

A.Kumarasamy Vs. State of Tamilnadu

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Court : Chennai

Decided On : Jul-08-2013

Judge : T.RAJA

Appellant : A.Kumarasamy

Respondent : State of Tamilnadu

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

08. 07.2013 CORAM THE HONOURABLE MR.JUSTICE T.RAJA W.P.No.21357 of 2011 A.Kumarasamy .. Petitioner -vs- 1. State of Tamilnadu rep.by its Secretary Department of Revenue Fort St.George Chennai 600 009 2. Special Commissioner and Commissioner for Land Administration Ezhilagam Chepauk Madras 600 005 3. The District Revenue Officer Chingleput 4. The Tahsildar Chingelput .. Respondents Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the third respondent culminating with its order bearing Rc.No.135378/87 B1 dated 26.8.2011 and to quash the same and to direct the respondents to assign the extent of 5 acres comprised in S.No.183/1, Thalambur Village, Kancheepuram District in favour of the petitioner herein. For Petitioner :: Mr.M.Vaidyanathan For Respondents :: Mr.N.Srinivasan Additional Government Pleader

ORDER

This writ petition was filed challenging the impugned order passed by the third respondent, the District Revenue Officer, Kancheepuram in his proceedings dated 26.8.2011, wherein the District Revenue Officer, Kancheepuram held that the initial assignment of land to an extent of 5.00 acres in S.No.183/1 situate in Thalambur Village given to the petitioner was illegal and without authority, although the G.O.Ms.No.1135, Revenue Department dated 17.3.62 imposed a ban on assignment of the land within 20 miles radius, the impugned land is classified as Anadheenam land, which is not eligible for assignment under R.S.O.15 and that the land in question is lying waste without cultivation.

2. Mr.M.Vaidyanathan, learned counsel for the petitioner, while challenging the correctness of the reasoning assigned in the impugned order, stated that the petitioner was assigned 5.00 acres of assessed waste dry land in S.No.183/1 on 9.5.67 in Thalambur village, Chengalpattu Taluk by the fourth respondent-Tahsildar, Chengalpattu on payment of cost of the land at Rs.100/-. Immediately, after the assignment, the petitioner reclaimed that land by cultivating the same. Thereafter, he was also issued with the patta by the revenue authorities and the patta number is 373 for the land in question covered in S.No.183/1. After seven years, the District Revenue Officer issued a show cause notice on 18.11.74 to show cause as to why the land assigned to the petitioner should not be cancelled for three reasons, namely, (a) that the land was kept as momool waste, hence, the conditions of assignment were violated; (b) that the petitioner was not likely to engage in personal cultivation of the land assigned and (c) that the assignment was not bona fide and secured free of land by abuse of his official position. Repudiating the above allegations, the petitioner submitted his detailed explanation stating that the petitioner, immediately after the assignment, started cultivating the same and the order of assignment of the land in question was issued on payment of cost without there being any abuse of the official position. However, it was pleaded that the third respondent-District Revenue Officer, Kancheepuram came to the conclusion that the allegations found in the show cause notice were proved. Aggrieved by the order passed by the third respondent, the petitioner filed an appeal to the second respondent, the Special Commissioner and Commissioner for Land Administration. However, the second respondent, by proceedings dated 4.9.84, set aside the order of the third respondent on merits

and held that the order of cancellation was incorrect. On that basis, a further direction was given to the third respondent to assign the land afresh to the petitioner on collection of market value as per the rules and also to send the assignment proposal to the Government through the Commissioner of Land Administration. However, when the third respondent has not restored and regularised the assignment order, by accepting the market value of the land, the petitioner filed W.P.No.7796 of 1987 for restoration of the assignment of land. This Court, by order dated 8.10.87, directed the respondents to supply a copy of the order of cancellation of the assignment passed by the District Revenue Officer, on the basis of the order passed by the Special Commissioner and Commissioner of Land Administration in D.Dis.E2/RP3/81 dated 4.9.84, within six weeks from the date of receipt of the High Court's order. In the light of the order passed by this Court in the said writ petition, the District Revenue Officer, in his proceedings dated 17.11.87, again cancelled the original assignment order dated 9.5.67. Aggrieved by the same, the petitioner again came to this Court by filing W.P.No.473 of 1988 challenging the order dated 17.11.87 passed by the District Revenue Officer.

3. The respondents filed a counter affidavit stating that proposals were already submitted to the Government through the Principal Secretary and Commissioner of Land Administration on 3.8.2009 and orders of the Government in this connection were awaited. In view of the said statement, this Court, by order dated 4.9.2000, disposed off the writ petition directing the District Revenue Officer to proceed further to assign the land afresh in favour of the petitioner as directed by the Commissioner at an early date with a further direction to maintain status quo in respect of the possession of the property. In spite of a specific positive direction given to the District Revenue Officer, once again the request of the petitioner for restoration of the assignment order was rejected with a mala fide intention and in total contravention of the order passed by this Court on 4.9.2000. It was further stated that the impugned order passed by the third respondent wrongly stated that the Government had imposed a ban of assignment of land within 20 miles radius in which the Thalambur village is situated, therefore, in view of the ban order imposed in G.O.Ms.No.1135, Revenue dated 17.3.62, the assignment of the land cannot be considered. It was also further pleaded that the impugned order is not

only arbitrary and unreasonable on facts, but also running contrary to the order passed by the second respondent-Special Commissioner and Commissioner of Land Administration dated 4.9.84 in D.Dis.No.E2/RP3/81, which clearly says that the previous cancellation of the assignment was incorrect, and also against the order passed by this Court in W.P.No.473 of 1988 dated 4.9.2000, wherein this Court had specifically given a positive direction directing the District Revenue Officer to proceed further to assign the land afresh in favour of the petitioner as directed by the Commissioner at an early date. In view of the order passed by this Court read with one another order passed by the second respondent, the third respondent has no authority to reject the request of the petitioner for assignment. Having made a statement before this Court in W.P.No.473 of 1988 that the petitioner was entitled for assignment of the land on payment of market value through the Government Advocate, they are estopped from refusing the assignment, especially when the respondents have fixed the market value of the land for the purpose of assigning it to the petitioner. By drawing the attention of this Court to a letter dated 8.1.2007 written by the District Collector, Kancheepuram to the second respondent-Special Commissioner and Commissioner of Land Administration, the learned counsel stated that the District Collector, Kancheepuram had already fixed the market price of the land at Rs.9,705/- per cent in order to assign the land. However, strangely, after seeking information regarding the valuation of the land to comply with the order dated 4.9.2000 passed by this Court in W.P.No.473 of 1988, for the simple reason that the petitioner had filed Contempt Petition No.665 of 2000 to comply with the order, with a mala fide intention, the third respondent rejected the request for assignment of the land by passing the impugned order. Therefore, the denial of the petitioner's request, he pleaded, is not only violative of the order passed by the second respondent, but also the order passed by this Court in W.P.No.473 of 1988 dated 4.9.2000.

4. Finally, adding further, it was stated that in any event the impugned order refusing to assign the land in favour of the petitioner on the ground that the land in question is Anadheenam land and the same is also hit by the ban order issued in G.O.Ms.No.1135 dated 17.3.62, which says that no Anadheenam land situate in Thalambur village shall be assigned to any assignee, is also violative of Article 14

of the Constitution of India, for the reason that both the first and second respondents had issued several assignment orders assigning similar Anadheenam lands situate in the same Thalambur village by various Government Orders, namely, in G.O.Ms.No.2180 dated 13.12.89 assigning 10.00 acres of land in S.No.84/1C and 1D in favour of one Mr.Selladurai. Similarly, by another G.O.Ms.No.396 dated 23.4.96, 5.00 acres of land in S.No.147/1 from the same Thalambur village had been assigned in favour of Mr.K.G.M.Keerthi Raj. One another G.O.Ms.No.56 dated 7.2.2001 for restoring the assignment cancelled in S.No.84/1A and 1B in the same village has been ordered in favour of two persons viz., Mr.Arumuga Rajan and Mr.Arivazhagan assigning each one of them with 5.00 acres of land. One another proceedings issued by the District Collector, Kancheepuram dated 21.8.2010 restoring the assignment cancelled in S.No.83/4B further shows that 5.00 acres of Anadheenam land in the same village Thalambur has been assigned in favour of Tmt.P.Komala Devi. In view of the above orders, the learned counsel for the petitioner emphatically submitted that the impugned order, being violative of the order passed by the second respondent, is liable to be set aside.

5. A detailed counter affidavit has been filed by the respondents. The learned Additional Government Pleader for the respondents vehemently contended that the land in question was wrongly allotted to the petitioner in the year 1967. Subsequently, when the petitioner was residing in Chennai, not cultivated the land, on proper examination of the land in question that was wrongly assigned to the petitioner in the year 1967, the same was cancelled. Moreover, the land covered in survey number is an anadheenam land, which is ineligible for assignment as per G.O.Ms.No.1135, Revenue Department dated 17.3.62, for, the Government have imposed a ban on assignment of the land within the area of 20 miles radius of the city and the village of Thalambur is also included in the said Government Order, hence, the respondents have rightly proceeded against the petitioner for cancelling the assignment order. When the impugned land is classified as anadheenam land, it is legally ineligible for assignment under R.S.O.15. Moreover, on record, it was found out that the land is lying waste without any cultivation. Further, the land in question is also fully surrounded by residential area, as such, it is not fit for land assignment. That apart, the petitioner Mr.A.Kumarasamy was a Government

servant, working as Personal Assistant to the Director of Adi-draavidar and Tribal Welfare Department, Chennai, by using his position, the assignment was obtained. In view of the same, the petitioner cannot find fault with the cancellation of the assignment.

6. Heard the learned counsel for the parties. The petitioner was assigned an extent of 5.00 acres of assessed waste dry land covered in S.No.183/1 on 9.5.67 in Thalambur village, Chengalpattu Taluk on payment of cost of Rs.100/-. After seven years from the date of assignment, he was issued with a show cause notice by the third respondent-District Revenue Officer to show cause as to why the land assigned to him should not be cancelled for three reasons, namely, (a) that the land was not cultivated, hence, the conditions of assignment were violated; (b) that the petitioner was not likely to engage himself by personal cultivation of the land and (c) that the assignment was not bona fide and secured free of land by abuse of the official position. After receiving the said show cause notice, the petitioner submitted his detailed representation, repudiating all the allegations, stating that he has been cultivating the land by raising paddy crops, engaging labourers from Thalambur and Aranthangi villages, except during the drought period and also when the land was inundated with flood waters and stagnation of backwaters. When the case of the petitioner was rejected, as against that, the petitioner preferred an appeal before the second respondent-Special Commissioner and Commissioner of Land Administration, who, by a reasoned order dated 4.9.84, disagreeing with the order passed by the District Revenue Officer dated 29.4.80, clearly held that the cancellation of assignment was not on valid grounds, on that basis, set aside the order of the District Revenue Officer by specifically holding that the petitioner had proved his case by producing adangal and kist receipts for the relevant period for having cultivated the land. Therefore, the question of violation of the conditions of assignment could not be put against the petitioner. It is appropriate to extract paragraphs 4 & 6 of the order dated 4.9.84 passed by the Special Commissioner and Commissioner of Land Administration, which read as follows:- ".4. This case has carefully been examined with reference to the connected records and the District Revenue Officer's report. The District Revenue Officer has himself admitted that the assignee has cultivated the land from fasli 1377 to 1379. The assignment has been made in fasli 1376 and therefore there

has been no violation of condition of non-cultivation within three years. The contention of the District Revenue Officer is that the land has been kept waste from fasli 1380. But since there has been no violation of condition about cultivation within three years, the assignment cannot be cancelled on the ground.

6. As regards the last ground relating to abuse of official position, it is seen from the available records (except in DKT file which is said to be not available) that the assignment has been made only on collection of land value of Rs.100/- and it is to be taken that the assignee has not suppressed his official position and income."

7. The above order clearly shows that the order cancelling the assignment passed by the District Revenue Officer was set aside. However, the Commissioner of Land Administration directed the petitioner to approach the District Revenue Officer for appropriate orders. But, the District Revenue Officer once again on 17.11.87 passed another cancellation order. Challenging the same, the petitioner came to this Court by filing W.P.No.473 of 1988. The learned Government Advocate, while hearing the matter, after filing counter affidavit, submitted that fresh proposal to re-assign the land had been processed with in view of the direction given by the Commissioner holding that the petitioner was entitled for issuance of the land on payment of the market value only. In view of the stand taken by the respondents herein, this Court allowed the writ petition by order dated 4.9.2000 giving a positive direction to the District Revenue Officer to proceed further to assign the land in favour of the petitioner by ordering status quo in respect of the possession of the land till such orders are passed. The order passed by this Court was not even challenged by the respondents. Therefore, when this Court, as early as on 4.9.2000, allowing the petitioner's W.P.No.473 of 1988, directed the District Revenue Officer to proceed further to assign the land afresh in favour of the petitioner by maintaining status quo till such order was passed, in my considered opinion, it is not open to the District Revenue Officer to sit in appeal against the order passed by this Court. Secondly, in the impugned order, a stand has been taken by the respondents that the land in question is Anadheenam land, therefore, all the Anadheenam lands situate in Thalambur village are banned by the G.O.Ms.No.1135 Revenue dated 17.3.62. Hence, the assignment in favour of the petitioner is contrary to the G.O.Ms.No.1135 dated

17.3.62.

8. To disprove the said stand, the learned counsel for the petitioner produced various Government Orders issued by both the first and second respondents assigning similar Anadheenam lands lying in the same village Thalambur to various parties. A perusal of G.O.Ms.No.2180 dated 13.12.89 issued by the Government granting restoration of assignment in similar case in S.No.84/1C & 1D having an extent of 10.00 acres in favour of one Mr.Selladurai goes to show that in the year 1989, similar Anadheenam land lying in the same Thalambur village has been assigned. Secondly, another G.O.Ms.No.396 dated 23.4.96 issued by the Government granting restoration of assignment in a similar case in S.No.147/1 having an extent of 5.00 acres of Anadheenam land has been assigned in favour of Mr.G.K.M.Keerthi Raju. One another G.O.Ms.No.56 dated 7.2.2001 issued by the Government granting restoration of assignment in S.No.84/1A & 1B to an extent of 10.00 acres of Anadheenam land in the same village Thalambur shows that Anadheenam land in Thalambur village can be given by way of assignment. Yet another G.O.Ms.No.524 dated 9.12.2002 granting restoration of assignment in S.Nos.66 & 67 to an extent of 3.89 acres assigning Anadheenam land in the same Thalambur village in favour of Tmt.K.M.Nalinisree, disproves the stand of the respondents that the assignment of the land in question is ineligible for assignment. Again, the proceedings of the District Collector, Kancheepuram in Na.Ka.6900/2007/B1 dated 21.8.2010 granting restoration of assignment to an extent of 5.00 acres in the same Thalambur village further shows that Anadheenam lands situate in Thalambur village, in which the petitioner's land is also situated, having the same character of Anadheenam, has been the subject matter of assignment. Therefore, the only unreasonable stand taken by the respondents in the impugned order that the petitioner is not entitled to restoration of assignment of his land in view of the fact that no Anadheenam land can be assigned, is a clear violation of Article 14 of the Constitution of India, when the first and second respondents have been granting assignment one after the other in favour of several other assignees the very same Anadheenam land in the same village.

9. Further, a perusal of the communication dated 18.1.2011 sent by the District Collector, Kancheepuram to the Principal Secretary and Commissioner of Land Administration, Chepauk clearly shows that the respondents had already taken a decision to assign the land to the petitioner in compliance of the order passed by this Court in W.P.No.473 of 1988 dated 4.9.2000. When the District Collector, Kancheepuram had already fixed the market value of the land at Rs.9,705/- per cent, the respondents could have complied with the order passed by this Court in W.P.No.473 of 1988 dated 4.9.2000, instead of passing the impugned order.

10. It must be also mentioned herein that when the Commissioner of Land Administration, in his order dated 4.9.84, had set aside the cancellation of assignment passed by the District Revenue Officer, subsequently thereafter, since many Government Orders have been passed by the Government repeatedly assigning Anadheenam lands in the same Thalambur village, the District Revenue Officer, in the impugned order, has wrongly mentioned that no Anadheenam land situate in Thalambur village is eligible for assignment. While the Government is defended by their officers before this Court, such officers should approach the Court with a fair amount of understanding that they are only assisting the Court in the process of defending the department and they must put forth only the true facts which are reflected in the records and any deviation in the statement which are contrary to the record would certainly amount to filing of a false statement before the Court and that obviously results in interference with the administration of justice. In the present case, when the above mentioned several Government Orders had been issued by both the first and second respondents for assigning the Anadheenam lands in the same village to an extent of 10.00 acres, 5.00 acres and so on and so forth to various assignees, the third respondent could have avoided making a false statement before this Court that no Anadheenam land in Thalambur village is fit for assignment.

11. Be that as it may, since the District Collector had already fixed the market value of the land in question, the impugned order is set aside and the respondents are directed to assign the land in S.No.183/1 in Thalambur village, Kancheepuram District in favour of the petitioner on the basis of the order passed by this Court in W.P.No.473 of 1988 dated 4.9.2000 and the communication bearing

Na.Ka.No.135378/87/B1 dated 18.1.2011 sent by the District Collector,Kancheepuram to the Principal Secretary and Commissioner of Land Administration for receiving the market value of the land in question, within a period of eight weeks from the date of receipt of a copy of this order. The writ petition stands allowed. Consequently, M.P.No.1 of 2011 is closed. No costs. Index : yes 08.07.2013 Internet: yes Issue copy on 14.8.2013 ss To 1. The Secretary to Government Department of Revenue Fort St.George Chennai 600 009 2. The Special Commissioner and Commissioner for Land Administration Ezhilagam Chepauk Chennai 600 005 3. The District Revenue Officer Chengalpet at Kancheepuram 4. The Tahsildar Chengalpet T.RAJA, J.

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