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WA.No.2587/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

WA.No.2587/2024

K.Gunasekaran

... Appellant

Vs.

1.The District Collector
Vellore District, Vellore.

2.The Tahsildar
Tahsildar's Office
Katpadi Taluk, Vellore District.

... Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent Act against the order dated 10.08.2023 passed in WP.No.6223/2023.

For Appellant : Mr.S.Sathia Chandran

For Respondents : Mr.T.Ravindran, AAG
assisted by
Mr.A.Selvendran, Spl.GP



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JUDGMENT

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

(1)The present writ appeal is directed against the order of the learned Single Judge dated 10.08.2023 dismissing the writ petition filed by the appellant in WP.No.6223/2023 filed for issuance of a writ of certiorarified mandamus to quash the order dated 30.12.2022 passed by the 2nd respondent/Tahsildar and to direct the respondents to issue patta in favour of the appellant/writ petitioner.

(2)In support of the prayer in the writ petition, the appellant filed an affidavit wherein he has stated as follows:-

(a) The appellant / writ petitioner belongs to Arundadiyar community which is a Scheduled Caste community. From the year 1985, the appellant's family has been in possession and enjoyment of an extent of 4.02 acres of Punja land in S.No.331 in Aayagoundanur Village in Katpadi Taluk, Vellore District. The said land is classified as "Government Poramboke" land. In the year 1989, one Rathina Gounder and his family members tried to interfere with their possession and the appellant along with his mother and elder



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brother filed a suit in OS.No.348/1989 before the District Munsif Court, Gudiyatham, for a permanent injunction as against the said individuals who were trying to disturb their possession. Simultaneously, one Manickam and the said Rathina Gounder filed a civil suit in OS.No.360/1989 on the file of District Munsif Court, Gudiyatham as against the writ petitioner and his brother for declaration of their title in respect of the said lands claiming title by adverse possession and for consequential permanent injunction. Both the suits were tried together and by a common judgment dated 31.01.1994, the suit in OS.No.348/1989 was decreed in favour of the appellant herein and his family members and the suit in OS.No.360/1989 was dismissed in entirety. Though appeals in AS.Nos.108 and 109/1994 were filed before the Sub Court, Vellore, by the said Rathinam, Manickam and others against the appellant and his family members, the appeals were also dismissed by a common judgment and decree dated 27.09.2001 and the decree as against the appellant's rivals has attained finality.



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(b) Though the appellant was issued with B-Memo from 1985, the appellant's family members were not issued with B-Memo after the suit filed by them was decreed in their favour. Since the appellant is continuously in possession of the lands to an extent of 4.02 acres without any let or hindrance from anybody and they have no other lands to eke out their livelihood, a representation was submitted by the appellant before the respondents 1 and 2 earlier and a reply was given to the appellant to the effect that the representation of the appellant could be considered after the civil suit is over. The appellant's brother by name Manidurai died on 12.02.2015 and his mother also passed away on 13.05.2016. Therefore, the appellant submitted another representation on 15.07.2022 for grant of patta [assignment] in his favour in respect of the very same land. Though the appellant belongs to a Scheduled Caste Community and the lands are being earmarked as Depressed Class land, the 2nd respondent rejected the representation submitted by the appellant for assignment of land in his favour vide impugned order dated 30.12.2022 on the ground that the lands in which the appellant is



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in enjoyment and the adjoining lands are included in the Prohibitive Order Book and reserved for the purpose of Karigiri Leprosy Hospital. The above writ petition is therefore, filed challenging the order of the 2nd respondent / Tahsildar, rejecting the representation of the appellant for grant of assignment on the ground that the lands have been earmarked in the Prohibitive Order Book for the purpose of construction of a Leprosy Hospital.

(c) The impugned order was challenged mainly on the ground that the land is specifically earmarked as Depressed Class land and the impugned order is in gross violation of Revenue Standing Orders, particularly, RSO 15[2][2]. Before the learned Single Judge it was contended that the land reserved for Scheduled Caste community need not be entered in the Prohibitive Order Book and hence, the reason for rejection is unsustainable in law.

(d) The judgments and decrees of the Civil Court both in the suit as well as in the appeals, which was between the appellant and a few private persons was also focussed before the learned Single Judge. Taking note of the fact that a portion of the land has been reserved



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for Depressed Class people who are landless and economically poor, the learned Judge justified the order impugned in the writ petition and held that the land which is required for future specific purpose and which is also entered in the Taluk and Village Prohibitive Order Book, cannot be assigned in favour of the appellant/writ petitioner. After finding that the lands which are in the encroachment of private individuals is held to be objectionable, the learned Judge further held that assignment of land and issuance of patta cannot be claimed as a matter of right. The learned Judge, finally held that the appellant cannot occupy Government property and claim patta or assignment free of cost merely because there is a provision enabling the respondents to consider certain encroachment for regularisation and for assignment. Aggrieved by the said order of the learned Single Judge, the present writ appeal is preferred.

(3)The learned counsel appearing for the appellant relying upon RSO 15, submitted that the land which is in the occupation of the appellant, has to be assigned in favour of the appellant. Learned counsel pointed out that



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the land is classified as land reserved as per RSO 15[2][2] for Depressed Classes and therefore, the inclusion of land in the Prohibitive Order Book is a clear violation and hence, the impugned order challenged in the writ petition is liable to be set aside. The learned counsel further submitted that the respondents have admitted in their counter affidavit that the land was originally classified as grazing poramboke as per Resurvey and Re-settlement Register prepared in the year 1910 and that the same was subsequently assessed as 'waste dry land' and reserved for Depressed Class. Since the respondents admit that lands are reserved for Depressed Class, the appellant is entitled to assignment.

(4)Learned counsel contended that the lands which are reserved for special purposes need not be entered in the Prohibitive Order Book as such lands are meant to be assigned in favour of Depressed Class. He further contended that such a land cannot be entered in the Prohibitive Order Book so as to allot the said land for construction of a Leprosy Hospital. Learned counsel submitted that the appellant who belongs to Scheduled Caste community, is fully eligible for assignment of land, especially when he is in peaceful possession and enjoyment of the same for more than 38



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years. It is also contended by the learned counsel that the respondents as well as the learned Single Judge of this Court while dismissing the writ petition, failed to consider the judgments and decrees in the two suits in OS.Nos.348 and 360/1989 on the file of the District Munsif Court, Gudiyatham.

(5) This Court is unable to countenance any of the submissions of the learned counsel for the appellant.

(6) From the counter affidavit filed by the respondents in the writ petition, it is seen that the lands in S.No.331 in respect of which the appellant seeks assignment and the adjoining survey fields were originally classified as grazing ground poramboke as per Re-survey and Re-settlement Register, 1910. Even though the lands were subsequently reclassified as assessed waste dry lands, the details of such reclassification is not given. A land which is classified as grazing ground poramboke is a communal land and vests with the Government. Not even a claim for ryotwari patta can be entertained. In the counter affidavit, it is stated that some portion of the fields were reserved for Depressed Class people for assignment based on their status and the land which is originally classified as grazing ground



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poramboke as per Resettlement Register prepared in 1910, cannot be reserved for assignment, as grazing lands cannot be treated as the absolute property of Government at their disposal. Under the Doctrine of Public Trust, the Government is expected to keep such communal lands for the benefit of community as a whole.

(7) It is also to be noted that the respondents in their counter affidavit, has categorically stated that as per G.O.Ms.No.3076, Health Department dated 30.10.1952, the property in S.No.331, in Aayagoundanur Village, Katpadi Taluk, Vellore District, was entered in the Taluk and Village Prohibitive Order Book for future requirement particularly for a specific public purpose. When the lands were entered in the Taluk and Village Prohibitive Order Book, the same cannot be assigned in favour of any individual. It is also to be noted that the appellant is aged about 80 years and his two sons and daughter are living separately in Chennai and in the nearby places. It is stated in the counter affidavit that the appellant shifted to a different village known as 'Adukkamparai' Village in Vellore Taluk. It is further stated that by virtue of the judgments and decrees in the two suits in OS.Nos.348 and 360 of 1989, the appellant is in



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possession of land through somebody who is in physical possession. The Revenue Standing Orders are nothing but executive instructions reflecting the policy of the Government. Merely because the appellant belongs to a Depressed Class, he is not entitled to assignment of land. The appellant is not an agriculturist or a farmer. Merely because he is in possession of a Government poramboke land, that does not confer any right in favour of the appellant to seek assignment. When a classification of the land as grazing ground poramboke as per the old survey records is admitted, not even the Government can deal with the property in view of the well established principles.

(8)The Government has entered the land in the Prohibitive Order Book so that this will not be assigned to anyone and it is meant to be used for public purpose. When the appellant has no vested right and he is just an encroacher, he cannot, as a matter of right, expect a direction from this Court to assign the land in his favour. Even in the suit filed by the appellant before the Civil Court, a revenue official was examined whose evidence is recorded in the judgment and decree of the District Munsif Court, Gudiyatham in OS.Nos.348 and 360 of 1989. From the common



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judgment, it is seen that the appellant has specifically pleaded that the land was reserved for Depressed Class people and it was classified as Poramboke [Anadeenam]. Except the fact that the appellant and his family were doing cultivation and issuance of B-Memo, the appellant contended that the property cannot be assigned in favour of people belong to other class. The appellant has not referred to any document to show their possession for grant of Ryotwari patta. It is contended before the Civil Court that the appellant who is in possession, was at liberty to get patta whereas the defendants who are very rich, cannot seek assignment and therefore, the suit was held in favour of the appellant and his family members.

(9)The Civil Court came to the conclusion that the land was reserved for Depressed Class people without any document being marked. It is seen from the judgment that both sides before the Civil Court have produced B-Memo issued by the Revenue Officials. The rival parties though filed several documents, their claim in the said suit was rejected mainly because the land has been classified as Depressed Class land. The appellant cannot take advantage of the suit filed by him as against the



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third party as none of the respondents herein are parties to the civil suits. Even before the Civil Court, the appellant and his family members categorically admit the character of the suit property as the property of the Government. Merely because the appellant can file an application for assignment in view of RSO 15, that does not mean that the respondents are obliged to grant patta recognising the enjoyment of the appellant for a considerable period. When the land itself was included in the Prohibitive Order Book as admitted by both sides, it can be taken that no assignment is permissible and that the land is reserved for a public purpose. The appellant produced revenue records namely Adangal for Fasli 1432 [2022] to show that the land has been classified as Punja Anadeenam. The classification of land as Anadeenam also indicate that the land is not in the exclusive possession of anyone. Though the land is shown under cultivation with reference to a portion of land, i.e., 20 ares [about 49 cents], there is no indication that the land is under cultivation by the appellant or his family members. When the appellant seeks assignment in respect of an extent of 4.02 acres, the extent of cultivation gives a clear indication that the appellant has approached this Court without sufficient



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records to show his physical possession and enjoyment of the land in question. The appellant who has encroached the public land, cannot be shown any indulgence merely because he belongs to Depressed Class.

(10)As pointed out earlier, the Revenue Standing Orders are just administrative instructions and that does not confer any right. When the Government has taken a policy decision about 70 years back, not to assign the land and to include the land in Prohibitive Order Book, the appellant who has encroached the land in the year 1985, cannot claim assignment merely because he belong to Depressed Class. The entries in revenue records is not supported by proceedings of competent authorities.

(11)There is no scope for assignment if the land is originally classified as Grazing land. Even though the land is classified as Government Poramboke, the land classified as grazing land shows that the land is a communal land and the Government is under obligation to keep the land for grazing animals. Even otherwise, RSO 15 only enables the Tahsildar to consider the land for assignment if the enjoyment of such persons seeking assignment, is objectionable and such assignment should also satisfy other conditions and reservations in the Revenue Standing Orders.



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(12) For all the aforementioned reasons, this Court finds no merit in the writ appeal. Accordingly, it is **dismissed**. Though this Court was inclined to impose exemplary cost for want of *bona fides* and suppression of material facts, this Court, taking note of the age of the appellant, is inclined to dismiss the writ appeal without cost. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [K.R.S., J.]
05.09.2024

AP

Index : Yes / No

Internet : Yes

Neutral Citation : Yes / No

To

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Vellore District, Vellore.

2. The Tahsildar
Tahsildar's Office
Katpadi Taluk, Vellore District.

S.S. SUNDAR, J.,
and
K. RAJASEKAR, J.,



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