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W.A.No.2802 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.A.No.2802 of 2022 and

CMP No.22780 of 2022

V.Selvi

... Appellant

Vs.

1. The Land Commissioner, Land Reforms,
Chennai-5.
2. The District Revenue Officer, Tiruppur.
3. The Assistant Commissioner, Land Reforms, Erode.
4. The Revenue Divisional Officer, Udumalpet Division,
Udumalpet.
5. Rajkumar, Tahsildar (Retired),
61, Aparna Avenue,
Thindal Post, Erode.
6. P.Balamurugan
7. N.Rathinam
8. V.Indhra

... Respondents



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order passed by this court in W.P.No.15622/2016, dated 27.09.2022 and allow the writ appeal.

For Appellant : Mr.V.Chandrasekaran

For Respondents : Mr.V.Manoharan, Addl.Govt.Pleader
for respondents 1 to 4

No appearance for respondents 5, 7 and 7

Given up, as against sixth respondent

JUDGMENT

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This Intra Court appeal has been filed by the writ petitioner, as against the order passed by the learned Single Judge in W.P.No.15622/2016, dated 27.09.2022.

2. The brief facts leading to the filing of the writ appeal is as follows.

The father of appellant, namely Venkatesan was a cultivating tenant in the land measuring to an extent of 1.65 acres comprised in S.No.201/1A, Periyakottai Village, Udumalpet Taluk and he was given assignment patta



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by the government on 01.09.1995, for which he had paid the full value of the land on 19.09.1995. Subsequently, he died on 09.02.2000 and his legal heirs are continuing in possession of the property. Since the patta was stood in the name of the deceased Venkatesan, his legal heirs approached the authorities concerned seeking name transfer of patta and they have also appeared before them on 16.04.2001 for enquiry. However, subsequently, the assignment given to Venkatesan was cancelled on 27.08.2001 and new assignment was given to the sixth respondent on 24.01.2002 and the above fact was came to know the appellant under RTI Act on 30.12.2011. Therefore, the appellant filed appeal before the second respondent, which was dismissed on 20.10.2014 and the review application in RP.No.7/2015 filed before the first respondent was also dismissed on 25.03.2016. Challenging the above order dated 25.03.2016, the appellant filed writ petition before this court and it came to be dismissed on the ground that the appellant did not produce any materials to prove that she is doing agricultural works in the land at Periyakottai Village, whereas, she is residing in Bengaluru and hence she is not eligible for assignment of patta, as per Rule 8(6) of the Tamil Nadu Land Reforms (Disposal of Surplus



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Land) Ruls, 1965. The above order is impugned herein.

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3. The learned counsel for the appellant submitted that, the deceased M.Venkatesan had applied for assignment of land and he had paid the value of the land, as fixed by the government and then only, assignment of surplus land was granted in favour of him under the Tamil Nadu Land Reforms (disposal of surplus land) Rules, 1965, subject to the conditions stipulated under the deed. He also submitted that the deceased as well as the appellant have not violated any conditions, appended to the deed of assignment.

4. The learned counsel for the appellant submitted that, the appellant is in continuous possession and cultivation of the assigned land in favour of her father, where, she and her father planted sapota numbering 250, out of which, now, 43 trees exists and 170 teak trees also exists for the past 26 years in the land. Apart from that, short term crops such as jover, maize, tomato, bengal gram also being planted depends upon the rain fall and season. He also submitted that, as per Rule 9(2) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, only if the conditions of



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assignment were violated, the assignment could be cancelled, whereas, in this case, the original assignee as well as his legal heirs, never violated the conditions of the assignment in the deed. Therefore, the assignment granted in favour of the deceased, shall be transferred to his legal heirs alone, as per condition No.14 of the agreement, and it should not be cancelled, when there is no violation of the conditions of the assignment.

5. The learned counsel also submitted that, the reasons for cancellation of the assignment are,

i) The deceased Venkatesan, before his death, was working as Office Superintendent and this fact was suppressed at the time of getting assignment.

ii) His, wife was working as P.G. Assistant in Visalakshi High School, Udumalpet

iii) The daughter of the deceased/appellant is living in Bengaluru along with her husband, who is doing textile business and the another daughter of the deceased viz., Tmt.Indira is working as Assistant in LIC.

Since the legal heirs of the deceased Venktesan are leading wealth and prosperous life, the assignment granted in his favour was cancelled. But, at the time of granting assignment patta, the deceased was unemployed and he has not suppressed his employment. Further, the deceased had paid the



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entire value of the land for getting assignment and in the conditions appended to assignment, he nominated his wife to transfer patta after his demise. Therefore, the order of cancellation of assignment is liable to be set aside and the same has to be re-transferred to the appellant.

6. The learned Government Pleader appearing for the official respondents submitted that the cancellation order was issued not against the original assignee after his demise, but it was against the transfer of assignment to the legal heirs of the deceased, who are found to be not eligible, as per rule 8(6)(a) of the Tamil Nadu Land Reforms (Disposal of Surplus land) Rules. He further submitted that, the purpose of assignment of land is to give lands to the landless agricultural labourer, so as to enable him/her to have access to the primary of livelihood.

7. He further submitted that the appellant, as well as the 7th and 8th respondent, who are the legal heirs of the deceased M.Venkatesan have not submitted any evidence to qualify themselves to the category of " landless agricultural labourer ", which is defined under Clause (d) of Rule 2.



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Further, during enquiry, the appellant as well as the respondents 7 and 8 appeared before the Special Tahsildar and stated about their working and the same was recorded. However, later, they denied that they have not given such statements and only, they signed in the blank papers and the contents of the same was recorded fraudulently. He further submitted that since the legal heirs of the deceased are economically sound in their status, they are not qualified for transfer of assignment. Hence the Assistant Commissioner, land reforms has cancelled the assignment granted to the deceased Venkatesan and the above order was served to the appellant and the respondents 7 and 8. Further, after perusing the statements of the parties materials on record and also the order passed by the Assistant Commissioner(Land Reforms), Erode, as well as the District Revenue Officer,Tiruppur, the first respondent/ Land Commissioner, Chepauk had confirmed the cancellation of original assignment.

8. The learned Additional Government Pleader also submitted that, as far as the re-assignment dated 24.01.2022 in favour of the 6th respondent is concerned, the appellate authority/ first respondent ordered to remand back



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the matter to the Revenue Division Officer Udumalpet for fresh disposal of land under the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 and to submit report for Rule 13 reservation of land/or re-assigning the lands if area is under agriculture and not being urbanized. Therefore, he seeks for dismissal of the writ appeal, as the order passed by the first respondent is perfectly correct and no need to interfere the same.

9. We heard the learned counsel appearing on both side and we have perused the materials on record.

10. It is the contention of the appellant that, she is not always living with her husband at Bangalore, but she is a permanent resident of the above said Village, in which lands are situated. It is further contended by her that, she has not given any statement on 16.04.2001 before the Special Thasildar, as observed by him, but it was created in a fraudulent manner, according to their convenience, to declare the dis-entitlement of land to the petitioner. Further, it is stated by the appellant that, she is doing agricultural work in the disputed land by planting saplings of Sappota, teak trees and were



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grown in the land and she is not doing any business. Further, before cancellation of assignment stood in the name of deceased Venkatesan, no notice was issued to the legal heirs of the deceased. Therefore, the appellant is entitled for assignment patta in her name, as per the terms and conditions of the assignment.

11. Per contra, it is the contentions of the official respondents that, at the time of assignment of patta, the deceased Venkatesan had been cultivating the land and thereafter, he had not cultivated and only by misrepresenting the facts, the deceased had obtained the order. According to the respondents, the daughter of the deceased, who is the appellant herein also settled outside the village and the legal heirs of the deceased are not cultivating the land till the Department taken the action. Therefore, after enquiry, the Department came to the conclusion that the assignee had violated the terms and conditions of the assignment and hence, cancelled the assignment patta granted in favour of the deceased and for the same, the claim of the appellant seeking transfer of assignment patta was also rejected by the department.



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12. Admittedly, the assignment patta was granted in favour of the deceased Venkatesan on 28.09.1995 only under the category of " landless agricultural labourer". In the deed of assignment, conditions were appended to the deed and at condition Nos.8 and 9 , it is held as follows.

8. Subject to the conditions of this deed, the land will vest absolutely in the assignee only after the value of the land, buildings and trees thereon is paid in full or after the expiry of a period of 20 years from the date of assignment, whichever is later. If any land assigned under these rules is required for any public purpose before the recovery of the last instalment of land value due from the assignee, the land maybe resumed by the govern\ . In such cases, the annual value as fixed under Schedule III of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1979 (Tamil Nadu Act 11 of 1979), for use of the land from the date of assignment, to the date of resumption by Government and the loans and advances, if any, granted for the improvement of the land or on the security of the land will be recoverable from the assignee. Subject to adjustment against such dues, the assignee shall be entitled to refund of the instalments of land value paid by him and reimbursement of the cost of any permanent improvements effected or any structure such as wells, buildings, etc. erected on the land at his own expense for agricultural purposes or for his own residence.

9. The assignee shall engage himself in direct cultivation of the land assigned.

Provided that this condition shall not be applicable to persons referred to in rule (i)(v) and persons who are physically or mentally disabled, woman, including widows and old persons who have no dependents, or family members to do cultivation on their behalf.



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13. According to the department, if there is any violation of the conditions, they have right to cancel the assignment patta. In such circumstances, we are of the view that this court cannot go into the issue with regard to the violation of the terms and conditions of the assignment. Further, it is to be noted that, the re-assignment patta granted to the sixth respondent was already cancelled by the appellate authority. At this juncture, the learned Additional Government Pleader requested to remand the matter back to the Department for considering the matter afresh, and to pass appropriate order on the claim of the appellant in accordance with law.

14. At this juncture, the learned counsel for the appellant submitted that, the appellant alone filed the present appeal and other legal heirs of the deceased Venkatesan have not agitated against the cancellation of assignment order passed by the department.

15. Considering the submission made by the learned Additional Government Pleader and also taking into account the facts and circumstances of the case, we inclined to dispose the writ appeal with the



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following directions.

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i) This matter is directed to be remanded back to the Assistant commissioner, Land Reforms, Erode to conduct a detailed enquiry, after giving notice to the appellant as well as the other legal heirs of the deceased Venkatesan and to file a report, within a period of eight weeks from the date of receipt of a copy of the order and the copy of the report also to be furnished to the appellant.

ii) After receipt of such copy of report from the Assistant Commissioner, Land Reforms, Erode, the respondent/appellant shall submit her explanation before the respondent authorities, within a period of six weeks from the date of receipt of the copy of the report.

iii) After getting such explanation from the appellant, the respondent shall proceed with the enquiry and pass appropriate final order, within eight weeks thereafter.

iv) All the above said exercise, shall be completed within five months from the date of receipt of a copy of this order.

v) The appellant is directed to co-operate for enquiry, failing which, it is open to the authorities concerned to pass appropriate order.



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WEB COPY 16. With the above directions, this writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.) (K.B.J.)

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Internet: Yes/No

Index : Yes/No

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To

1. The Land Commissioner, Land Reforms, Chennai-5.
2. The District Revenue Officer, Tiruppur.
3. The Assistant Commissioner, Land Reforms, Erode.
4. The Revenue Divisional Officer, Udumalpet Division, Udumalpet.



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and
K. KUMARESH BABU, J.

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