(1993) 11 MAD CK 0033

In the Madras High Court

M. Munusamy Gounder APPELLANT

Vs

Commissioner for Land Administration and Others RESPONDENT

Date of Decision : 22-11-1993

Acts Referred:

Citation : (1994) 1 MLJ 310

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Judgement

Kanakaraj, J.—The facts are not basically disputed. The lands in question bearing R.S. No. 10/4 (1.92 acres) and 10/5 (1.04 acres) at

Kadagampatti village are admittedly bought-in-lands of the Government within the meaning of Revenue Standing Order 45. The lands were

assigned in favour of the 3rd respondent and there was a long history of litigation between the petitioner and the 3rd respondent. The petitioner

filed an appeal to the Sub-Collector, Tindivanam, against the order of assessment and the same was allowed on 2.2.1973. On revision by the third

respondent, the District Revenue Officer remanded the case to the Sub-Collector on 31.7.1973. Thereafter, by an order dated 11.3.1974, the

Revenue Divisional Officer set aside the order of the Deputy Tahsildar and directed fresh enquiry. That order of the Revenue Divisional Officer

dated 11.3.1974 was confirmed upto the stage of the Commissioner of the Land Revenue. In the meanwhile, the petitioner seems to have filed

O.S. No. 2 of 1972 for declaration of his possessory title and for a permanent injunction against the third respondent. That suit was dismissed and

on appeal in A.S. No. 657 of 1973 the matter was again remanded to the trial court. On remand, the suit was decreed in favour of the petitioner and the further appeal by the third respondent was dismissed. It is in this state of affairs the Sub-Collector directed the Tahsildar to transfer the

land in the name of the petitioner by an order dated 1.3.1984. Accordingly, the Tahsildar, by an order dated 24.4.1984, granted patta to the

petitioner. The third respondent challenged this order in revision before the District Revenue Officer. The District Revenue Officer has passed an

order on 22.1.1986 directing fresh enquiry. The writ petition is directed against this order, though the Commissioner of Land Revenue has also

confirmed this order of the District Revenue Officer in his proceedings dated 29.4.1986. The Commissioner has expressed the view that the

dispute between the parties should be settled by a civil court.

2. The learned Counsel for the third respondent also brings to my notice a suit filed by the third respondent for the very same relief of declaration

for possessory title and for an injunction. That suit seems to have been decreed ex pane on 29.9,1986 and the attempt of the writ petitioner to

have the ex-parte decree set aside did not succeed. It is also stated that there is a third suit pending between the parties, which has not yet been

disposed of.

3. It is under these circumstances Mr. R.G. Rajan, learned Counsel for the petitioner argues that the order of the District Revenue Officer dated

221.1986 directing a fresh enquiry into the entire issue by giving opportunity to both parties is not seriously questioned. But, according to the writ

petitioner, his preferential claim under Revenue Standing Order 45(4) could also be considered at the time of the fresh enquiry. Learned counsel

for the 3rd respondent argues that his claim should be considered on the basis of the assignment made in his favour as early as in the year 1971.

The only question that has to be decided is whether the revenue authorities should go into the matter or whether as directed by the Commissioner,

in his proceedings dated 29.4.1986, the parties should await decision from the civil court. In resolving this dispute, I am taking into account the

fact, that before the civil court the Government is not a party. Since the subject lands are bought-in lands the proper authority under Revenue

Standing Order 45. This is because the said Revenue Standing Order 45 deals with the question of treatment of bought-in lands, the manner in

which trespass on such bought-in lands should be dealt with and the manner in which such bought-in lands should be disposed of. In particular in

Sub-section (4) of Revenue Standing Order 45, it is stated that in the matter of assignment of bought-in lands the original owners or their

undisputed heirs should be preferred to outsiders subject to certain conditions. Since the power is given to the authority under the Revenue

Standing Orders on the question of assignment and on the question of proper person who should get the assignment, I am of the opinion that a civil

court cannot decide that issue regarding assignment. The past history shows that title to the said lands can be claimed only on the basis of the

assignment. Certainly the civil court cannot grant an assignment, in this view of the matter, I uphold the order of the District Revenue Officer dated

22.1.1986 subject to certain modifications which I propose to make. The order of the Commissioner in his proceedings dated 29.4.1986 directing

the parties to abide by the decision of the civil court is hereby set aside. In making the fresh enquiry as per the order of the District Revenue Officer

dated 22.1.1986, the Tahsildar is directed to consider the claim of the writ petitioner under Revenue Standing Order 45(4) as well as the claim of

the third respondent on the basis of his earlier assignment. Both the parties shall be given notice of the fresh enquiry and after hearing them or their

counsel, a decision shall be rendered. The writ petitions are ordered in the above terms. There will be no order as to costs.

