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W.A.No.1392 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.A.No.1392 of 2023

1. The District Collector
Salem District, Salem
2. The District Revenue Officer
Salem District, Salem
3. The Revenue Divisional Officer
Attur, Salem District
4. The Tahsildar
Gangavalli Taluk, Salem District .. Appellants

v.

V.Malliga .. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 20.04.2021 made in W.P.No.11502 of 2011.

For Appellants :: Mr.R.Ramanlal
Additional Advocate General
assisted by Mr.A.Selvendran
Special Government Pleader



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For Respondent :: Mr.T.P.Prabakaran

JUDGMENT

(Judgment of the Court was made by S.S.SUNDAR,J.)

This writ appeal is directed against the order of the learned single Judge dated 20.04.2021 in Writ Petition No.11502 of 2011 filed by the respondent/writ petitioner.

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

(a) The subject matter of appeal is the land comprised in Survey Nos.46/1, 46/5 and 45/2 in Veppanthattai Village, Gangavalli Taluk, Salem District. The respondent in this appeal claims that the property in these survey fields originally belong to Government and these lands were assigned in favour of three individuals during 1989-90. It is the further case of respondent that the original assignees, after completion of twelve years, sought for permission to sell the land and sold the same in favour of the respondent after getting such permission vide letter dated 30.07.2002.

(b) It is not in issue that the sale deeds in favour of the respondent are



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registered as Document Nos.2468 and 2472 of 2009. After the sale deeds, the respondent applied for transfer of patta in favour of the respondent. The said representation of the respondent was forwarded to the Revenue Inspector to conduct an enquiry and accordingly an enquiry was conducted. Despite the recommendation for grant of patta by the Revenue Inspector, it is stated by the respondent that the fourth appellant, namely, the Tahsildar rejected the application filed by the respondent for issuance of patta, on the ground that already proceedings were initiated for cancellation of assignment and that therefore the representation of the respondent for issuance of patta cannot be considered. Aggrieved by the proceedings of the Tahsildar, namely, the fourth appellant dated 26.04.2010, the respondent filed the writ petition in W.P.No.11502 of 2011.

(c) Learned single Judge of this Court, after considering the rival submissions, found that the lands purchased by respondent were assigned in favour of individuals and that the original assignees have executed the sale deeds only after getting permission as required in the order of assignment. Since the property has been sold long after the assignment and the sale deeds are not prohibited as per the terms and conditions of assignment, the learned



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Judge further held that the respondent is entitled to get patta as a person who got the lands transferred from the assignees. The learned Judge further held that the order of Tahsildar-Revenue to decline the request on the basis of enquiry that commenced in 2005 cannot be considered as valid. Considering the admitted facts, the learned single Judge came to the conclusion that the respondent's representation for grant of patta on the basis of valid sale deeds, cannot be rejected merely because some enquiry was pending.

3. The learned Additional Advocate General appearing for the appellants, assailing the impugned order, submitted that the assignment in favour of the original assignees was on the basis of the recommendation of the respondent's husband, who was then the Village Administrative Officer. Since the assignment was in favour of some of the relatives of the respondent's husband, the learned Additional Advocate General submitted that the assignment as such is fraudulent. He submitted that the land meant for eligible beneficiaries, has been assigned in favour of relatives of the Village Administrative Officer and that therefore proceedings were initiated for cancellation of assignment. Since the proceedings initiated for



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cancellation of assignment were pending, the Tahsildar refused to grant patta, as the title of the respondent is subject to the outcome of the enquiry proceedings. The learned Additional Advocate General also submitted that the husband of respondent was the Village Administrative Officer in Veppanthattai Village from 12.12.1989 to 21.10.1990 and that therefore the assignment in favour of close relatives of revenue officials and Village Administrative Officer is prohibited. Referring to the fact that the assignments were made between 05.07.1989 and 20.06.1990, the irregularity and the probable collusion between the then Tahsildar and the respondent's husband was projected by the learned Additional Advocate General. Again referring to the fact that the original assignees have executed power of attorney deed in favour of the close relatives of the respondent, the learned Additional Advocate General submitted that a serious fraud has been committed as evident from the transactions and that therefore, this Court cannot interfere with the order of Tahsildar refusing to grant patta to a person who has purchased the property from her own relatives who got assignments through the respondent's husband.

4. This Court carefully considered the serious allegations on the basis



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of which this appeal is preferred.

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5. The fact that the land was meant for assignment to eligible beneficiaries is not in issue. Even though the husband of respondent is stated to have been in office as Village Administrative Officer from 12.12.1989, one of assignments made prior to this date i.e., 05.07.1989 is admitted. Therefore, every assignment cannot be presumed to be based on the recommendation of the Village Administrative Officer. It is to be noted that the Village Administrative Officer is the person who is duty bound to inform the lands which are meant for assignment. As per the revenue records, the land is classified as 'waste' land. Therefore, it is properly classified as Government poramboke land. However, the land which is classified as 'waste' also can be assigned in favour of eligible persons as per the Revenue Standing Orders. When the assignment is shown to be between 1989 and 1990, the person who is entitled to get assignment, can alienate the property subject to the terms and conditions of assignment. When there is a valid assignment, the appellants can initiate action for cancellation of assignment and resumption of land, if the terms and conditions of



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assignment are violated or the assignment itself is obtained by fraud. If it is true that the assignment was in favour of the relative of Village Administrative Officer, there is a possibility of collusion. However, till such time the assignment is cancelled and the land is resumed by taking physical possession, the person who claims title through the original assignment, cannot be termed as an encroacher or a person who is alien to the land. Since the assignment is not in dispute and the transfer in favour of the respondent is not in dispute, the appellants cannot refuse to grant patta. It is to be noted that the transfer was after obtaining permission. Under the Patta Pass Book Act, the transfer or mutation of record in favour of transferee in interest, where the patta in favour of transferor is admitted, is automatic. This Court, therefore, is unable to interfere with the order of the learned single Judge. However, it is open to the revenue officials to take appropriate action for resumption of land, if it is established that the assignments in favour of the original assignees are vitiated by fraud. If any action is warranted in this regard, the appellants shall proceed instantly without waiting for a direction from any of the higher officials. In other words, the Tahsildar or the Revenue Divisional Officer, who is competent to initiate proceedings may



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take appropriate action, however, by following the procedure in accordance with law. The writ appeal stands disposed of accordingly. Consequently,

C.M.P.No.13554 of 2023 is closed. No costs.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (K.R.S,J.)
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SS

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