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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.7097 of 2022
and
W.M.P(MD)Nos.5384 & 9403 of 2022

1.Naina Mohammed

2.Farook Ali ... Petitioners

Vs

1.The Revenue Divisional Officer,
Aranthangi,
Pudukottai.

2.The Tahsildar,
Avudaiyarkoil Taluk,
Pudukottai District.

3.C.Karmegam

4.J.Kasiyar ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings in MuMu 936/2022/A3 dated 30.03.2022 of the first respondent and quash the same.

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For Petitioners : Mr.VR.Shanmuganathan

For Respondents : Mr.K.Balasubramani
Special Government Pleader
for R.1 & R.2

Mr.V.S.Badrinath for R.3 & R.4

ORDER

Heard both sides.

2. The Tahsildar, Avudaiyarkoil assigned 0.40.5 HAC of land in Survey No.80/6 in favour of one Seyyathu Beevi in Nattani Purasaikudi Village on 17.12.2006. The said Seyyathu Beevi executed a settlement deed dated 07.06.2018 in favour of the petitioners herein. On 11.07.2018, mutation of patta was also effected. The private respondents appear to have raise some objections. Thereupon enquiry was conducted on 10.03.2022. Thereafter, the impugned order dated 30.03.2022 came to be passed cancelling the assignment as well as patta. Challenging the same, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and

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called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The learned Special Government Pleader as well as the learned counsel appearing for the private respondents submitted that the impugned order is well reasoned and that it does not call for interference. They pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. The impugned cancellation order rests on three grounds:

a) The assignment order was issued on condition that the land must be brought for cultivation within one year and that this condition was not complied with

b) For 30 years the assignee could not sell or alienate the lands by executing the settlement deed. The assignee had breached this condition

c) In any event, permission from the authority concerned had not been obtained.

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7. The learned counsel appearing for the petitioner relies on the decision reported in ***2020 0 AIR (AP) 59 (Kante Jagan Mohan Vs The State of Andra Pradesh)***. He points out that the execution of settlement cannot be said to be a breach of the assignment condition. The Hon'ble Andra Pradesh High Court had held that where the settlement deed has been executed by the assignee in favour of one's spouse, who would otherwise be entitled to inherit the property, such transaction cannot be said to be an alienation.

8. Now let me test each of the grounds one by one. Let me take the first ground. The assignment was made way back in the year 2006. It is true that one of the conditions was that the property must be brought for cultivation within one year. I have already held that an assignment could be cancelled for the breach of this condition only if a spot inspection is conducted before the expiry of the one year period. It is simply impossible to come to any conclusion in this regard after a lapse of several years. The assignee could have brought the land for cultivation within one year and thereafter could have left the land fallow for any other reason. The rains could have failed. There could be any other justifiable reason for not cultivating the assigned land. Therefore, the first ground is unsustainable.

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9. The third is also unsustainable. The Hon'ble Division Bench in the decision reported in ***(2010) 5 LW 289 (C.Tirumalai Gounder Vs The State of Tamil Nadu)*** had held that when once the revenue entries have been mutated in favour of the alienee, it will be taken that the transfer was done with the permission of the competent authority. In this case my attention is drawn to the issuance of patta in favour of the petitioners herein by the competent authority. Therefore, the third ground also cannot hold good.

10. I am not persuaded by the decision relied on by the learned counsel appearing for the petitioners. It is true that Condition No.3 is to the effect that for 30 years, the assignment land cannot be sold or alienated. The expression employed is "Paratheenam". Jennath Beevi passed away on 03.05.2019. She was survived by her husband and the writ petitioners herein. The assignee was a muslim. Even if she had executed a Will, it would have been confined only to 1/3rd of the estate. Apart from the petitioners, the husband of the assignee was available. He is also a legal heir. Therefore, it is not as if, following the demise of the assignee the property could have devolved only on the petitioners herein. I can understand if in the settlement deed, the terms of the assignment had been read into. That has not been done. However, I do not lose sight of the equities obtained in this case.

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11. The learned counsel appearing for the petitioners on instruction states that the petitioners herein shall adhere to the terms and conditions of the assignments. In other words, the petitioners will not alienate the assign property till 16.12.2036. Even thereafter, they would not alienate the property or sell the property without getting permission from the competent authority. In other words, they will not take advantage of the fact that the patta is standing in their names. It is seen that in the enquiry also the father of the petitioner had represented. It is not as if the property was settled by the assignee immediately after the assignment order was issued. She executed it almost 12 years after the assignment was made. Recording the undertaking of the writ petitioners, the impugned order is set aside.

12. This writ petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

03.10.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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G.R.SWAMINATHAN, J.

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