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W.P.(MD)NO.17848 OF 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.17848 of 2015 AND
M.P.(MD)Nos.1 & 2 of 2015

K.Sonai

... Petitioner

Vs.

1. The Special Commissioner and
Commissioner of Land Administration,
Chepauk,
Chennai – 5.
2. The District Collector,
Collectorate Buildings,
Madurai.
3. The District Revenue Officer,
Collectorate Buildings,
Madurai.
4. The Revenue Divisional Officer,
Collectorate Buildings,
Madurai.
5. The Tahsildar,
Melur Taluk,
Madurai District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent



herein relating to the impugned order in Pa.Mu. No.41105/2013/J1 dated 08.08.2015 and quash the same as illegal and consequently directing the 5th respondent to issue patta in favour of the petitioner's name in the light of the order of this Court in W.P. No.23818 of 2002 dated 08.06.2011 and in proceedings of the 3rd respondent in Na.Ka.No.G2/93870/95 dated 05.02.1996 and in W.P.No.10234 of 2013 dated 26.06.2013 by considering the petitioner's representation dated 09.08.2011, 12.05.2015 and 03.06.2015 to respondents 5, 2 and 3 respectively.

For Petitioner : Mr.S.Alagarsamy

For Respondents : Mr.N.Satheesh Kumar,
Additional Government Pleader.

* * *

ORDER

Heard the learned counsel on either side.

2. The writ petitioner belongs to Scheduled Caste community. His father Kodangi Samban was assigned the petition-mentioned land way back in the year 1935. On 25.04.1935, the land had been classified as Panchamar land. The petitioner's father passed away on 02.12.1960. The



petitioner alleges that when he was a minor, the aforesaid document was registered as if the petition-mentioned land was sold by the petitioner's family in favour of private parties (non SCs.) Since mutation was also made in their favour, the petitioner submitted a representation before the Revenue Divisional Officer, Madurai for mutation of patta. According to the petitioner, due to error committed during UDR, the revenue record came to reflect the name of one Parvathysamy. The petitioner's case was accepted by the Revenue Divisional Officer, Madurai who held that the purchase of land by T.V.Samy was void. The revenue record was directed to be re-classified as Panchamar Tharisu land. Aggrieved by the said order dated 28.02.1995 passed by the Revenue Divisional Officer, Madurai, Mrs.Parvathysamy, W/o.T.V.Samy filed revision before the District Revenue Officer, Madurai on 05.02.1996. The District Revenue Officer, Madurai dismissed the revision filed by the purchaser. Challenging the same, the second revision was filed before the Commissioner of Land Administration, Chepauk, Chennai. The Commissioner of Land Administration vide order dated 01.10.2001 disposed of the revision in the following terms:-



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“9. The point raised by the respondent counsel regarding the validity of the title deserves consideration. Though this may not be the appropriate forum for going into the details, it can be safely concluded that Transfer of Registry in the name of Swamy by the local village authorities based on this document was not correct, particularly because the sale was that of a property given on condition assignment of Panchamar land. The entries in the village account is only a follow up of this order. As other community people are barred from purchasing the panchamar land, this should not have ordered transfer of patta based on this document and this order is made to be cancelled. Since it is proved that the land has been sold to an ineligible person, the land has to be resumed for violation of condition and the land has to be transferred to the original classification. The land can be assigned to Panchamer, subject to eligibility as per provision in the R.S.O.



10. Accordingly, orders passed by the Revenue Divisional Officer, Madurai in his proceedings 9229/94/N dated 28.02.1995 is hereby upheld and land resumed to Government for violation of condition. The DRO is also directed to assign the land to a Panchmar subject to eligibility as per the provisions in the R.S.O.”

3. Feeling aggrieved by the said order, the petitioner filed W.P.No.23818 of 2002. The writ petition was however dismissed on 08.06.2011 in the following terms:-

“4. The learned counsel for the petitioner submitted that the petitioner has been in possession and enjoyment of the land over the years and the violation has been made by the petitioner's father behind the back of the petitioner. Despite the fact that the sale has been effected, the petitioner continuous to be in possession. Therefore, taking into consideration of the above said facts alone, the second respondent has issued appropriate directions to consider the



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case of the petitioner. Hence, it is submitted that the order of the first respondent will have to be set aside by restoring the order passed by the second respondent.

5. The contention raised by the petitioner cannot be countenanced for the reason that no revision has been filed by the petitioner challenging the order of the third respondent, by which a direction was issued to the fourth respondent to classify the land as 'Panchama' land. It is the fifth respondent, who had filed the revision before the second respondent. Therefore, the direction issued by the second respondent was one without power or authority, as he clearly exceeded the jurisdiction. The issue before the second respondent was whether the fifth respondent is entitled to have the patta in her name and the assignment as well as the consequential sale deed are valid or not. Therefore, the first respondent has rightly reversed the said finding of the second respondent, insofar as the direction issued to the



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fourth respondent to classify the land as 'Panchama' land. It is further to be seen that both the petitioner as well as the fifth respondent claimed possession to the said land. Further, the question as to whether the petitioner has been in possession or not cannot be decided by this Court under Article 226 of the Constitution of India. Hence, this Court does not find any illegality or perversity in the order impugned passed by the first respondent. Accordingly, the writ petition stands dismissed.

6. However, the dismissal of the writ petition will not prevent the petitioner from approaching the respondents 3 and 4 for seeking a fresh assignment in his favour. As and when the petitioner approaches the respondents 3 and 4, the request of the petitioner will have to be considered, in the light of the relevant rules and regulations, on merits and in accordance with law, and the documents filed by the petitioner also will have to be taken into consideration in respect of



the land.

7. With these observation, the writ petition is dismissed. No costs.”

4. The petitioner, for the reasons that are not quite clear, did not file any writ appeal. Instead he chose to file a fresh petition before the Tahsildar, Melur in terms of the liberty set out in paragraph No.6 of the order dated 08.06.2011 made in W.P.No.23818 of 2002. Since no order was passed by the authorities, the petitioner filed W.P.(MD)No.10234 of 2013. The said writ petition was disposed of on 26.06.2013 in the following terms:-

“6. When this Court has passed an order giving liberty to the petitioner to approach the respondents 3 and 4 for fresh assignment, through his representation, dated 11.08.2011, the same is required to be disposed on merits, as per law and they cannot keep the representation pending for more than two years.

7. In view of that, the fifth respondent, Tahsildar, Madurai, is directed to pass appropriate



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orders as per law, after giving notice to the all parties concerned, within a period of sixteen weeks from the date of receipt of a copy of this order.”

5. Pursuant to the said direction given by this Court, the Revenue Divisional Officer processed the papers and forwarded the same for consideration of the District Collector, Madurai. The District Collector vide order dated 08.08.2015 negatived the petitioner's request for issuance of patta. Challenging the same, the present writ petition came to be filed.

6. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition. He placed reliance on the decision of the Hon'ble Apex Court reported in **(2012) 10 SCC 283 (State of Rajasthan and Ors. Vs. Aanjaney Organic Herbal Pvt. Ltd.)**. The Hon'ble Apex Court in the said decision held as follows:-

“ **12.** The expressions “Scheduled Castes” and “Scheduled Tribes”, we find in Section 42(b)



of the Act have to be read along with the constitutional provisions and, if so read, the expression “who is not a member of the Scheduled Caste or Scheduled Tribe” would mean a person other than those who have been included in the public notification as per Articles 341 and 342 of the Constitution. The expression “person” used in Section 42(b) of the Act therefore can only be a natural person and not a juristic person, otherwise, the entire purpose of that section will be defeated. If the contention of the Company is accepted, it can purchase land from Scheduled Caste/Scheduled Tribe and then sell it to a non-Scheduled Caste and Scheduled Tribe, a situation the legislature wanted to avoid. A thing which cannot be done directly cannot be done indirectly overreaching the statutory restriction.

...

15. The abovementioned condition makes it amply clear that the mutation on the basis of registration shall be made only in the name of that



particular person/vendee who is a member of Scheduled Caste/Scheduled Tribe and not in the name of any firm/society/company/legal institution wherein a person is office-bearer or member. When we apply the above principles to the transfer of land in question, we have no hesitation to hold that the sale deed effected on 26-9-2005 was void and therefore rightly denied mutation in the revenue records. Properties, therefore purchased by the respondent from the members of Scheduled Castes vide sale deed dated 26-9-2005 and other sale deeds, therefore, are void since hit by Section 42(b) of the Act and it is so declared. The State can, therefore, repossess the lands and return the lands to the original owners who are members of Scheduled Castes. "

7. The learned counsel would contend that it is beyond dispute that the petitioner's father was assigned Panchamar land. Such a land could not have been alienated. There is nothing on record to show that the petitioner was a party to



any alienation. Therefore, the document whereby the land was purportedly sold in favour of one T.V.Samy was a void document. Applying the ratio laid down by the Hon'ble Apex Court, the authorities ought to have resumed possession and handed over the same to the petitioner who admittedly is the sole surviving legal heir of the deceased assignee. He prays for granting the relief as prayed for.

8. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. He submitted that the petitioner is not eligible for any assignment. He also would point out that the petitioner cannot be allowed to reopen a concluded issue. He prayed for dismissal of the writ petition.

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

10. The basic facts are not in dispute. Mookayee Amma, mother of the petitioner had purportedly sold a portion of the assigned land in favour of T.V.Samy vide document



No.3614/1967 and the remaining extent of the assigned land was sold to one Rathinavelu and T.V.Samy vide document Nos. 475/68 and 1206/68 respectively. T.V.Samy as well as Rathinavelu do not belong to SC community. Obviously, the alienation was void. That is why, when the petitioner took up the issue in the year 1995, the revenue authorities held that the revenue record has to be re-classified and pattas issued in favour of the alienees should be cancelled. The revenue authorities themselves could have handed over the possession of the assigned land in favour of the petitioner. But that was not done. Instead the Commissioner of Land Administration chose to direct resumption of land to the Government for violation of condition and for assigning the same to a Panchamar subject to eligibility as per the provisions in the RSO. The operative portion of the order dated 01.10.2001 passed by the Commissioner of Land Administration clearly undermined the petitioner's claim. He therefore rightly challenged the same by filing W.P.No.23818 of 2002. The prayer in the said writ petition was as follows:-

“ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of



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Certiorarified Mandamus, calling for the records of the first respondent passed in her proceedings in R.C.No.F2 14817/96, dated 01.10.2001 and quash the same as illegal and to direct the first respondent to issue patta in favour of the petitioner in respect of the land in S.No.100/3, measuring of 1:24:5 Hectares in Thuvarangulam Village, Melur Taluk, Madurai District.”

11. The petitioner could have succeeded in the said writ petition by pointing out that he was not a party to the transactions and therefore for the error that might have been committed by his mother and the fraud committed by third parties, he should not have been penalised. But unfortunately, the writ petition was dismissed. The order passed by the Commissioner of Land Administration was confirmed. Of course, an opportunity was given by permitting the petitioner to move the authorities for assignment. But then, it could have only been a case of fresh assignment. In the order dated 08.06.2011 made in W.P.No.23818 of 2002 as well as in the order dated 26.06.2013 in W.P.(MD)No.10234 of 2013, it had



been directed that the assignment can be made in favour of the petitioner only in accordance with law and on merits.

Therefore, the question that arises for consideration is whether the petitioner was eligible for fresh assignment. The learned Additional Government Pleader drew my attention to two points: One, the petitioner was employed as assessor in TNEB and retired from service and he is receiving pension. The petitioner's wife worked as Head Assistant in District Munsif Court and retired from service and she is also receiving pension. Two, the lands that are now standing in the name of the petitioner and his wife have been set out in the counter affidavit filed by the respondents. According to the learned Additional Government Pleader, when the petitioner and his wife are Government pensioners and they are holding lands, they obviously, cannot be eligible for fresh assignment.

12. I have to necessarily sustain the said stand of the learned Additional Government Pleader. The petitioner could have definitely succeeded on the strength of his father's assignment. But unfortunately, the petitioner's claim was not endorsed by this Court when he filed W.P.No.23818 of 2002.



The prayer made in the earlier writ petition was for issuance of patta. The grounds which the petitioner now projects before this Court in these proceedings were originally projected. My hands are bound by the previous order dated 08.06.2011. This Court had categorically held that the petitioners can only apply for fresh assignment. The petitioner being a pensioner is not eligible for assignment. Therefore, the impugned order cannot be interfered with. This writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

26.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

1. The Special Commissioner and
Commissioner of Land Administration,
Chepauk, Chennai – 5.
2. The District Collector, Collectorate Buildings, Madurai.
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G.R.SWAMINATHAN,J.

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