by virtue of the title of the ancestors of the said Navaneethan. The petitioner admitted in the affidavit filed in support of the petition that the property in Survey Nos.1232 and 1233 was*



*assigned in favour of Navaneethan, S/o.Thangam Asari. The petitioner himself has produced before this Court the proceedings of the Special Tahsildar assigning the lands in favour of Navaneethan, S/o.Thangam Asari. Having claimed title on the basis of the assignment, the petitioner also pleaded that the title of assignee was upheld by this Court in S.A.(MD)Nos.1121 to 1129 of 2011. The learned Counsel appearing for the petitioner admit that the property in Survey No.1233 measuring an extent of 1.41 acres in Vadaveeranaickenpatty village is not the subject matter of the previous suit and that therefore, the order of this Court in the Second Appeals may not have any relevance. Insofar as the property in Survey No.1233 is concerned, no record is produced before this Court except the assignment and other documents to show that the assignment of land in favour of Navaneethan was acted upon. No other document is produced in this case to suggest that the said Navaneethan got the property through some other source. In the said circumstances, the judgment and decree in S.A.(MD)Nos.1121 to 1129 of 2011 has no relevance to the present case.*

*5.The petitioner himself has admitted before this Court that proceedings were initiated for cancellation of assignment and resumption of land from the petitioner way back in 1998. The petitioner has not challenged the cancellation of assignment so far by filing any independent Writ Petition. In such circumstances, this Court is unable to entertain this Writ Petition which is filed to cancel the classification of the land as Government vacant land. When the assignment relied upon by the petitioner is already cancelled, the petitioner is not entitled to any relief without challenging the order*



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*cancelling the assignment. In that view of the matter, this Writ Petition is devoid of any merits and accordingly, dismissed. However, liberty is given to the petitioner to challenge the cancellation of assignment made in favour of the petitioner's predecessor-in-interest by name Navaneethan in the year 1970. No costs."*

4. Pursuant to the above order, the present Writ Petition has been filed before this Court challenging the impugned proceedings of the third respondent, dated 28.07.1998.

5. The learned counsel for the petitioner submitted that the cancellation of assignment was done by an authority, who did not have the power and jurisdiction and it is opposed to Revenue Board Standing Order No.15. It was also contended that the cancellation of assignment was done without affording an opportunity to the assignee and it is in violation of principles of natural justice. In the alternative, the learned counsel for the petitioner also submitted that the property in Survey No.1233 originally stood in the name of one Veerasamy Naicker and it never belonged to the Government and hence, the Government could not have assigned the land in favour of one Navaneethan in the year 1970. Thus, the learned counsel for the petitioner touched upon the very right and title of the property and questioned the jurisdiction of the assignment order.



6. The third respondent has filed a counter affidavit in this case. The relevant portions in the counter affidavit are extracted hereunder:-

*"4. The brief history of the case is submitted hereunder:-*

*It is submitted that the lands measuring an extent of 3.51 acres in S.No.1232 and also an extent of 1.41 acres in S.No.1233 which are classified as "Government Assessed Waste Dry" (AWD) lands in Vadaveeranaickanpatti Village, Periyakulam Taluk, was assigned in favour of one Thiru.Navaneethan, S/o. Thangan Asari, a landless poor person on free of market value subject to the usual conditions and special conditions stipulated vide proceedings of the Special Tahsildar (Assignment), Periyakulam, in D.K.T.No.1017/80 dated 20.11.1970. The special conditions as laid down in Revenue Standing Order in Order 15. Clause (I) of Sub Paragraph (3) of Paragraph 12 states as follows:-*

*"(3) Special Conditions: The assigned lands shall not be alienated for a period of ten years from the date of assignment. In the event of the assignee wishes to dispose of the land after the above period, he should got prior permission either the Tahsildar or the Revenue Divisional Officer, who should give permission only if the sale is to one of the categories eligible for assignment Government/Waste lands for cultivation purposes."*

*5. It is submitted that the assigned land in S.No.1233 measuring an extent of 1.41 Acres situated in Vadaveeranaickanpatti Village was*



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*not brought to cultivation from the date of assignment and the said lands are needed for the bonafide public purpose of the construction of the Master Plan complex for the newly formed Theni District on 01.01.1997 bifurcating the composite Madurai district. Hence after observing the due formalities, the land in question which remain uncultivated for years together was resumed to the Government for the violation of the land assignment conditions vide this office proceedings in Roc.No.2321/98/A3 dated 28.07.1998 and necessary changes were carried out and the land restored to its original classification of land as "Government Assessed Waste Dry" in the Revenue records. The Master plan complex with its building has been constructed and the same is put into public usage. Aggrieved against the said cancellation of assignment patta, the petitioner herein who is the subsequent purchaser of the assigned lands has filed this writ petition after a lapse of 24 years which is not legally sustainable.*

*6. It is submitted that the original assignee Navaneethan sold the land in S.No.1233 measuring an extent of 1.41 acres in Vadaveeranaickanpatti Village, Periyakulam Taluk vide a registered sale deed dated 28.04.1982 to one Tmt.Sahunthala, W/o.Arunagiri. Thereafter, the said Sahunthala through her power of Attorney entered into an agreement of sale with one Rajangam on 15.11.1988. It is submitted that the said Rajangam filed a suit for specific performance in O.S.No.184 of 2007 and obtained a decree for specific performance and the decree was executed in E.P.No.124 of 2007 before the Sub Court, and the sale deed was executed by the learned Sub Judge in favour of said Rajangam on 31.07.2008 before the Sub Registrar, Theni. The writ petitioner herein states that he purchased*



*the property from the said Rajangam by a registered sale deed dated 14.09.2012 and he applied for the mutation of the patta in his name. But the same was rejected by the Revenue authorities. Aggrieved against the same, the petitioner filed a writ petition in W.P.No.5821 of 2014 and this Hon'ble Court by order dated 04.04.2014 has directed the Tahsildar to consider and pass order on merits. The Tahsildar concerned has rejected the claim stating that the lands stands classified as Government Assessed Waste Dry lands in the records.*

*7. It is submitted that the petitioner has averred that in respect of land in S.No.1232, some of the purchases have obtained a decree in a batch of suits, filed against the State. The first appeals filed before the Sub Court Periyakulam, were also dismissed and the second appeal in S.A.No.1129 of 2011 filed before this Hon'ble Court was also dismissed. Citing the judgment of the civil court, the petitioner claims that the classification of the Government land should also be cancelled. It is submitted that the impugned land in S.No.1233 measuring an extent of 1.41 acres is not the subject matter of the previous suit and hence the order of this Hon'ble Court in the second appeals do not have any relevance to the present case. However, the petitioner filed W.P.(MD)No.14331 of 2015 on the file of this Hon'ble Court praying for the issue of patta in favour of him. This Hon'ble Court by its order dated 23.01.2015 in W.P.(MD)No.14331 of 2015 has dismissed the writ petition.*

*However, liberty was given to him to challenge the cancellation of assignment made in favour of the petitioner's predecessor in interest by name Navaneethan in the year 1970. Accordingly the petitioner herein has filed this writ petition, which is not legally tenable."*



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7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. Even at inception, it has been made clear that the petitioner cannot be allowed to blow hot and cold by taking two diametrically opposite stands. Either the petitioner has to trace his right by virtue of the assignment made by the Government or the petitioner has to question the title of the Government in assigning the land. The petitioner cannot be allowed to raise both the grounds. Insofar as the assignment of land is concerned, Survey No.1233, measuring an extent of 1.41 Acres, was classified as "Government Assessed Waste Dry" and through the proceedings dated 20.11.1970, it was assigned in favour of one Navaneethan. As per the condition imposed, the land in question must not remain uncultivated. Since the subject land in Survey No.1233 was not put to cultivation and was not utilized, the Government have decided to resume the land and hence, through the proceedings, dated 28.07.1998, the assignment was cancelled and it was restored to its original position in the revenue records as "Government Assessed Waste Dry". This land was sold by Navaneethan through a registered sale deed, dated 28.04.1982 to one Tmt.Sakunthala. The said Sakunthala entered into an agreement of sale with one Rajangam and the said Rajangam filed a suit for specific performance in O.S.No.104 of 2007 against Sakunthala and the said suit was decreed and consequently, a sale deed



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was executed in favour of the said Rajangam. The petitioner had purchased the property from the said Rajangam through a registered sale deed, dated 14.09.2012. Even after the sale, the petitioner made an application for mutation of revenue records and the same came to be rejected. Therefore, it is clear that the petitioner had come into the scene much after the assignment was cancelled in the year 1998. In fact, the sale in favour of the said Rajangam had taken place much after cancellation of the assignment in the year 1998 and the petitioner is the subsequent purchaser from the said Rajangam. Hence, this Court is of the considered view that the petitioner cannot be allowed to question the cancellation of the assignment that took place in the year 1998 and the petitioner has no *locus standi* to question the same.

9. Insofar as the alternative submission that was made by the learned counsel for the petitioner touching upon the title of the Government with respect to property in Survey No.1233, the same cannot be gone into in a Writ Petition. The proceedings under Article 226 of the Constitution of India cannot be converted into a proceeding for determination of title to the property. The said exercise can only be done before the competent Civil Court. According to the Government, the property in Survey No.1233 was classified as "Government Assessed Waste Dry" and therefore, the Government had the power and jurisdiction to assign the land. On the



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contrary, the petitioner claims that the property originally stood in the name of Veerasamy Naicker and therefore, the Government did not have any right to assign this land. This issue requires appreciation of evidence, consideration of relevant documents and determination of title and it is only a Civil Court, which can go into this issue. The question of title cannot be decided in a Writ Petition. Hence, the alternative submission that was made by the learned counsel for the petitioner is also rejected.

**10.** In the light of the above discussion, this Court does not find any merits in the Writ Petition. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/No  
Internet : Yes  
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To

03.10.2023

1.The Additional Chief Secretary /  
The Commissioner of Land Administration,  
Chepauk,  
Chennai – 600 005.

2.The District Collector,  
O/o. the District Collector,  
Theni.

3.The Revenue Divisional Officer,  
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Periyakulam,  
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4.The Tahsildar,  
O/o. the Tahsildar,  
Periyakulam,  
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**N.ANAND VENKATESH, J.**

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