BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.9780 of 2021
and
W.M.P.(MD).Nos.7509 and 16465 of 2021

S.Mathialagan ... Petitioner

Vs.

1.The District Revenue Officer – Cum - Additional District Executive Magistrate,
Trichy District,
Trichy.

2.The Revenue Divisional Officer,
Lalgudi,
Trichy District.

3.The Tahsildar,
Manachanallur,
Trichy District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.B4/31326/2021 dated 07.04.2021 and quash the same as illegal, arbitrary, without jurisdiction and in violation of principles of natural justice.

For Petitioner : Mr.B.Saravanan
Senior Counsel
For Mr.D.Kirubakaran

For Respondents : Mr.R.Baskaran,
Additional Advocate General
Assisted by,
Ms.S.Jeyapriya
Government Advocate

O R D E R

The subject matter of challenge in this Writ Petition pertains to the impugned proceedings of the first respondent dated 07.04.2021 cancelling the original assignment that was granted and further directing the land to be restored to its original position as "Government Poramboke Natham land" and to carry out necessary mutation in the revenue records.

2. The case of the petitioner is that the subject property in Survey No.216/1 measuring an extent of 1 hectare was assigned in favour of the petitioner through the proceedings of the third respondent dated 15.07.1994. One of those conditions of assignment was that the land should be cultivated within a period of three years from the date of assignment and that the land should not be alienated within a period of 10 years from the date of assignment.

If these conditions are not complied with, the assignment was subject to cancellation.

3. The further case of the petitioner is that the land that was assigned was mostly a rocky terrain and hence it was not possible to cultivate the entire lands. This difficulty was expressed to the third respondent and the third respondent also made an inspection and through proceedings dated 18.10.1996, found that the land that was assigned was of a rocky terrain for the major portion and it is not fit for cultivation. With respect to the remaining portion, it was found that the same was utilized for cultivation of millet crops. Accordingly, the third respondent was satisfied that the land was effectively put to cultivation.

4. Survey No.216/1 which was assigned to various persons including the petitioner was sub-divided for the purpose of assigning pattas to the assignees. Once again, the land was inspected by the third respondent in order to ascertain as to whether the land is in possession of the assignees and whether the assignees are effectively utilizing the land for cultivation. After inspection, the sub-division took place and the land that was assigned to the petitioner was sub divided as 216/13 and separate patta was issued in the name of the petitioner in Patta No.1928. Thereby, the revenue records reflected the name of the

petitioner and the petitioner was in possession and enjoyment of the property. The petitioner had also dug a bore well after getting necessary electricity connection and had installed submersible motor to draw water and to irrigate the trees that were cultivated in the assigned land.

5. The first respondent issued an enquiry notice dated 09.02.2021 directing the petitioner to appear for an enquiry with all the available records on 15.02.2021. On receipt of the notice, the petitioner made enquiries and understood that the enquiry is being made to see if there is any breach of conditions of assignment. The first respondent thereafter passed the impugned order through proceedings dated 07.04.2021 and the land that was assigned to the petitioner was cancelled on the ground that the land was not cultivated continuously for a period of 3 years from 2000 to 2002 (Fasili 1410, 1411 and 1412). Consequently, the lands were directed to be classified as Government Assessed Waste Lands in the revenue records. Aggrieved by the same, the present Writ Petition has been filed before this Court.

6. Heard the learned counsel appearing on behalf of the petitioner and the learned Additional Advocate General assisted by the learned Government Advocate appearing on behalf of the respondents.

7. This Writ Petition along with the connected Writ Petitions came up for hearing on 11.12.2023 and this Court passed the following order:

> *"Heard Mr.B.Saravanan, learned Senior Counsel appearing on behalf of the petitioners in all these Writ Petitions.*
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> *2. The learned Senior Counsel appearing on behalf of the petitioners submitted that Condition Nos.13 and 14 that were imposed at the time of assignment of lands are relevant for the purpose of these Writ Petitions. It was further submitted that as per Condition No.14, the land has to be put to agricultural use within a period of three years from the date of assignment. Insofar as Condition No.13 is concerned, the land should not be dealt with for a period of 10 years without getting permission of the Government.*
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> *3. The learned Senior Counsel submitted that out of the nine Writ Petitions, in seven Writ Petitions, namely, W.P.(MD)Nos.9780, 9782, 9783, 9784, 9786 9787 and 9788 of 2021, there is an alleged violation of Condition No. 14 on the ground that the land was not put to cultivation within three years from the date of assignment. Insofar as the other two Writ Petitions namely, W.P.(MD)No.11268 and 22075 of 2021 are concerned, apart from the violation of Condition No.14, the respondents have cancelled the*

assignment for violation of Condition No.13 also, since the land has been sold within a period of 10 years without getting permission from the Government.

4. Insofar as the first batch of seven Writ Petitions are concerned, the learned Senior Counsel submitted that there are sufficient materials to show that the land that was assigned was a rocky terrian and it was unfit for being used for agricultural purposes. The learned Senior Counsel therefore submitted that the respondents cannot expect the writ petitioners to perform an impossibility by undertaking agricultural activities in a rocky terrian.

5. Insofar as other two Writ Petitions are concerned, the learned Senior Counsel contended that in W.P.(MD)No. 11268 of 2021, the sale itself was made after a period of 10 years. In W.P.(MD)No.22075 of 2021, the sale had happened within a period of 10 years.

6. The learned Additional Government Pleader appearing on behalf of the respondents sought for some time on the ground that he is led by the learned Additional Advocate General.

7. Considering the short issue that is involved in these Writ Petitions, post these Writ Petitions under the caption "Part Heard Cases" on 18.12.2023 at 02.15 p.m.”

8. In the instant case, the assignment was made in favour of the petitioner in the year 1994. Subsequently, an inspection was made and patta was also granted in favour of the petitioner after subdividing the property. Under such circumstances, the only issue that arises for consideration is as to whether the assignment granted in favour of the petitioner can be cancelled by quoting condition no.14 to the effect that the petitioner has not utilized the property for cultivation.

9. The issue involved is squarely covered by the earlier orders passed by this Court. Useful reference can be made to the judgment of this Court in the case of ***C.Tirumalai Gounder Vs The State of Tamil Nadu*** reported in ***2010 SCC Online Madras 4431*** and the relevant portions are extracted hereunder:

> *“12. The proceedings dated 14.12.1995 on the file of the Commissioner of Land Administration gives a clear indication about the mutation of records and the possession of the property by the appellants. The relevant observations reads thus:-*
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> > *"5. The Revision petitioner has filed the copy of Adangal relating to 1401 fasli during the equality. The name of the aforesaid petitioner has*

been mentioned in it. Hence, the District Revenue Officer, Villupuram Ramasami Padayachi was required relating to the survey as to whether it is panjama barren land and to send report. Besides that it was asked how much land that Thiru.Thirumalai Gounder is having.

6. In the report of the District Revenue Officer, Vizhupuram Ramasami Padayachiar third cited, it has been stated that Thiru. Thirumalai Gounder has cultivated this land in the aforesaid fasli 1401 and has sent the copy of adangal in this regard. Further, it has been stated that this land has not been published as panjagam barren land and the lands already assigned alone is belong to Thiru. Thirumalai Gounder and Periyasami"

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. Therefore, the Revenue Divisional Officer Virudhachalam was not justified in cancelling the assignment in favour of the first appellant."

10. Reference can also be made to the order passed in W.P.(MD).No.7097 of 2022 dated 03.10.2023 and the relevant portions are extracted hereunder:

"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.

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."

11. It is clear from the above judgments that were brought to the notice of this Court that once the inspection was conducted after the assignment of the lands and the revenue entries are mutated in favour of the assignee, it will be taken that the assignee had complied with the conditions of assignment and only thereafter the patta was issued in favour of the assignee. Once the revenue authorities passed orders for mutation of revenue records in favour of the assignees, they cannot be permitted to subsequently cancel the very assignment on the ground that there was violation of condition of assignment at a later point of time.

12. The above orders will squarely apply to the facts of the present case. In the instant case, the inspection of the lands that were assigned was carried out repeatedly and the revenue authorities were satisfied that the lands were effectively put to cultivation. Thereafter, the survey number was subdivided and separate patta was issued in the name of the petitioner. Having done so, it is too late in the day for the first respondent to cancel the assignment made in favour of the petitioner by stating that condition no.14 of the assignment was not fulfilled. The assignment happened in the year 1994 and whereas the cancellation had taken place in the year 2021, nearly after 27 years. Hence, the

impugned proceedings of the first respondent in Na.Ka.B4/31326/2021 dated 07.04.2021 is illegal and there is an error of law apparent on the face of the order which requires the interference of this Court. Accordingly, the same is hereby quashed.

13. This Writ Petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

21.12.2023

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To

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3.The Tahsildar,
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N.ANAND VENKATESH, J.

Nsr

W.P.(MD)No.9780 of 2021

21.12.2023