



W.A(MD).No.497 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.03.2024

PRONOUNCED ON : 27 .03.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD).No.497 of 2024
and CMP(MD).Nos.4013 & 4035 of 2024

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1.N.Paramasivam

2.M.Rajakumar

3.M.Ramkumar

4.S.R.Kumar

5.S.R.Sekar

6.S.R.Kishore

7.Manikandarajan

8.Manikandakumar

9.G.Rajesh

...Appellants/Petitioners

Vs



W.A(MD).No.497 of 2024

1.The State of Tamil Nadu
Represented by the Additional Chief Secretary to Government
Revenue and Disaster Manager Department
Fort St.George
Chennai 600 009

2.The Commissioner of Land Administration
Chepauk, Chennai 600 005

3.The District Collector
Nagercoil
Kanyakumari District

4.The District Revenue Officer
Nagercoil
Kanyakumari District

5.The Thasildar
Thovalai Taluk
Boothapandi & Post
Kanyakumari District

6.The Revenue Inspector
Azhagiapandipuram Post
Kanyakumari District

....Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to allow the writ appeal setting aside the order passed by the learned Judge in W.P(MD).No. 9150 of 2023 dated 20.12.2023 and render justice.

For Appellants : Mr.V.Selvaraj
For M/s.T.Arul

For Respondents : Mr.N.Satheeshkumar
Additional Government Pleader



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J U D G M E N T

(Made by **R.VIJAYAKUMAR,J.**)

The writ petitioners are the appellants herein. The petitioners have filed W.P(MD).No.9150 of 2023 challenging the proceedings of the Government in G.O.Ms.No.113 Revenue and Disaster Management Department, Land Disposal Wing dated 08.03.2023 wherein the request of the writ petitioners for grant of patta was rejected and an order of resumption was passed.

2.The writ Court after considering the submissions made on either side, had dismissed the writ petition. Challenging the same, the present writ appeal has been filed.

(A)Factual Background:

3.The forefathers of the writ petitioners herein was holding Kuthagapattam for about 100 acres of land comprised in Survey Nos.426 to 431 of Arumainallur Village, Thovalai Taluk, Kanyakumari District under the erstwhile Travancore Cochin State. After reorganization of the State in the year 1956, Kanyakumari District became part of Tamil Nadu. The ryotwari settlement was introduced in Kanyakumari District from 01.07.1971 and as a result of the same, the Board Standing Orders were extended to the transferred territory.



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4. In view of the extension of Board Standing Orders to Kanyakumari District, the disposal of the Government lands started to be governed by the provisions of the Board Standing Orders and by way of G.O.Ms.No.3369 Revenue Department dated 13.12.1972, rules relating to Kuthagapattam were repealed. Thereafter, the assignment of Government lands are governed by the Board Standing Orders.

5. Under G.O.Ms.No.947 Revenue Department dated 02.03.1973, the Government had decided to assign the lands which were the subject matter of Kuthagapattam as per the provisions of the Board Standing Orders, but subject to certain special modifications considering the special features of Kanyakumari District which formed part of the erstwhile Travancore Cochin Government.

6. As per Government Order in G.O.Ms.No.947 Revenue Department dated 02.03.1973, the Government decided to assign lands to an extent of 5 acres of dry and 3 acres of wet land free of value. In case, the possession exceeded its extent, the same would be assigned on payment of market value subject to certain conditions. However, the assignment cannot exceed the limit as per Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961.



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7.The Government had decided to resume the lands for which the assignment orders could not be issued. The forefathers of the petitioners herein had filed W.P(MD).No.5301 of 1992 seeking assignment orders on the basis of G.O.Ms.No.947. This Court had directed the authorities to consider the representation. Based upon the orders of this Court, G.O.Ms.No.377 Revenue Department was passed on 13.05.1993 rejecting the request for assignment on the ground that the petitioners are affluent and they are rich pattadars. The Department further observed that the lands for which assignment is sought for, are required by the Government for the purpose of construction of Bio-Diversity and Agricultural Extension Centre. The Government further observed that the possession of the petitioners are considered to be an encroachment under Tamil Nadu Lands Encroachment Act, 1905.

8.Without challenging the above said order, the petitioners herein had filed W.P(MD).No.11495 of 1998 seeking a mandamus as against the revenue official forbearing them from interfering with the petitioners' possession and enjoyment of the above said survey numbers. This Court by an order dated 15.11.2001 dismissed the said writ petition with the following findings:

(a)The petitioners are not eligible to get assignment
of the said lands.



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(b)The petitioners have been issued to B memos and so long as their occupation continues to be unauthorized, the Government has to proceed to evict them after issuing Section 6 notice.

(c)Since Kuthagaipattam rules of the erstwhile Cochin Travancore Government have been repealed, the Government is entitled to resume the lands without any separate order.

(d)The petitioners are not eligible for assignment since admittedly, they are having more than 50 acres of patta lands and they are very rich landlords.

9.Challenging the above said orders of the learned Single Judge, the petitioners herein had filed W.A.No.1349 of 2002. This Court by an order dated 10.11.2009 had dismissed the said writ appeal with an observation that if the appellants herein have got any grievance as against the order passed in G.O.Ms.No.377 dated 13.05.1993, they should work out their remedies in a manner known to law.

10.Taking a cue from the said order of the Division Bench, the petitioners had filed W.P.No.26808 of 2009 seeking to quash



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G.O.Ms.No.377 Revenue Department dated 13.05.1993. This Court by an order dated 21.02.2022, though arrived at a finding that the petitioners cannot be termed as encroachers, yet granted liberty to the State to resume the lands in terms of G.O.Ms.No.947 dated 02.03.1973 for the purpose of construction of Bio-Diversity and Agricultural Extension Centre. This order was not challenged by the petitioners and it has reached finality.

11.The petitioners without challenging the order of the learned Single Judge in W.P(MD).No.26808 of 2009, had filed W.P(MD).No.8190 of 2022 seeking a mandamus directing the revenue authorities not to interfere with the possession of the petitioners in the above said survey numbers. This writ petition came to be disposed of by the learned Single Judge of this Court with a direction to the authorities not to disturb the possession of the petitioners before passing of the final orders as directed by this Court in WP(MD).No. 26808 of 2009.

12.The Government thereafter had passed the impugned G.O.(Ms).No.113, Revenue and Disaster Management Department Land Disposal Wing, dated 8.03.2023 rejecting the request of the petitioners for patta and for resumption of the said lands. This Government order is challenged in WP(MD).No.9150 of 2023. The writ Court after hearing either parties, had dismissed the writ petition with an observation that the



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petitioners do not have any iota of title over the lands in question and took a sympathetic view and granted five months time to vacate and handover the possession. This order is under challenge in the present writ appeal.

(B).Contentions of the learned counsel appearing for the writ petitioners.

13.The primary contention of the learned counsel for the writ petitioners is that the Kuthagapattam is a land tenure granting lease for an unlimited period and therefore, the petitioners cannot be branded as encroachers at any point of time. As per G.O.Ms.No.947 dated 02.03.1973, separate orders have to be issued for resumption of lands under Kuthagapattam only when the Government arrives at a conclusion that they cannot be assigned to the occupier.

14.The learned counsel for the petitioners had further contended that 100 acres of lands are still under Kuthagapattam and the Government has specifically targeted the writ petitioners and has issued an order of resumption under impugned Government Order which is discriminatory in nature.



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15.The learned Single Judge of this Court in WP(MD).No.26808 of 2009 had arrived at a specific finding that the petitioners are not encroachers. Quite contrary to the said finding, the present impugned Government Order has been passed, for resumption of lands from the writ petitioners treating them as encroachers. The learned counsel had further contended that as per G.O.Ms.No.947, Revenue Department, dated 02.03.1973 certain extent of Kuthagapattam land could be assigned without cost and if the person is in possession of excess extent, the excess extent could be assigned on payment of market value when substantial development has been made by the person in possession.

16.As far as the present case is concerned, the petitioners have made substantial development and therefore, they are entitled to an order of assignment as per the said Government Order. Without considering the same, the present impugned Government Order has been passed. Hence, he prayed for allowing the writ appeal.

17.We have considered the submissions made on the side of the learned counsel appearing for the appellants and perused the material records.



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(C) Analysis:

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18.The trajectory of events that have been captured in the previous paragraphs would clearly reveal that the petitioners are in possession of more than 100 acres of land under the guise of Kuthagapattam from the erstwhile Travancore Cochin Government. The request of the petitioners for grant of assignment under G.O.Ms.No.947 dated 02.03.1973 was originally rejected under G.O.Ms.No.377 dated 13.05.1993. This Court by an order dated 15.11.2001 in W.P(MD).No.11495 of 1998 had arrived at a specific finding that the petitioners and their forefathers are not eligible for assignment since, admittedly, they own more than 50 acres of patta lands and they are very rich landlords. This Court had further found that their occupation is unauthorized and they can be evicted invoking Section 6 of the Tamil Nadu Land Encroachments Act. This order was challenged in W.A.No.1349 of 2002 and the same has also been dismissed on 10.11.2009, granting liberty to challenge G.O.Ms.No.377 Revenue Department dated 13.05.1993.

19.When the petitioners had challenged G.O.Ms.No.377, Revenue Department dated 13.05.1993, they ought to have established the fact that they are eligible for getting assignment of Government lands. However, there are no averments in the writ affidavit contradicting the findings in G.O.Ms.No.377, Revenue Department, dated 13.05.1993 that the petitioners



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are rich landlords and they are income tax assesses. Even in paragraph No.5 of the present writ affidavit, the petitioners had admitted that they are in possession of 100 acres of land and they have not disputed that they are income tax assesses and they are rich landlords.

20.A perusal of G.O.Ms.No.947 Revenue Department dated 02.03.1973 clearly indicate that after the merger of Kanyakumari District with the State of Tamil Nadu, the special rules relating to Kuthagapattam that were followed in erstwhile Travancore Cochin Government have been repealed and the Board Standing Orders were introduced to the Kanyakumari District under G.O.Ms.No.3369, Revenue dated 13.12.1972. Therefore, it is clear that from the said date onwards the order of assignment could be granted only as per the eligibility criteria fixed under the Board Standing Orders. Admittedly, the petitioners are rich landlords and therefore, they are not eligible for any assignment of lands.

21.The said Government Order further reveals that an assignment could not exceed the land ceiling as fixed under Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961. Therefore, viewed from any angle, the petitioners would not be entitled to an order of assignment for 100 acres when they are affluent landlords having more than 50 acres of patta lands and they are income tax assesses.



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22.In G.O.Ms.No.377, Revenue Department dated 13.05.1993, the request of the petitioners for assignment has been rejected also on the ground that the said land is required for construction of Bio-Diversity and Agricultural Extension Centre. This fact is also not disputed by the writ petitioners in their affidavit in the present writ petition. Therefore, it is clear that the land is required for public purposes by the Government.

23.The order impugned in the writ petition further reveals that the request of the petitioners for patta has been rejected in the judgement of District Munsif Court, Nagercoil in O.S.No.25 of 1994 dated 07.03.1996 and has directed that they should be evicted in accordance with law. Another suit in O.S.No.8 of 1992 filed by the petitioners before the Sub Court, Nagercoil has been dismissed on 25.06.1996 and the appeal preferred by the writ petitioners before the District Court Nagercoil in A.S.No.5 of 1997 has been dismissed on 30.06.1998.

24.Therefore, it is clear that the petitioners have been shopping from one forum to another forum to cling on to 100 acres of land without any title or any other legal rights to hold on to the same. Belatedly the Government had issued the present impugned Government Order in G.O.Ms.No.113, Revenue Department, dated 08.03.2023 rejecting the request of the petitioners for patta and for resumption of the lands.



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25.The writ Court had analyzed all these factual and legal aspects and had dismissed the writ petition granting five months time to the petitioners to vacate and hand over the property to the Government. We do not find any illegality or infirmity in the order of the writ Court.

26.In view of the above said deliberations, there are no merits in the writ appeal and the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K.J.,)

(R.V.J.,)

27 .03.2024

Index :yes

Internet :yes

NCC : Yes/No

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To



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State of Tamil Nadu
Revenue and Disaster Manager Department
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Chennai 600 009

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Chepauk, Chennai 600 005

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**D.KRISHNAKUMAR, J.
AND
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Pre-delivery Judgment made in
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