BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2023

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

W.A.(MD).No.697 of 2023
and C.M.P.(MD) No.6096 of 2023

1.The District Revenue Officer,
Sivagangai District,
Sivagangai.

2.The Revenue Divisional Officer,
Sivagangai.

3.The Tahsildar,
Sivagangai.

4.The Commissioner for Land Administration,
Ezhilagam, Chepauk,
Chennai – 5. .. Appellants/Respondents

Vs.

V.Balashanmugam ...Respondent/Writ Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 26.07.2022 in W.P.(MD) No.13654 of 2010 on the file of this Court.

For Appellants : Mr.Veera Kathiravan
Additional Advocate General,
Assisted by Mr.S.P.Maharajan
Special Government Pleader

For Respondent : Mr.S.Srinivasa Raghavan

JUDGMENT

(Judgment of the Court was delivered by S.M.SUBRAMANIAM,J.)

The intra-Court Appeal on hand has instituted against the order dated 26.07.2022 in W.P.(MD) No.13654 of 2010.

2. The State is the appellant. The respondent instituted the Writ Proceedings to quash the order of the District Revenue Officer, Sivagangai dated 17.08.2010 and to grant patta in his favour in respect of the Punja Land measuring 36 cents in S.No.111/3 in Paiyoor Pallivasal Street, Sivagangai District.

3. Learned Additional Advocate General appearing on behalf of the appellants would submit that one Mr.Chelliah Konar was the original assignee of the subject property. In violation of the assignment conditions,

the original assignee Mr.Chelliah Konar sold the subject property in favour of the Writ Petitioner, Mr.Balashanmugam. The revenue authorities subsequently, came to know about the violation of the assignment conditions committed by the original assignee Mr.Chelliah Kone and cancelled the assignment on 07.07.1987. The Writ Petitioner Mr.Balashanmugam preferred an appeal before the District Revenue Officer challenging the cancellation order issued by the Revenue Divisional Officer. The District Revenue Officer conducted an elaborate enquiry by affording opportunities to all the parties and confirmed the cancellation of assignment order passed by the Revenue Divisional Officer on 02.02.2007.

4. Learned Additional Advocate General would further submit that against the said order the respondent / Writ petitioner ought to have preferred an appeal before the Commissioner of Land Administration, who is the competent appellate authority. Instead, he preferred the Writ Petition and the Writ Petition is not entertainable on two grounds, since the power of the Revenue Divisional Officer to cancel the assignment has been confirmed by way of clarification by the Commissioner of Land Administration.

Therefore, the Revenue Divisional Officer has got powers to cancel the assignment in the event of violation of the assignment conditions by the original assignee. Thus, the Writ Petition, filed without exhausting the appellate remedy, is not entertainable.

5. Learned Additional Advocate General further contended that the learned Single Judge has referred a Division Bench Order of this Court in ***T.Tirumalai Gounder & another v. The State of Tamil Nadu and others*** reported in ***2010-5-L.W. 289***. The said judgment would have no application with reference to the facts of the case on hand in view of para 13 of the judgment, which reads as under:-

> "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 dt. 16.5.1967 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.”

Since the facts are distinguishable, the reference made by the learned Judge for granting the relief is erroneous.

6. Learned Senior Advocate Mr.Srinivasasa Raghavan appearing on behalf of the respondent / writ petitioner would submit that the Revenue Divisional Officer has erroneously cancelled the assignment. The writ petitioner is in possession of the subject property for more than three decades and those mitigating factors were considered by the learned Single Judge and the reliefs were granted by the learned Single Judge. Thus, the present appeal is to be rejected.

7. Considering the arguments as advanced between the learned Additional Advocate General and the learned Senior Advocate Mr.Srinivasa Raghavan, it is not in dispute that the original assignee is Mr.Chelliah Konar. Whether the sale occurred within the permissible limit or the sale became valid is the subject matter which is to be adjudicated with reference

to the documents and evidences available on record. Admittedly in the present case, the appellate remedy has not been exhausted. Exhausting the appellate remedy is of paramount importance, since the factual adjudication made by the original authority is to be scrutinized by calling for the original record.

8. An aggrieved person need not be denied an opportunity of appeal which is otherwise contemplated under the statutes and exhausting an appellate remedy would be of greater assistance for the High Court to exercise the powers of judicial review under Article 226 of the Constitution of India. Factual findings of the appellate authority would be more relevant for forming final opinion. In the present case the learned Senior Advocate for the respondent would make a submission that liberty may be granted to the respondent to prefer an appeal before the Commissioner of Land Administration.

9. In view of the facts and circumstances, the order impugned dated 26.07.2022, in W.P.(MD) No.13654 of 2010 is aside. The Writ Appeal

stands allowed. The respondent is permitted to prefer an appeal before the Commissioner of Land Administration within a period of thirty days from today and in the event of any such appeal being filed, the same may be considered on merits and in accordance with law and any interim application along with the main appeal is filed, the same also be considered by the Commissioner of Land Administration. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S.,J.) (L.V.G.,J.)
18.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
SJ

To

1.The District Revenue Officer,
Sivagangai District,
Sivagangai.

2.The Revenue Divisional Officer,
Sivagangai.

3.The Tahsildar,
Sivagangai.

S.M.SUBRAMANIAM,J.
and
L.VICTORIA GOWRI,J.

SJ

4.The Commissioner for Land Administration,
Ezhilagam, Chepauk,
Chennai – 5.

W.A.(MD).No.697 of 2023

18.12.2023