BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.11268 of 2021
and
W.M.P.(MD).Nos.8804 and 8797 of 2021

V.Kumar ... 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,
Mannachanallur,
Trichy District.

4.T.Anburaj ... 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 R-1 to R-3 : Mr.R.Baskaran,
Additional Advocate General
Assisted by,
Ms.S.Jeyapriya
Government Advocate

For R-4 : Mr.K.Neelamegam

ORDER

This Writ Petition has been filed challenging the impugned proceedings of the first respondent in Na.Ka.B4/31326/2021 dated 07.04.2021 cancelling the original assignment that was made in favour of one T.Anburaj and issuing a further direction to restore the property as "Government Poramboke Waste Land" and to carry out necessary mutation in the revenue records.

2. The case of the petitioner is that the third respondent through proceedings dated 05.02.1993 assigned the subject property in Survey No.216/1 in favour of the fourth respondent. The assignment carried certain conditions to be fulfilled and for the instant case, it will suffice to take note of Condition No.13 of the assignment order. This assignment condition mandated that the assigned land shall not be sold or encumbered within a period of 10 years from

the date of assignment and if this condition is breached, the assignment will be cancelled and the assignment land will be recovered by the Government.

3. The subject property that was assigned in favour of the fourth respondent was sub-divided by the Tahsildar through proceedings dated 26.05.1994 and it was subdivided as Survey No.216/8 measuring an extent of 1 hectare. A separate patta was also issued in the name of the fourth respondent in Patta No.1902. The name of the fourth respondent was entered in the revenue records.

4. The fourth respondent executed a registered deed of General Power of Attorney dated 11.09.2002 in favour of one David Rajkumar. By virtue of the same, three registered sale deeds dated 10.02.2003 were executed by the Power of Attorney agent of the fourth respondent in favour of the petitioner. Those documents were registered as Document Nos.228, 229 and 230 of 2003. After the execution of the sale deed, the petitioner applied for patta and patta was also issued in the name of the petitioner in Patta No.1902. The petitioner was in possession and enjoyment of the property and the land was also put to cultivation.

5. The first respondent issued an enquiry notice dated 09.02.2021 and called for an enquiry. According to the petitioner, he was not even aware about the proceedings since the enquiry notice seems to have been issued in the name of the original assignee. Thereafter, the impugned proceedings dated 07.04.2021 came to be passed by the first respondent and the original assignment made in favour of the fourth respondent was cancelled, both on the ground that the land was not cultivated continuously for a period of 3 years and the same is in breach of condition No.14 and the land was also sold without obtaining permission which is a breach of condition No.13. The petitioner after coming to know of the impugned order passed by the first respondent has chosen to file the present Writ Petition before this Court.

6. Heard the learned counsel appearing on behalf of the petitioner, the learned Additional Advocate General assisted by the learned Government Advocate appearing on behalf of the respondents 1 to 3 and the learned counsel appearing on behalf of the fourth respondent.

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.

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.

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 granted in favour of the fourth respondent has been cancelled by the first respondent on the ground that there is violation of condition Nos.13 and 14 of the assignment order that was passed on 05.02.1993.

9. Insofar as condition no.14 is concerned, the same pertains to not putting the lands for cultivation for a continuous period of 3 years. Insofar as Condition No.13 is concerned, it deals with the alienation of the land within a period of 10 years without getting the permission of the Government.

10. 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:-*
>
> > *"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."

11. 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.*
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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."

12. In the instant case, after the assignment that was made in the year 1993, inspection was done by the revenue authorities and they found that the land has been put to cultivation and hence, the patta was issued in the name of the fourth respondent in Patta No.1902 for the subdivided property in Survey No.216/8 measuring an extent of 1 hectare. Once the patta is granted in favour of the fourth respondent, it must be taken that the land was properly put to use and only thereafter, the revenue authorities have proceeded to issue patta.

13. As per Condition No.13 of the assignment order, the land cannot be alienated within a period of 10 years without permission. The assignment was made on 05.02.1993 and the sale deed was executed in favour of the petitioner on 10.02.2003 which is after a period of 10 years. After the sale deed was executed in favour of the petitioner, the petitioner also applied for mutation of revenue records and patta was also issued in favour of the petitioner in Patta No.1902. In view of the same, once the revenue entries were mutated in the name of the petitioner, it must be taken that the transfer was done with the permission of the competent authority. Hence, the original assignment cannot be cancelled on the ground that condition no.13 is not complied with, after having issued a patta in favour of the petitioner.

14. In the light of the above discussion, the impugned proceedings of the first respondent in Na.Ka.B4/31326/2021 dated 07.04.2021 is hereby quashed and this Writ Petition is accordingly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

21.12.2023

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

To

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

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

3.The Tahsildar,
Mannachanallur,
Trichy District.

N.ANAND VENKATESH, J.

Nsr

W.P.(MD)No.11268 of 2021

21.12.2023