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W.P.(MD)NO.13492 OF 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2024

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.13492 of 2015 AND
M.P.(MD)Nos.1 & 2 of 2015

V.Selvam

... Petitioner

Vs.

1. The District Revenue Officer,
Virudhunagar District,
Virudhunagar.
2. The Revenue Divisional Officer,
Sivakasi,
Virudhunagar District.
3. The Tahsildar,
Sattur,
Virudhunagar District.
4. The Village Administrative Officer,
Thulukkankurichi Village,
Sattur Taluk,
Virudhunagar District.
5. P.Subburaj (died)
6. The Tahsildar,
Vembakottai, Vembakottai Taluk,
Virudhunagar District.
(R-6 is impleaded vide order dated 10.07.2023
in W.M.P.(MD)No.2850 of 2020)



7. S.Muthumari

8. S.Muthuselvi

9. Minor S.Kasthuri

(R-7 to R-9 are impleaded vide order dated 10.08.2023
in W.M.P.(MD)No.15557 of 2023)

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings dated 11.07.2013 in Ni.Mu.A1/3397/2013 on the file of the second respondent as confirmed by the proceedings dated 05.09.2014 in Ni.Mu.P2/33600/2013 on the file of the first respondent and quash the same and further directing the sixth respondent to mutate the revenue records including issuance of patta in the name of the petitioner in respect of the property comprised in survey No.208/1 measuring an extent of 2 acres and 62 cents at Thulukkankurichi Village, Sattur Taluk, Virudhunagar District.

(Prayer is amended vide order dated 05.02.2024 in W.M.P.(MD)No.2849 of 2020)

For Petitioner : Mr.M.P.Senthil

For R-1 to R-4&R-6: Ms.D.Farjana Goushia,
Special Government Pleader.

For R-7 to R-9 : Ms.P.Jessi Jeeva Priya

For R-5 : No appearance.

* * *

**ORDER**

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The petitioner is a soldier served in Indian Army Force. He has purchased the property in survey No.208/1 to an extent of 2 acres 62 cents at Thulukkankurichi Village, Sattur Taluk, Virudhunagar District from one Nataraja Pillai. This land was assigned to the petitioner's vendor Nataraja Pillai under the Madras Land Reforms(Fixation of Ceiling on Land) Act, 1961 on 05.09.1969 and he has also sold the land by way of registered sale deed in favour of the petitioner on 06.04.2011. After the purchase, the petitioner has approached the Tahsildar, Sivakasi for mutation of revenue records and at that time, on the objection raised by the fourth respondent herein, the Revenue Divisional Officer has *suo motu* taken up the matter and held that the assignment made in favour of Nataraja Pillai in the year 1969 itself is wrong and therefore, he has cancelled the order of assignment. As against the same, the present writ petition came to be filed.

2. The learned counsel appearing for the petitioner submits that though Nataraja Pillai was serving as a Pune in the Panchayat office, he was cultivating a piece of land in survey No.208/1 for several years and he was recognised as a cultivating tenant by the Government by way of



lease deed on 11.07.1969. Only thereafter, the land was assigned to him by way of order of assignment on 05.09.1969. According to the learned counsel, there is no suppression of facts in the order of assignment and even the assignment order has been made only as Sri.S.T.Nataraja Pillai, S/o.Sri.Deivanayagam Pillai, Peon, Panchayat Union Office, Vembakottai at Sivakasi and therefore, it cannot be stated that the assignment has been made wrongly in the year 1969. He further submits that the fifth respondent's father has raised certain issues as against the petitioner in the year 1988 and filed a civil suit before the District Munsif Court, Sattur in O.S.No.687 of 1989 for the relief of injunction and the same was dismissed by the trial Court by the judgment and decree dated 22.01.1991 and the fifth respondent has not raised any objection as against the petitioner. However, on the objections raised by the fifth respondent's father, the Revenue Divisional Officer has *suo motu* taken up the papers from the file of the Tahsildar and has passed the impugned order.

3. The learned counsel has also relied on the following orders :-

(i) ***T.R.Dinakaran V. The Revenue Divisional Officer (2012***

(3) CTC 823



(ii) ***K.S.Jarina V. Commissioner of Land Administration***

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The learned counsel also submits that the Revenue Divisional Officer is the appellate authority and he is not having the right to *suo motu* take up the matter from the Tahsildar when the issue is pending with the Tahsildar.

4. The learned Special Government Pleader submits that the order of assignment made in favour of Nataraja Pillai itself is wrong. He has no right over the land under the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 and he is not having any occupation and enjoyment over the land and that therefore, there is no reason to interfere with the impugned order. The order passed by the Revenue Divisional Officer was also confirmed by the District Revenue Officer and there is no reason to interfere with the order passed by the revenue officials. She further submits that the fifth respondent has executed a sale deed in favour of one Ponraj and patta has also been issued in favour of the said Ponraj. Since the Tahsildar has not taken any decision, the petitioner has filed a writ petition before this Court in W.P.(MD)No.15644 of 2012. A direction was issued to the Tahsildar to take decision on the petitioner's application for transfer of patta. However, the issue has been taken by the



Revenue Divisional Officer and an order has been passed. The Tahsildar has submitted a report that the Revenue Divisional Officer has itself taken the decision under the Land Reforms Act that the assignment itself was issued in favour of the Government servant. Therefore, the Revenue Divisional Officer has taken cognizance of the issue and decide the issue on merits.

5. The learned counsel appearing for the respondents 7 to 9 submits that the petitioner's vendor Nataraja Pillai has filed civil suit for declaration and injunction as against the fifth respondent before the District Munsif, Sattur in O.S.No.14 of 2010. While the civil suit was pending, the land has been transferred in the name of the petitioner who is none other than the grandson of Nataraja Pillai. This sale is also liable to be set aside on the ground of *lis pendens* as against the judgment and decree passed in O.S.No.14 of 2010. The fifth respondent has already filed an appeal before the Sub Court, Sivakasi and the same is pending in A.S.No.31 of 2021. As per the provisions under Section 52 of the Transfer of Property Act, where any suit or proceedings is pending with reference to a property, which is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings so as to affect the rights of any other party and



therefore, there is no ground to interfere at this stage.

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6. This Court considered the rival submission and went through the materials on record.

7. The petitioner has purchased the property from Nataraja Pillai in survey No.208/1 and has approached the revenue officials for mutation of revenue records. While the application is pending with the Tahsildar, the Revenue Divisional Officer has *suo motu* taken up the issue and has declared that the order of assignment made in favour of the petitioner's vendor Nataraja Pillai is wrong and Nataraja Pillai was serving as a Government official at that relevant point of time. Therefore, according to the Revenue Divisional Officer, a person who was serving as Government servant at that relevant point of time is not eligible for the order of assignment and cancelled the order of assignment which was made in favour of Nataraja Pillai without issuing notice to Nataraja Pillai. The said order was also confirmed by the District Revenue Officer. As against those orders, the present writ petition came to be filed.

8. The learned counsel appearing for the petitioner by providing the lease agreement endowed by the Government in favour of the petitioner's vendor Nataraja Pillai on 11.07.1969, submits that the assignee Nataraja Pillai was the cultivating tenant of the said land and



therefore he was recognised as cultivating tenant and also issued with lease deed dated 11.07.1969. Since he was cultivating the land, the land was also assigned to Nataraja Pillai. There is no suppression of his possession at that relevant point of time. The order of assignment itself discloses that the assignment has been made in favour of Nataraja Pillai only as a cultivating tenant by recording as he is a Peon of Panchayat Union Office at Vembakottai. Without considering the same, the Revenue Divisional Officer has passed the order cancelling the assignment after a period of thirty years and the same was mechanically approved by the District Revenue Officer. The petitioner has filed a civil suit in O.S.No.14 of 2010 on the file of the District Munsif Court, Sattur as against the fifth respondent and obtained the order of declaration and injunction in his favour. Therefore, the impugned order is set aside and remitted back to the file of the second respondent to consider the issue by providing an opportunity of hearing to all the parties concerned by considering the lease deed executed in favour of the petitioner's vendor Nataraja Pillai on 11.07.1969 on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order. The Sub Court, Sivakasi is also directed to dispose of the appeal which is pending on its file in A.S.No.31 of 2021 as expeditiously as



possible, preferably, within a period of three months from the date of receipt of copy of this order. This writ petition stands allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

05.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

To:

1. The District Revenue Officer,
Virudhunagar District,
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2. The Revenue Divisional Officer,
Sivakasi,
Virudhunagar District.
3. The Tahsildar,
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B.PUGALENDHI,J.

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