BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2023
(Reserved on 22.09.2023)

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A(MD)No.1534 of 2023
and
C.M.P(MD)No.11835 of 2023

1. The Commissioner of Land Administration,
Ehilagam, Chennai.

2. The District Collector,
Sivagangai District,
Sivagangai.

3. The Tahsildar,
Ilayankudi Taluk,
Ilayankudi,
Sivagangai District. ... Appellants

-vs-

K.S.Jarina ... Respondent

PRAYER : Appeal filed under Clause 15 of Letters Patent, as against the order dated 03.08.2022 made in W.P(MD)No.9335 of 2013.

For Appellants : Mr.J.Ravindran
Additional Advocate General, assisted by
Mr.J.Ashok, Additional Government Pleader
For Respondent : Mr.M.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates

J U D G M E N T

[Judgment of the Court was made by S.S.SUNDAR, J.]

The above appeal is filed against the order of the learned Single Judge dated 03.08.2022 allowing the writ petition in W.P(MD)No.9335 of 2013 filed by the respondent herein.

2. Brief facts that are necessary for the disposal of the above appeal are as follows:-

The respondent is the wife of one M.M.Fazal Mohamed, who is the son of one H.Mohamed Abuthahir. The respondent filed the above writ petition challenging the order of appellant No.1/Commissioner of Land Administration, Chennai, confirming the order of appellant No. 2/District Collector, Sivagangai District, cancelling the patta and assignment in favour of respondent's father-in-law by name, Mohamed Abuthahir.

2.1. An extent of 1.94.5 hectares of land (about 4.80 acres) in Survey No.193/2, Keelayur Village, Ilayangudi Taluk, Sivagangai District, was originally assigned in favour of respondent's father-in-law Mr.Mohamed Abuthahir on 14.05.1965. Pursuant to the said assignment, the name of the respondent's father-in-law was shown in all the revenue records. It appears that in the year 1978, appellant No.3/Tahsildar, Ilayankudi Taluk, initiated proceedings for recovery of market value for the land assigned. Later, the Revenue Divisional Officer, Sivagangai, on the appeal filed by the assignee, confirmed the order of appellant No.3, holding that the assignee should pay market value for the assigned land and therefore, the assignee was required to pay market value fixed at Rs.1,352/- by remitting into the Sub Treasury, Ilayangudi. Thereafter, the assignee namely, Mohamed Abuthahir appears to have remitted a sum of Rs.1,352/- towards value for the land assigned in his favour in respect of the land in Survey No. 193/2, Keelayur Village, Ilayangudi Taluk. From the proceedings of the Revenue Divisional Officer dated 30.06.1980, it is seen that the Revenue Divisional Officer has acknowledged the assignment of land in favour of Mohamed Abuthahir and the receipt of a sum of Rs.1,352/- into the Sub-Treasury, Ilayangudi, vide Challan No.312 dated 26.11.1979.

2.2. It is admitted that respondent's father-in-law namely, Mohamed Abuthahir died intestate on 08.03.1993. It is the case of the respondent that after the demise of the original assignee by name, Mohamed Abuthahir, there was a partition and the subject matter of proceedings namely, an extent of 87.27 cents in Survey No.193/2 in Keelayur Village, was allotted to the respondent's husband. Subsequently, the land allotted to respondent's husband was conveyed in favour of the respondent by a gift deed (hiba) dated 28.08.1997. It is the specific case of the respondent that she is in possession of the land which was gifted in her favour, as absolute owner without any hindrance from any one.

2.3. Later, the respondent came to know about the Gazette publication dated 18.06.1999, whereby, the District Collector appears to have given a general notice calling upon persons whose names were registered in revenue records with reference to Survey No.193 in Keelayur Village, under the pretext that the said lands were to be resumed after cancelling the pattas granted to all the individuals concerned. It is admitted by the respondent that she came to know about such notice through the owner of neighbouring lands. Even though no individual notice was issued to the respondent, she sent her objection to appellant No.2 and it is the case of the respondent that another representation in this regard was also given by her on 04.08.1999. The respondent earlier filed a writ petition in W.P.No.

18685 of 1999 to quash the proceedings relating to the communication by which the land owners were informed about the proposed cancellation of assignment. Since the notice issued by appellant No.2 dated 17.06.1999 is only an intimation to the public and it is open to the respondent and other assignees to file their respective objections, the Principal Bench dismissed the said writ petition, recording the fact that the notice which is only inviting the persons concerned to attend an enquiry, need not be quashed, after observing that there was no threat of dispossession at that stage. Thereafter, appellant No. 2/District Collector, Sivagangai, passed an order by proceedings dated 15.05.2006, cancelling the assignment in favour of 359 persons in respect of an extent of 73.57.0 hectares in Survey No.193 of Keelayur Village. The assignment in favour of respondent's father-in-law in 1965 was also cancelled and patta that was given in favour of the respondent and others were also cancelled by the proceedings dated 15.05.2006. Aggrieved by the order of appellant No.2, the respondent preferred an appeal before appellant No.1 namely, Commissioner of Land Administration, Chennai. Appellant No.1 also confirmed the order of appellant No.2 by proceedings dated 16.08.2012.

2.4. Challenging the order of appellant No.2 as well as the order of appellant No.1 confirming the order of appellant No.2 cancelling the assignment in favour of the respondent's father-in-law, the respondent filed a writ petition in W.P(MD)No.9335 of 2013. The said writ petition was allowed after setting aside the order of appellant No.1 confirming the order of appellant No.2 on many grounds. Challenging the order of the learned Single Judge allowing the writ petition, the present writ appeal is filed by the Government.

2.5. The learned Single Judge after going through the records, found that there is no dispute as to the assignment of land in favour of the respondent's father-in-law on 15.04.1965. Though payment of market value was doubted by the learned Additional Advocate General on the ground that there was no proof for payment of market value for the land by the assignee, considering the proceedings of the Revenue Divisional Officer and the Tahsildar at the relevant point of time, the learned Single Judge found that respondent's father-in-law had remitted the market value for the land assigned in his favour namely, a sum of Rs.1,352/- into the Sub-Treasury, Ilayangudi, vide Challan No.312, dated 26.11.1979. Since appellant No.2 cancelled the assignment mainly on the ground that the land had not been brought under cultivation within a period of three years, the learned Single Judge referring to Adangal extract prepared for the year 1975 and revenue documents, held that the assignee was cultivating Millets in the assigned land.

2.6. Referring to the fact that tax receipts had been produced by respondent for the years 1967, 1988 and subsequent years, the learned Single Judge found that the appellant Nos.1 and 2 have not assigned proper reasons for rejecting the documents. Since Adangal extract produced by the respondent would show actual cultivation, the learned Single Judge found that the reason for cancellation that the assignee had not brought the land under cultivation, cannot be sustained. The learned Single Judge further found that since the lands are rainfed (Tharisu), cultivation may not be possible for all the fasli years, and therefore, cancellation of assignment merely because the assigned land was not under cultivation for a few fasli years, cannot be sustained. The learned Single Judge also followed a few judgments of this Court where it is held that an assignment which was prior to 1973, cannot be cancelled beyond the period of three years, as the Government Order vide G.O.Ms.No.2555, Revenue, dated 14.05.1973, cannot be given retrospective effect.

2.7. The learned Judge also relied upon a few more precedents of this Court, wherein this Court has held that it is not open to the authorities to cancel the assignment after a lapse of several decades. Since the assignment of the respondent's father-in-law was sought to be cancelled after a lapse of more than 3 decades that too after the death of original assignee, the learned Single Judge followed the judgment of this Court dated 24.06.2022 in W.P(MD)Nos.8799 and 11231 of 2017 for the proposition that cancellation of assignment after a lapse of half century that too after the death of assignee cannot be permitted either on misrepresentation or on any other grounds.

3. Learned Additional Advocate General appearing for the appellants raised the following grounds:-

(a) The appellants found that pattas issued during UDR to 344 persons including the father-in-law of respondent were obtained fraudulently as per the report submitted by the Revenue Divisional Officer in 1999.

(b) Only after conducting an enquiry and being satisfied with the report of the Revenue Divisional Officer, the District Collector passed an order for resumption of the assigned lands and therefore, there is no illegality in the order of appellant No.1 confirming the order of appellant No.2.

(c) The objections received from several persons including the respondent were duly considered and rejected by the competent authority for valid reasons.

(d) The power to cancel the assignment for violation of conditions of assignment, cannot be restricted to three years, as this Court in several other cases, have directed the authorities to initiate proceedings for resumption after giving opportunity to the assignees even in cases where cancellation of assignment was required for violation of conditions of assignment.

(e) There is no authenticated record to show that the assignee had paid the market value. Even assuming that market value was paid by the assignee, that will not take away the rights of the authorities to cancel the assignment for violation of the terms and conditions of assignment.

4. Apart from the grounds raised in the memorandum of appeal grounds referred to above, learned Additional Advocate General raised a serious doubt as to the genuineness of the documents relied upon by the respondent. Learned Additional Advocate General submitted that the revenue officials are unable to find original records

relating to the assignment and therefore, in the absence of the original assignment in favour of the respondent's father-in-law, the Court cannot presume that there was a valid assignment in favour of the respondent's father-in-law in the year 1965. It is, in the said context, the learned Senior Counsel appearing for respondent produced before this Court original assignment with annexures. After producing the original, the photocopies of original assignment with Annexures and few more documents were also produced by the learned Senior Counsel appearing for respondent in the form of typedset.

5. From the additional documents, it is seen that the Deputy Tahsildar, Ilayangudi, had passed an order by proceedings dated 15.04.1965 assigning an extent of 5.02 acres in Survey No.193 out of the total extent of 181.72 acres in favour of the respondent's father-in-law on free of cost with a direction that the land should be used only for cultivation purpose. Form-D annexed with the order of assignment specifies 12 conditions. By a communication dated 09.04.1980 along with the original challan dated 26.11.1979, the Deputy Tahsildar was given not only an intimation about the payment of market value namely, a sum of Rs.1,352/-, but also the original challan itself was sent to the Deputy Tahsildar. As seen from the contents of the letter

dated 09.04.1980, it is evident that the Deputy Tahsildar, Ilayangudi, by his communication dated 09.04.1980, has acknowledged the receipt of the challan dated 26.11.1979 for remitting a sum of Rs. 1,352/- by the assignee. By a subsequent communication dated 30.06.1980, the Revenue Divisional Officer, Sivagangai, after referring to the communication received from the Deputy Tahsildar, Ilayangudi, dated 18.04.1980, has confirmed the remittance of market value for the land as per the assignment. It is to be noted that in the communication dated 30.06.1980, the Revenue Divisional Officer has indicated that the market value was originally fixed by him and that the same was confirmed by the District Revenue Officer.

6. However, learned Additional Advocate General submitted that the documents produced by the learned Senior Counsel appearing for respondent cannot be accepted on the face value as there are several discrepancies. It was pointed out by the learned Additional Advocate General that the date of assignment was wrongly mentioned in the communication dated 30.06.1980. Similarly, referring to the terms and conditions in respect of other cases, learned Additional Advocate General pointed out that some of the conditions which are normally found in the case of assignment, are not found in Form-D

that was annexed with the original assignment order in favour of respondent's father-in-law.

7. Learned Additional Advocate General then referring to a few more proceedings, submitted that the assignment in favour of the respondent's father-in-law was not in consonance with the Board's proceedings and therefore, the assignment cannot be taken as a valid assignment. Learned Additional Advocate General then submitted that the so-called assignment in favour of the respondent's father-in-law was obtained fraudulently. Though learned Additional Advocate General produced before this Court the Board's proceedings which authorises the Deputy Tahsildar and the Tahsildar to assign lands in favour of Government officials, it was pointed out by the learned Additional Advocate General, the said procedure that was framed after 1972 was not followed in the case of assignment in favour of respondent's father-in-law. After going through the additional typedset filed by the respondent, learned Additional Advocate General submitted that the assignment was obtained fraudulently by the respondent's father-in-law with the connivance of the then revenue officials and therefore, cancellation of assignment should be held valid in public interest.

8. On the other hand, learned Senior Counsel appearing for respondent, referring to various communications and the order of assignment in 1965, submitted that the doubt entertained by the learned Additional Advocate General pointing out a few discrepancies, cannot be accepted as these discrepancies are due to typographical errors. In the absence of any explanation to the existence of several documents and communications, it was contended by the learned Senior Counsel appearing for the respondent that the argument based on surmises cannot be appreciated by this Court, especially when there are no compelling reasons or documents on the side of the revenue to substantiate any one of the serious allegations.

9. This Court considered the submissions made on either side in the light of the documents.

10. From the records, it is admitted that the entire extent of 181.72 acres in Survey No.193, Keelayur Village, Ilayangudi Taluk, Sivagangai District, has been registered in the village accounts as ''Assessed Waste Dry'' during the settlement survey. It cannot be disputed that the lands which are already assessed to tax and identified not in the holdings of ryots, are chosen for assigning them to

landless poor or for cultivation in 1960s with an object to augment revenue. Therefore, the assignment of land in 1965 in favour of respondent's father-in-law and more than 350 other persons in the same survey number cannot be doubted at this length of time. It is to be noted that appellant No.1 has also recorded a finding that no records or files of assignment could be found in the Taluk office, as the records were destroyed due to efflux of time. In the said circumstances, the contention of the learned Additional Advocate General to the effect that the orders of assignment were made in favour of hundreds of people fraudulently without any verifiable material, cannot be countenanced. The fact that the revenue records were mutated in the name of individual assignees after assignment, is not in dispute.

11. It is also to be noted that after introduction of UDR, the revenue records would clearly show that the entire Survey No.193 of Keelayur Village, was sub-divided into several parcels defining the holdings of every assignee. The fact that UDR was introduced in 1982 and the names of every assignee was shown in UDR ''A'' Register, is not in dispute. The District Collector himself has proceeded by recording the fact that the assignment of entire land in favour of more

than 300 persons is registered in the revenue records during UDR. If the UDR "A" register is altered without any authority, the revenue department ought to have approached the District Revenue Officer who is competent to deal with errors. Therefore, the contention of the learned Additional Advocate General raising some doubts as to the genuineness of assignment, cannot be countenanced.

12. As a matter of fact, the submissions of the learned Additional Advocate General were strongly deprecated when he is unable to give plausible explanation for any one of the documents relied upon by the respondent before the learned Single Judge. We are surprised to note that the learned Additional Advocate General made his submissions even before this Court on probabilities without any material document to support his assertion. This Court is unable to appreciate the conduct of the appellants who have not directed any enquiry if there was fraud in a large scale when the lands were assigned. This Court has witnessed in several cases the stand of the revenue doubting the genuineness of assignment taking note of the market value of such lands as on date. An assignment is a valid conveyance of title and the person who was given assignment gets the property as absolute owner. When it is evident that the market value

of the property during the assignment was less than Rs.200/- per acre even as per the assessment made by the District Revenue Officer as indicated in one of the communications, the order of assignment by the Deputy Tahsildar is perfectly valid and binding on the Government.

13. Under Section 114 of the Indian Evidence Act, 1872, the Court may presume existence of any fact. There is a presumption in respect of genuineness of the documents and the validity of the proceedings unless there are materials which can be relied upon to rebut the said presumption. It is to be noted in the present case that the revenue has taken a peculiar stand quite contrary to every fact that are recorded by the District Collector and the Commissioner of Land Administration in the impugned orders before the Writ Court. When the District Collector himself entertains a doubt as to the genuineness of the proceedings, after recording the fact that original records have been lost or destroyed, the observation of the District Collector in his proceedings dated 15.05.2006 that the entry and issuance of patta in favour of individual assignees had been wrongly made, is erroneous and made for the purpose of justifying the illegal act of cancelling every assignment without even issuing any individual notice to give a specific reason for cancelling the assignment.

Therefore, the very initiation of proceedings for cancellation of assignment is based on surmises and conjectures without an enquiry. The submission of the learned Additional Advocate General doubting the genuineness of assignment cannot be sustained in view of the conclusions reached by appellant No.1 in the following lines:-

> *"6. After going through the contentions of both the petitioner and Collector, Sivaganga and the connected records, I come to following conclusion.*
>
> *i) The assignment in respect of S.No.193/2 was done for cultivation purposes. As enshrined in RSO.15, the prime purpose of assignment is to bring cultivable waste land into cultivation.*
>
> *Failure to do so will seriously impair the rights of the assignee over the land as one of the main condition of the assignment is being violated.*
>
> *ii) Aim of the assignment is to bring the land under cultivation and not to merely hold onto the land for speculative purposes. Adangal entries for Fasli years 1403, 1405, 1408, 1409, 1411, 1412, 1413 and 1416 show the land in the state of "Tharisu". The petitioner has claimed in his petition that he has cultivated the land as per chitta entry for Fasli 1407. On perusal, it is only a Chitta entry showing ownership of land. From the documents submitted by him him, it is seen that adangal entries for Fasli years 1378 – 1383 show some cultivation. But, he has not shown the original extracts. Further, it is seen that in subsequent years the land has been kept*

fallow. He has not given reasons why subsequently the land has been kept fallow. Even the contention of land being under cultivation is doubtful.

iii) The petitioner is under the mistaken impression that assignment made on collection of land value is not liable for resumption. Under RSO.15 all assigned land for cultivation purpose are subject to resumption consequent upon breach of one or more conditions. The question of assignment free of cost or on collection of market value depends upon the economic status of the assignee and does not in any way reduce or enhance the rights of the assignee over the assigned land.

iv) Mere paying of kist cannot prove cultivation of land. It is only a corroborative evidence of the ownership and the Collector has not questioned the ownership. He has merely cancelled the assignment on account of non-cultivation of land.

v) On basis of above, it is clear that there are serious violations of the conditions of assignment and that the basic object of assignment has been defeated. Further, the Collector is right in asserting that the land is required for public purposes as it is lying on the limits of Ilayankudi Town Panchayat.

vi) Therefore, the Collector has rightly cancelled the patta issued with reference to S.No.193/2 and I find no reason to interfere with his order vide Proc.C2/33877/99, dated 15.5.06. Accordingly, the appeal is hereby rejected."

14. One of the issues that was considered by the District Collector as well as the Commissioner of Land Administration is that the cancellation of assignment was justified as there was violation of conditions of assignment. Before the District Collector and the Commissioner of Land Administration, the respondent has produced the Adangal extract to show that the assignee was in fact brought the land under cultivation and was doing cultivation at least for a few fasli years as per the revenue records. After recording the fact that adangal entries for the fasli years 1378 to 1383 show cultivation, the Commissioner of Land Administration ought to have seen that cancellation of assignment was long after the actual cultivation of lands by the assignee. Merely because the land which was assigned was not under cultivation for a few fasli years, there cannot be any justification for initiating proceedings for cancellation of assignment. One of the conditions of assignment is that the land assigned should be brought under cultivation. The fact that the land assigned in this case was brought under cultivation by the assignee would satisfy the condition. There is no specific condition in Form-D regarding cultivation within three years or restraining alienation. It is true that there are specific conditions requiring cultivation within three years in

all the model Form-D whenever assignment of land is under RSO-15. Assuming that the assignment was subject to a condition that the assigned land should be brought under cultivation, this Court finds that such condition was also complied with in the present case having regard to the document submitted by the respondent before the appellants and before this Court.

15. The assignment was in the year 1965 in favour of the respondent's father-in-law. It is admitted that the respondent's father-in-law died in the year 1993. Long after the death of the assignee, proceedings appear to have been initiated by the District Collector for resumption of lands without even issuing any individual show cause notice to the legal heirs. Question whether the land was brought under cultivation by the assignee within three years or not, cannot be decided unilaterally at this length of time that too when the original assignee was not alive when proceedings were initiated nearly 35 years after the assignment. This Court in a similar case expressed its concern over the manner in which the revenue officials respect the individuals' rights with reference to their land holdings on the basis of valid assignment, in the case of the **District Collector, Pudukkottai District, and others vs. Gunasundari(died) and others in**

W.A(MD)Nos.1201, 1588 and 1201 of 2019 decided on 08.07.2022, in which one of us (SSSRJ) was a party.

16. When an assignment is made in favour of a person on payment of land value, the assignee has a right to hold the land absolutely and has a legitimate expectation to hold the land as absolute owner. In the present case, this Court finds that initiation of proceedings 32 years after the assignment by publishing a notice in the District Gazettee itself is irregular. Even though the respondent/writ petitioner participated in the enquiry, submitted her explanation/objection after coming to know about the proposed cancellation proceedings, none of the contentions raised by the respondent (as stated by her) have been considered by the District Collector. There is no proper reason for discarding the documents relied upon by the respondent before the appellant Nos.1 and 2. Having regard to the the nature of the documents produced before this Court, except doubting the genuineness of a few documents, the learned Additional Advocate General has not produced before this Court any material or an enquiry report to justify the stand that the assignment in favour of the respondent's father-in-law is questionable.

17. No Court can rely upon mere allegations or unsubstantiated statements made for cancellation of assignment quite contrary to the documents and their evidentiary value on its face. This Court finds no reason to interfere with the order of the learned Single Judge.

18. Accordingly, the Writ Appeal is dismissed. No costs. Connected miscellaneous petition is closed.

[S.S.S.R, J.] **[D.B.C., J.]**
29.09.2023

Index : Yes / No
Neutral Citation : Yes / No
bala

To

1. The Commissioner of Land Administration,
Ehilagam, Chennai.

2. The District Collector,
Sivagangai District,
Sivagangai.

3. The Tahsildar,
Ilayankudi Taluk,
Ilayankudi,
Sivagangai District.

S.S.SUNDAR, J.
and
D.BHARATHA CHAKRAVARTHY, J.

bala

Pre-Delivery Judgment made in
W.A(MD)No.1534 of 2023

29.09.2023