
(1997) 12 MAD CK 0034
In the Madras High Court

Gopinath and Another

APPELLANT

Vs

District Revenue Officer and Others

RESPONDENT

Date of Decision : 18-12-1997

Acts Referred:

Citation : (1998) 2 MLJ 15

Hon'ble Judges : E. Padmanabhan, J

Bench : Division Bench

Judgement

E. Padmanabhan, J.—The petitioners in this writ petition prayed for issue of writ of mandamus directing the respondents to assign the land to

the petitioners and issue patta in respect of an extent of 4.57 acres of land comprised in Survey No. 1676/2, 1677/2 and 1691/2 in Vadakku

Valliyur Village, Radhapuram Taluk, Tirunelveli Kattabomman District.

On 26.3.1997, this Court issued rule nisi and also granted interim orders protecting the possession of the writ petitioners. Subsequently, by order

dated 4.12.1989, the 4th respondent (the District Collector) had been impleaded. The 1st respondent has filed the counter affidavit. With the

consent of the parties, the writ petition itself was taken up for final disposal. Heard Mr. A. Sankarasubramanian, counsel for petitioner and Mr. G.

Sankaran, Government Advocate for the respondents.

2. The 1st petitioner and one Joseph, the husband of the 2nd petitioner, being poor agriculturists and being landless occupied survey Nos.

1676/2, 1677/2 and 1691/2 in Vadakku Valliyur village, Radhapuram Taluk, Tirunelveli Kattabomman District and their occupation it is claimed

was for about 22 years. The said land as well as the adjacent lands had been classified as grazing ground poramboke (meichal poramboke) in the

revenue records. The 1st petitioner and the abovesaid Joseph improved the land, brought it under cultivation, dug a well 15 years back with

substantial investment, had also installed oil engine pump set and have been cultivating the land there with hard labour. It is further claimed that they

have also developed the land by planting coconut trees and cultivated other crops like plantains etc. The said Joseph died in the year 1991 leaving

behind his wife, the 2nd petitioner. The petitioners 1 and 2 have been cultivating the land and has been in their exclusive possessions for nearly 25

years. The petitioner and the said Joseph applied to the Revenue Department for assignment of the said extent of 4.57 acres of land, with respect

to which they have been assessed to penal levy. The 1st respondent, the District Revenue Officer by his proceedings dated 23.10.1986 in R.Dis.

16398/84 directed the 2nd respondent, the Sub Collector to assign 4.57 acres of the said land to the petitioners, after verification of the

petitioners" claim and after following the procedure prescribed.

3. As the land had been classified as grazing puramboke, steps were taken for reconversion or re-classification from grazing poramboke to

assessed waste dry, which again has to be taken before issuing formal orders of assignment and issuance of patta. The 1st respondent took the

steps and ordered re-classification. The said reclassification has been undertaken only for the purpose of assignment of land to the petitioners.

4. As the grazing ground was under the control of local panchayat, the District Collector published a Notification u/s 76(2) of the Tamil Nadu

Panchayats Act excluding the said extent of land from the operation of Tamil Nadu Panchayats Act. The Notification dated 10.7.1986 has been

published in the Tamil Nadu Government Gazette on 6.8.1986. The Valliyur Town Panchayat had also passed a Resolution approving the said

proposal and agreeing for exclusion of the said land. Thus the formalities viz., diversion of the land from the control of the panchayat and

reclassification from meichal Poramboke to assessed waste dry had been ordered only to assign the lands to the petitioners. These facts are not in

dispute and in fact in the counter affidavit the 1st respondent had not controverted the above facts. After the issuance of the proceedings dated

23.10.1986 the 1st petitioner and the said Joseph represented for the issue of formal orders of assignment and patta. But the respondents have

been evading. In the circumstances the petitioners filed W.P. No. 2135 of 1995 praying for issue of writ of mandamus directing the 3rd respondent

to issue patta in favour of the petitioners for the said extent of land as already ordered by the 1st respondent on 23.10.1986.

5. After hearing either side, this Court directed the petitioner to submit representation and directed the competent authority to consider the same

and pass orders within a period of three months from the date of such representation. Pursuant to the orders passed by this Court on 14.2.1995,

the petitioners had submitted their representation before the 1st respondent on 16.3.1995. At that stage, the 3rd respondent issued a Notice on

11.4.1995 calling upon the petitioners to appear before him and requiring them to produce relevant documents. To the surprise, the 3rd

respondent instead of assigning the lands which have been improved by the petitioners with respect to which orders have been passed by the

District Revenue Officer on 23.10.1986, issued orders of assignment in respect of different lands comprised in survey No. 2138/7 in Vadakku

Valliyur Village measuring 0.39.5 hectares. The said land according to the petitioners is located at a far off place and it is totally unfit for cultivation.

It is contended that the said orders were passed by the 3rd respondent only with a view to avoid initiation of contempt proceedings and to make it

appear as if that the respondents have complied with the directions of this Court issued on 14.2.1995 in W.P. No. 2135 of 1995.

6. The petitioners further state that the 1st respondent, the District Revenue Officer and the District Collector, the 4th respondent have also

directed the 3rd respondent to reconsider the order of assignment and directed assignment of the said 4.57 acres of land to the petitioners.

However, despite such directions by the District Collector and the District Revenue Officer, the 3rd respondent had declined to assign the said

extent of land to the petitioners. The 3rd respondent had taken such a stand ignoring the earlier orders passed by the District Revenue Officer as

well as the District Collector directing the assignment of 4.57 acres of land on the sole pretext that the value of the said land has increased

subsequently that the land is located in a developed locality that it cannot be assigned.

7. The petitioners had also referred to certain correspondence that took place between the petitioners and the respondents as well as the

Government Advocate in this behalf. However, the same need not be elaborated here.

8. The petitioners state that the District Collector issued directions in R.Dis.(G1) 86196/95, dated Nil.10.1995. In terms of the said proceedings of

the Collector, the 3rd respondent, the Tahsildar has been directed to issue amendment to his proceedings dated 2.6.1995 and issue patta to the

said 4.57 acres in favour of the petitioners within three days and also to report compliance. Despite such a direction of the District Collector, the

respondents 1 to 3 have not taken any steps to comply with the directions issued by the District Collector.

9. As the respondents have not complied with the earlier orders dated 23.10.1986 passed by the District Revenue officer and that of the District

Collector, dated Nil.10.1995 as well as the subsequent memo of the District Revenue officer dated 18.12.1995, the petitioners had come before

this Court and once again praying for the issue of writ of mandamus directing the respondents to issue patta in respect of the said 4.57 acres of

land.

10. Counter has been filed by the 1st respondent. In the counter affidavit, the 1st respondent had not referred to any of the -above proceedings

nor the 1st respondent had controverted the above statement of the facts. As such, the above statements of the facts are admitted and have to be

taken as true and correct. However, the 1st respondent purport to sustain the refusal of the 3rd respondent, the Tahsildar by stating that the

petitioners have not chosen to accept the assignment of 0.39.5 hectares of assessed waste dry lands in survey No. 2138/8 Vadakku Valliyur

Village, Part II Village assigned on 2.6.1996, that the said land will be resumed, that the request of the petitioner for assignment in respect of

survey Nos. 1676/2, 1677/ 2 and 1691/2 cannot be entertained as they have become very valuable, that no other Government land is available,

that the land has been considered for transfer to the Public Health Department for construction of an hospital serving public purpose, that on

24.4.1992 the 1st respondent had entered the land in the prohibitory order, that the encroachment by the petitioners will not confer any right to

them, that the land being valuable cannot be assigned free of cost, that there has been development in the locality where Housing Board Colony

has come besides other commercial establishments, that the claim of the petitioners that they have invested and incurred a huge amount to improve the land cannot be accepted and that the request for assignment cannot be complied with. It is further contended that the petitioners have no right over the property simply because they had been in enjoyment and it is a valuable. Government poramboke. The 1st respondent further states that the petitioners ought to have accepted the assignment of survey No. 213 8/8 and they should not insist for survey Nos. 1676/2, 1677/2 and 1691/2 in Vadakku Valliyur village.

11. The learned Counsel for the petitioner contended that the orders have been passed by the District Revenue Officer directing the assignment of land as well as by the District Collector besides specific directions have been issued by the District Collector directing the issue of patta to the petitioners. It is also pointed out by the learned Counsel for the petitioners that only at their instance, the land was reclassified for being assigned in their favour and also diverted from the local panchayat by a Notification. The District Revenue Officer has also passed an order directing the 3rd respondent for the assignment of the land, so also the District Collector. In this respect, the learned Counsel for the petitioners strongly rely upon the Resolution passed by the local panchayat on 28.2.1985, the Gazette Notification issued by the District Collector on 10.7.1986 in the Government Gazette dated 6.8.1986, the Proceedings of the District Revenue Officer in R.Dis. No. 163598 of 1983, dated 23.10.1986 directing to submit separate proposals for assignment of the lands by the Revenue Divisional Officer, the Proceedings of the District Collector dated Nil-10-1995 in R.Dis.(G1)86196/95 and a Memo dated 18.12.1995 in Roc.G1 86196/95. A perusal of these proceedings would show that already the

District Revenue Officer as well as the District Collector have directed not only to reclassify but also directed assignment of the lands to the petitioners. In fact the District Collector has issued the following directions to the Tahsildar:

The Tahsildar, Radhapuram in the reference 4th cited above has issued patta in favour of the petitioner over an extent of 0.39.5 Hect. in S. No. 2138/ 7 of Vadakku Valliyoor village instead of S. Nos. 1676/2. 1677/2 and 1691/2 which was originally ordered for assignment in the reference

1st cited above. Aggrieved against this order, the petitioner's Advocate Sri. P. Kulandaivelu sent contempt of Court notice to the Collector and authorities.

Legal opinion has been obtained from the Additional Government Pleader, High Court, Madras. The Government Pleader after perusing the

connected records offered his legal opinion in the reference 5th cited. In his opinion he has pointed out that at the time of passing order by the

D.R.O., the land value is Rs. 1,000 per acre. The Collector has passed orders for withdrawal notification for excluding the lands from the

operation of the Panchayats Act. The D.R.O., in his order dated 23.10.1986 directed the Tahsildar to make assignment in favour of the petitioner

within 10 days. The delay is only on the part of the Tahsildar. In 1991 the land value was increased. But the petitioners also spent their skill for the

development of value. Moreover the order passed by the D.R.O. & Collector has not been changed by a higher Authority i.e., Commissioner or

Government. In respect of the court direction, the Tahsildar has passed orders in time but he has granted patta in respect of other land. The

present order passed by the Tahsildar is not according to the higher authorities order. To avoid further complication, the Tahsildar Radhapuram

may be asked to issue amendment in his proceedings dated 2.6.1995 and to issue patta in favour of the petitioners as ordered by the D.R.O., in

R.Dis. 163598/84, dated 23.10.1986.

Hence, the Tahsildar, Radhapuram is hereby directed to issue amendment to his proceedings 4th read above and he is directed to issue patta for

S. Nos. 1676/2, 1677/2, 1691/2 over an extent of 4.57 acres in favour of the petitioners within 3 days. The Tahsildar, Radhapuram is also

requested to inform the fact after issuing patta in favour of the petitioner to this office at once. This is to be treated as most urgent.

12. These public records would show that the respondents have considered the petitioners' request for assignment and they have scrutinised their

application at all levels and have also concluded to assign the lands to the petitioners, and the 3rd respondent has been directed to issue formal

orders of assignment and patta to the petitioners. Surprisingly, the 3rd respondent and the 1st respondent on a later date have changed their minds,

presumably because the lands had become valuable in the course of time and

the petitioners have also effected improvements by their hard labour.

The very issue as to how the land is to be considered had been decided by the District Collector as well as the District Revenue Officer on the

legal opinion sought for, and it has been directed that the value as on date of original order of the 1st respondent dated 23.10.1986 alone is to be

considered for the purpose of valuation of the land to be assigned and not the present prevailing rate. The District Collector has stated this on

23.10.1986. The District Revenue Officer had directed the Tahsildar to make assignment of land to the petitioners and that being so, as rightly

pointed out by the District Collector there is no justification to delay the matter any further, merely because there has been subsequent increase in

the market value or improvement in the locality. That cannot be a ground to deny the benefit of the earlier proceedings.

13. In the counter affidavit also the 1st respondent, the District Revenue Officer has assigned identical reasons in support of his subsequent view

not to assign the lands as those lands have become valuable. This approach of the 1st respondent as well as the 3rd respondent, the Tahsildar

cannot be appreciated. The delay has been caused solely by the Tahsildar and the District Revenue Officer and the petitioners have been made to

run from the pillar to post. The petitioners had to move heaven and earth despite orders being passed in their favour to assign lands. The

respondents are estopped by their conduct from taking a different view merely because there has been an increase in the value of the lands

consequent to certain subsequent development or events. Being public servants the respondents are estopped from going back on the decision

already taken to assign the land.

14. In this respect, the learned Counsel for the petitioners placed on the judgment of the Supreme Court reported in *Shri Guru Singh Sabha Rai v.*

Defence Colony Welfare Association (1993)1 S.C.C. (Supp.) 666 and a decision reported in *Dharanipathy Lakshmi Devi v. Secretary to*

Government of Tamil Nadu and 3 Ors. 1997 W.L.R. 498.

15. The Apex Court in *Shri Guru Singh Sabha Rai v. Defence Colony Welfare Association* (1993)1 S.C.C. (Supp.) 666 while considering the

plea of estoppel with respect to allotment of plot, held thus:

We must, however, decline to adjudicate the rival claims in view of the fact that

the other two claimants are not before us. What we can examine in the present case is the legitimacy of the appellant's claim in which it requires to be observed that there is a definite commitment on the part of the government to allot 0.5 acre to the appellant. Having regard to the assurance implicit in the communications from time to time to the appellant it is, perhaps, too late in the day for the government to say that no such right of interest was created.

16. There is sufficient material before the court to show that the District Revenue Officer had directed assignment of land to the petitioners and pursuant to the said decision as well as the decision of the District Collector steps have been taken to reclassify the land, under the provisions of the Panchayats Act and orders as well as directions also have been issued to assign the land. These facts cannot be retraced by the respondents merely because there has been a subsequent development in the locality which has resulted in the increase of market value. As have been rightly pointed out by the District Collector, the value of the lands should have been taken as on the date of the orders of the District Revenue Officer directing assignment and not the later developments. The Collector is well justified in taking such a stand.

17. The subsequent change of officer or approach of the District Revenue Officer and the Tahsildar, who are just anxious to avoid the assignment of the land to the petitioners, cannot be appreciated as they are bound by the earlier decisions. Being public servants, the respondents are bound by the earlier decisions or orders. The respondents are estopped by conduct and the decision of the Supreme Court squarely applies to the facts of the present case.

18. In the circumstances, this Court holds that the petitioners are entitled to the writ of mandamus as prayed for and their hard labour and investment should not be denied. The right that has accrued to them pursuant to the earlier directions of the District Revenue Officer and the District Collector cannot be taken away or denied. Normally, a direction to consider the assignment would have been ordered. However, there has been earlier orders and directions to assign as seen from the earlier proceedings of respondents 1 and 4 themselves. Taking into consideration of the subsequent changes in the views of respondents 1 and 3, and their refusal

to comply with the directions of the District Collector, this Court holds that there is every justification to direct assignment of the land to the petitioners. Such a direction is necessitated by the conduct of respondents 1 and 3.

19. In these circumstances, the 2nd respondent, the Sub Collector, Cheranmahadevi, Tirunelveli Kattabomman District is directed to issue orders of assignment of patta in favour of the petitioners for the lands comprised in S. Nos. 1676/2, 1677/2 and 1691/ 2 admeasuring 4.57 acres in

Vadakku Valliyur Village within six weeks from the date of communication of this order.

The writ petition is allowed with cost of Rs. 2,000 against the third respondent.