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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-02-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

And

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

WP Nos.28503 of 2015 and 22450 of 2017

And

MP No.1 of 2015 and WMP No.23573 to 27575 of 2017

1.Jayakrishnan (Died)

2.Leelavathi

3.Dhamodharan

[P-2 and P-3 are substituted as LR's of
the deceased first petitioner vide order
of Court dated 25.07.2023 made in
WMP No.35463 of 2019 in WP
No.28503 of 2015]

.. Petitioners in WP 28503/2015

Chinnammal

.. Petitioner in WP 22450/2017

-VS-

1.The Sub Collector,
Gobichettipalayam-638 452,
Erode District.



2.Chinnammal

[R-2 impleaded vide order of Court dated 08.08.2023

made in WMP No.23828 of 2021 in WP No.28503 of

2015]

.. Respondents in WP No.28503/2015

1.The Chief Secretary/Commissioner of Land
Administration,
Chepauk,
Chennai-600 005.

2.The District Collector,
Erode District,
Erode.

3.The Tahsildar,
Anthiyur Taluk,
Erode District.

4.Sub Collector,
Gobichettipalayam,
Erode District.

5.The District Revenue Officer,
Erode.

6.A.Aarappa Gounder

7.Jayakrishnan (Deceased)

8.Leelavathi

9.Dhamodharan

[R-8 and R-9 suo motu substituted as

LRs of the deceased R-7 vide order of

Court dated 08.08.2023 made in WP 22450

of 2017]

.. Respondents in WP 22450/2017



WEB COPY

WP Nos.28503 of 2



22450 of 2017

WP No.28503 of 2015 is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records relating to Na.Ka.12450/2014/A3 dated 23.07.2015 on the file of the first respondent herein and quash the same.

WP No.22450 of 2017 is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of the District Revenue Officer dated 16.08.2016 in Na.Ka.24403/15/Vu4, quash the same and direct the respondents to consider and decide the status of the lands assigned in view of the proposed decision to be made on the recommendations of the Committee constituted as per the orders of Government dated 08.10.2015 and decide the issue without reference to the writ petition in WP No.28503 of 2015.

For Petitioner in WP 28503/2015: Mr.T.Murugamanickam,
Senior Counsel for
Ms.Zeenath Begum.

For Petitioner in WP 22450/2017: Mr.A.Mohan

For Respondent-1 in
WP 28503/2015 and



WEB COPY

WP Nos.28503 of 2



22450 of 2017

R-1 to R-5 in WP
22450/2017

: Mr.A.Selvendran,
Special Government Pleader.

For Respondent-2 in
WP 28503/2015

: Mr.A.Mohan

For R-7 in WP 22450/2017

: Died. Steps taken.

For Respondents-8 and 9 in
WP 22450/2017

: Mr.T.Murugamanickam,
Senior Counsel for
Ms.Zeenath Begum.

COMMON ORDER

[ORDER OF THE COURT WAS MADE

BY S.M.SUBRAMANIAM, J.]

The lis on hand has been instituted questioning the validity of the order dated 23.07.2015 passed by the Sub Collector, Gobichettipalayam cancelling the conditional assignment of the Government land granted in the name of late Mr.Kuppan.



2. Admittedly, Government land measuring an extent of 4.02 acres situate in S.No.268 and another extent of 8.17 acres in S.No.269 Sankarapalayam Village, Bhavani Taluk, Erode District, had been assigned in favour of late Mr.Kuppan.

3. The original assignee late Mr.Kuppan along with his sons borrowed loan from one Mr.Thandavarayan. The said Mr.Thandavarayan instituted a civil suit in OS No.114 of 1966 for recovery of money on the file of the Sub Court, Erode. The decree was passed in favour of Mr.Thandavarayan EP No.7 of 1968 was filed to execute the decree.

4. The Court auction sale was conducted. The original writ petitioner late Mr.Jayakrishnan was the successful purchaser of the property through Court auction. He took physical possession of the property situate in S.No.269, Sankarapalayam Village, Bhavani Taluk, Erode District.



5. The first petitioner in WP No.28503 of 2015 states that he continue to be the owner of the property, right from taking possession of the same through Court Auction. While-so, the Sub Court passed an order in the year 2015, cancelling the original assignment granted in the name of late Mr.Kuppan. Thus WP No.28503 of 2015 came to be instituted. Subsequently, after the writ petition filed by Mr.Jayakrishnan, the legal heirs of the original assignee late Mr.Kuppan filed another writ petition in WP No.22450 of 2017. The petitioner Tmt.Chinnammal is the wife of the grandson of the original assignee late Mr.Kuppan.

6. The learned Senior Counsel appearing on behalf of the petitioners in WP No.28503 of 2015 would contend that admittedly, assignment of Government land was granted in favour of late Mr.Kuppan in the year 1930. The petitioner in WP No.28503 of 2015 late Mr.Jayakrishnan purchased the land through Court auction in the year 1968. The validity of the conditional assignment normally would be 30 years from the date of assignment. Therefore, the Government lost its right to resume the land by invoking the Board Revenue Standing Orders.



WEB COPY

WP Nos.28503 of 2

22450 of 2017



7. That apart, the original writ petitioner was the Court auction purchaser and his rights are to be safeguarded. He took possession of the property in the year 1970 and continue to be in possession and enjoyment of the subject property for more than five decades.

8. That being so, the auction purchase of the writ petitioner is protected. Thus, the order impugned is beyond the jurisdiction conferred under Board Revenue Standing Orders.

9. Mr.A.Mohan, learned counsel for the writ petitioner in WP No.22450 of 2017 would oppose the contentions by stating that the deceased first petitioner Mr.Jayakrishnan in WP 28503 of 2015, cannot claim any right. The assignment granted in favour of the original assignee was cancelled. Further, the writ petitioner Tmt.Chinnmmal in WP No.22450 of 2017, while supporting the contentions of the deceased first petitioner Mr.Jayakrishnan in WP No.28503 of 2015 states that the cancellation of



assignment is wrong and she is in possession of the subject property till the year 2015. Therefore, the relief, as such, sought for in WP No.22450 of 2017 is to be considered.

10. Mr.A.Selvendran, learned Special Government Pleader, appearing on behalf of the first respondent in WP No.28503 of 2015 and respondents 1 to 5 in WP No.22450 of 2017, would oppose the contentions raised on behalf of the petitioner in both the writ petitions, by stating that the Authorities Competent are empowered to invoke the powers conferred under the Board Revenue Standing Orders and to resume the land.

11. The counter filed by the respondents state that in compliance of Form 'D' as stipulated in Revenue Standing Order-15 "If the land is alienated to any person within a period of ten years from the date of the grant by way of voluntary transfers by any means including sale, gift, settlement, mortgage or lease of any kind, or after that period to any person who is not a member of the Scheduled Castes, or if it ceases to be owned by the original grantee or his legal heirs (or after the ten years) other members



of the Scheduled Castes owing to voluntary transfers by any means including sale, gift, settlement, mortgage and lease of any kind or if default is made in the payment of the Government revenue on the dates prescribed the grant will be liable to be resumed by the government who will be entitled to re-enter and take possession of the land without payment of any compensation or refund of the purchase money. This prohibition does not however apply to hypothecation of the land to a Cooperative Institution advancing loans on the security of lands or to a Scheduled Bank”.

12. The learned Special Government Pleader would further state that conditional assignment granted was not relaxed or modified. The original assignee deceased Mr.Kuppan had not obtained any permission from the Government. The Government has not relaxed the conditions nor granted any patta for the purpose of alienation of the Government property assigned in favour of late Mr.Kupan. In the absence of any such permission or relaxation of condition, the original assignee has no right to alienate the property. More-so, in respect of money suit and subsequent litigations, the Government has not been impleaded as a party. Therefore, all decrees and



orders passed behind the back of the Government are not binding and are in violation of the Board Revenue Standing Orders. Thus the Government is empowered to resume the land. Hence, both these writ petitions are to be rejected.

13. We have considered the rival submissions made on behalf of the parties to the lis on hand.

14. “Alienation of a land” and “assignment of land”, are distinguishable. Assignment is all about transfer of right, but alienation amounts to transfer of title.

15. It is not in dispute that the land assigned belongs to the Government. The Government assigns the land for the benefit of the Scheduled Caste people and to protect their livelihood. Such assignments are granted in respect of Panchami lands for the up-liftment of the socially backward community people. When such assignments are granted to socially weaker class people, the conditions stipulated in the assignments



are to be scrupulously followed.

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16. Mere assignment of Panchami land would confer no right to alienate the Government land in favour of third parties. Therefore, in the absence of any permission from the Government or relaxation of condition or grant of patta, the assignees are not empowered to alienate or sell or mortgage etc., of the Government lands or transfer the same in favour of any third parties.

17. In the present cases, admittedly, the original assignee late Mr.Kuppan had not obtained any permission from the Government. The transactions were not even informed to the Government. It is found from the Adangal Register maintained by the Revenue Department, the name of the original assignee has been recorded. Therefore, the Government had no knowledge about the transaction between private parties and civil suits instituted.



WEB COPY

WP Nos.28503 of 2



22450 of 2017

18. Admittedly, in a money suit, the Government Authorities were not even impleaded as parties nor aware of such loan transactions. The Revenue Standing Orders contemplated certain procedures. RSO 15 (12)(4) indicates that "whenever loans are granted on lands on the security of land assigned by Government any authority processing the loan application may specially scrutinise, whether there is breach of condition and liability of cancellation of assignment. Procedures are contemplated for cancellation of assigned lands. Therefore, even for borrowing a loan by mortgaging the assigned land or to deal with the Government land, prior permission in prescribed format is required. Necessary entries are also to be made in the revenue records. In the absence of adherence of such procedures, the Civil Court decree or its execution would not be binding on the Government and the Government is empowered to exercise their powers conferred under Revenue Standing Orders for the purpose of resumption of land.



WEB COPY

WP Nos.28503 of 2



22450 of 2017

19. Even the general conditions for the grant of state land would indicate that the Government may resume the land wholly or in part, with any buildings thereon, if in the opinion of the Government the land is required for a public purpose or for conducting mining operations. The Government reserves its right to exploit the land or to utilise the land for public purposes. Therefore, it is amply clear that the assigned lands, can be enjoyed by the assignee, but the ownership remains with the Government intact. Violation of condition is also a ground for resumption of Government lands from the original assignee. Thus, assigned Government lands do not vest with the assignee and transfer of right to enjoy the land would not confer any right to alienate the property or to deal with the property in violation of the terms and conditions stipulated in the Assignment Order and also in the Revenue Standing Orders.

20. The contentions of the learned Senior Counsel for the petitioner Mr.T.Murugamanickam is that the petitioner late Mr.Jayakrishnan



was the Court auction purchaser. We are of the considered opinion that the decree passed in a money suit is not binding on the Government. Execution of such decree behind the back of the Government, cannot be taken as a shelter to deprive the Government from exercising their powers to resume the land under the Revenue Standing Orders. Thus the said contention of the learned Senior Counsel for the petitioner is unacceptable.

21. The order impugned passed by the Sub Collector unambiguously stipulates that in none of the Court proceedings, the Government has been impleaded as a party and both the original assignee late Mr.Kuppan and the subsequent purchasers have failed to implead the Government as a party. More-so, the transactions were not informed to the Government as required under the Revenue Standing Orders nor permission has been obtained to deal with the assigned properties, which all are Panchami lands.

22, The learned Senior Counsel for the petitioner in WP No.28503 of 2015 would submit that the Court Auction Sale occurred



beyond the prohibited period and therefore, the Court Auction Sale became valid. Such a contention will have far reaching consequences. Once it is a Panchami land and assignment so granted for a particular purpose and to protect the livelihood of depressed class people, then such Government lands cannot be dealt with by any other person other than for the purpose for which it was assigned. More-so, the transactions without permission of the Competent Authority in violation of Revenue Standing Orders are untenable.

23. In the present cases, the order impugned states that the resumption of land has been made under the Revenue Standing Orders and the Revenue Standing Orders are unambiguous that the Panchami lands assigned to the depressed class people, cannot be alienated. Thus, we do not find any infirmity in respect of the orders impugned. The claim of the writ petitioner in WP No.22450 of 2017 deserves no merit consideration. Thus the Government has to resume the land and utilise the same for public purposes or to reassign the land for the eligible depressed class people by following the procedures as contemplated under the Revenue Standing



Orders.

WEB COPY

WP Nos.28503 of 2



22450 of 2017

24. With the above observations, both the writ petitions are dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

(S.M.SUBRAMANIAM,J.) (K.RAJASEKAR,J.)

26-02-2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

Svn



To

WEB COPY

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WEB COPY



WP Nos.28503 of 2

22450 of 2017

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And
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26-02-2024