
(2002) 03 MAD CK 0129

In the Madras High Court

Case No : Writ Petition No. 6291 of 2000

P. Subramanian

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 05-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 — Rule 10(A), 13, 9(1), 9(2)
Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 18(1)

Citation : (2002) 03 MAD CK 0129

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : Ravi Benjamin, for V. Nicholas, for the Appellant; M. Mahalingam, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—Writ petition praying to issue writ of certiorarified mandamus calling for the records relating to the orders made by the first respondent Secretary to the Government of Tamil Nadu in G.O.Ms.No.245, Revenue (L.R. 2 (2) Department) dated 18/5/1999 and to quash the same so far as the petitioner is concerned and consequently direct the respondents to remove the encroachment and restore possession of the land assigned to the petitioner in an extent of 64 cents in S.No.736/1A1/B, Nallur Village, Palladam Taluk, Coimbatore District.

2. In the affidavit filed in support of the writ petition, the petitioner would submit that the said land more fully described in the petition was assigned in his favour in Na.Ka.6541/87 p dated 12/1/1988 on payment of Rs.287.40 and a deed of assignment was also executed on 9/2/1988 between the petitioner and the Assistant Commissioner, Land Reforms, Coimbatore and the petitioner had paid the entire amount.

3. The further pleadings of the petition are that at the instance of the political hooligans 150 unruly elements encroached upon the said property and on his representation dated 30/1/1988 to the Tahsildar requesting him to prevent the encroachment; that the Assistant Commissioner (Land Reforms), Coimbatore in his memo dated 13/2/1988, directed that no further action should be taken for evicting the encroachers; that repeated representations made to the Commissioner (Land Reforms), Madras on 3/12/1990, 2/1/1991, 31/12/1992 and since there was no response, ultimately the petitioner sent a petition dated 10/3/1997 to the Assistant Divisional Engineer, Tamil Nadu Electricity Board, Tiruppur requesting him not to give electricity connection to the encroachers in the lands assigned to the petitioner; that even thereafter on repeated representations dated 29/6/1993 and 7/9/1993 requesting to remove the encroachments made to the Commissioner, Land Reforms, Madras, ultimately an order in G.O.Ms.No. 1 (d) 295, Revenue (Land Reforms (2 - 1) Department dated 6/9/1994, the Joint Secretary, Revenue Department directed to remove the encroachment and for further action and therefore, he was not in a position to bring the assigned property under cultivation.

4. The petitioner would further submit that a further representation dated 15/3/1997 made to the Tahsildar to restore the land from removing the encroachers, did not have any response and that a notice dated 15/4/1997 had been sent by the Assistant Commissioner, Land Reforms, Coimbatore to give explanation for not doing cultivation in the assigned lands for which he submitted his explanations on 28/4/1997; that he also made representation to the authorities concerned from giving electricity connection and not to assess the encroachers for land tax and not to provide water facility revealing the facts; that without consideration of his petitions and explanations and without even holding an enquiry, the Secretary, Revenue Department passed an order in G.O.Ms.No. 245, Revenue (L.R. 2 (2) Department dated 18/5/1999 ordered to assign the said lands in Survey No.736/1A measuring 3.18 acres including land assigned in favour of the petitioner to the encroachers without even cancelling the assignment made in favour of the petitioner and others regarding the same property and hence the writ petition.

5. Counter affidavit filed on behalf of the respondents having explained as to how earlier the lands declared as surplus from the agricultural holdings of one Kathirvelu as per the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on land) Act, 1961 as amended by notification u/s 18(1) of the Act for an extent of 8.90 acres were taken over and assigned in favour of eligible persons namely Kannusamy Gounder, Marimuthu Pandaram and S.N.Daniel. The respondents would further submit that the reassignment was ordered to five persons including the writ petitioner on 12/1/1988, but prior to handing over possession of the assigned land, 193 families have encroached the extent of 3.18 acres of land in 736/1A1 and have negated the proposal to reserve the said lands in favour of the encroachers as per G.O.Ms.No.1 (D) 295 Revenue (Land Reforms - II (1) dated 6/9/1994 and eviction was also ordered and since the

eviction of the encroachers became impossible due to various reasons, the Government after reexamining the order dated 6/9/1994 directed the Collector, Coimbatore to assign the lands as house sites and after collecting the land value from the encroachers.

6. The respondents admit that regarding the assignment made in favour of the petitioner for 64 cents of land on payment of land value in instalments executing Form "F" deed dated 12/2/1988, but the possession of land could not be handed over to the petitioner on account of encroachment; that since the encroachers by constructing houses, huts, etc., for dwelling purposes for more than 100 families were in physical possession of the land, it came impossible for the Government to evict them from the lands including that of the one assigned in favour of the petitioner and hence in G.O.Ms.No. 124, Revenue Department dated 25/1/1990 the said surplus land being retained for public purpose and placed at the disposal of the Collector, Coimbatore District for assignment of house sites, were assigned in favour of the encroachers; that the Government only after careful consideration of the relevant factors in depth arrived at the conclusion to regularise the encroachments for issuance of house site pattas as the last resort further denying all other allegations of the petitioner.

7. It would further be submitted in the counter affidavit that according to Rule 13 of the Rules:

"the Government may, if it considers that any surplus land is required for any public purpose, reserve or retain such land for such purpose."

It comes to be known from the counter that only in cases, where the assignee violated any of the assignment conditions prescribed in rule 9 (1) of the Rules, as amended, or the deed of assignment in Form "F", the rule 9 (2) of the Rules will apply with an opportunity to be afforded to the earlier assignee before such cancellation. But in this case, the lands have been resumed by the Government invoking the provisions contained in Rule 9 (1) (iii) (b) of Rules, 1965, for resumption of the land and therefore, the contention of the respondents that the petitioner's assignment was cancelled much less without any opportunity does not hold water. However, the respondents would pray to dismiss the above writ petition.

8. During arguments, the learned counsel for the petitioner would only repeat those facts put forth in the writ petition with no additional information or material brought forth. However, he would lay emphasis that there were absolutely no valid reasons for assigning the property in favour of the encroachers by the impugned Government Order especially without cancelling the assignment made earlier in favour of the petitioner. He would further argue that since the land was under encroachment, he was not able to cultivate the same nor the Governmental authorities who are responsible for evicting the encroachment have not acted in accordance with law inspite of repeated representations made on the part of the petitioner; that one of the foremost

conditions is that the lands assigned cannot be cancelled after the lapse of five years and in derogation of this condition, the impugned order has been passed.

9. On the part of the learned Additional Government Pleader he would only say that the Rules provide to pass such impugned order herein for public purpose and that against such assignment, there is a right of appeal under revision is also available by-passing which the petitioner cannot straight away file this writ petition seeking the extraordinary relief and therefore, would pray for dismissing the above writ petition, with costs.

10. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what could be assessed in the case in hand is that the entire extent of lands measuring 3.18 acres in Survey No.736/1A1 Nalloor Village, Palladam Taluk, Coimbatore District had been assigned in favour of many parties including the petitioner for an extent of 64 cents as per the proceedings of the Assistant Commissioner, (Land Reforms), Coimbatore in ROC.No.6541/87 P dated 12/1/1988 under the Tamil Nadu Reforms (Disposal of Surplus Land), Rules 1965 that after the assignment, the said lands have been encroached by 150 persons (according to the petitioner, at the instance of the local politicians) who started putting up huts, houses and structures and in spite of the best efforts made on the part of the petitioner on repeated representations to the respondents, nothing moved towards evicting the encroachers and even in G.O.Ms.No.1 D 295 Revenue (Land Reforms 2 - 1) Department dated 6/9/1994, the Government directed to remove the encroachment and to take necessary further action. But the said order was not implemented effectively. Ultimately under some pretext or other by the impugned G.O.Ms.No. 245 Revenue LR 2 (2) Department dated 18/5/1999 an extent of 3.18 acres including the portion for which the petitioner had been granted assignment, have been directed to be assigned in favour of the encroachers laying house sites testifying the validity of which the petitioner has come forward to file this writ petition.

11. There is absolutely no denying of all these sequence of events pleaded by the petitioner and on the part of the Government and they are admitted facts. The petitioner's strong case is that if such an assignment is made as it had been done in his favour, it cannot be withdrawn or cancelled unless for violation of the conditions of assignment and in the case in hand, no such violation of any condition could be advocated on the part of the respondents attributing non-compliance on the part of the petitioner; that even regarding taking possession of the land assigned in favour of the petitioner it would be argued on his part that since immediately after the assignment was made, the lands were allowed to be encroached by encroachers backed by political forces and the respondents were also lethargic in evicting them and handing over possession with the petitioner for reasons best known to themselves. But on the contrary, the Government expressing their inability to enforce the law and order, would yield to the encroachers and even without cancelling the original assignment made in

favour of the petitioner and 4 others by the proceeding dated 2/1/1988 mentioned supra as required by law the respondents have ordered that the lands be assigned in favour of the encroachers converting the same into house sites. The petitioner would further strongly object to the attitude of the respondents' attitude in revoking their own conditions imposed to the effect that no assignment could be modified or cancelled, if five years have lapsed and after the same was made and further that under proviso to Rule 9 (2) of the relevant Rules, no cancellation shall be ordered without giving the assignee an opportunity of being heard. On the part of the respondents, they would simply come forward to say that since being the Government, it is empowered to pass such orders as one that is impugned herein and since the Government was incapable of clearing the encroachment and handing over possession to the original assignees such as the petitioner it had taken the other decision to assign the lands in favour of the encroachers themselves which is palpably wrong and goes against all principles governing the cancellation and reassigning the lands in favour of individuals.

12. On the part of the petitioner, it would further be submitted that since no order cancelling the original assignments made in his favour had been passed is even deprived of the relief of the appeal under Rule 10 A of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, thus answering the arguments made on the part of the respondents that in spite of appeal and revisional provisions are provided for regardless of the same and without resorting to such legal provisions, the petitioner has resorted to the extra ordinary jurisdiction of this Court granted under Article 226 of the Constitution of India without an enquiry with opportunity of being heard and without an order passed in a considered manner question of approaching the statutory authorities does not arise at all and, therefore, the petitioner is perfectly within his rights to have approached this Court with the above writ petition.

13. Be that as it may. The foremost point that surfaces for consideration in the facts and circumstances of the case is that while the definite order had been made as per the proceedings of the first commissioner Land Reforms (Coimbatore) dated 12/1/1988 (mentioned supra) in favour of the petitioner and 4 others regarding the lands measuring 3.18 acres in Survey No. 736/1A1 of Nalloor Village, Palladam Taluk, Coimbatore District without cancellation of the said order of assignment made on the part of the fourth respondent, whether further assignment of the said land could be made in favour of any one much less, the encroachers as it is in the case in hand by the impugned order? The consequences of the non-cancellation of the original assignment effected in favour of the petitioner are susceptible to impair and affect the basic rights of the original assignees such as the petitioner herein being deprived of the relief of appeal as contemplated under Rule 10 A of the Tamil Nadu Reforms (Disposal of Surplus Land) Rules, 1965, and being referred without an opportunity of being heard by any authority much less the appellate revisional Authority, this violating the high principles of natural justice and therefore, on these two strong legal

grounds alone the impugned order had been passed by the first respondent dated 18/5/1999 as per G.O.Ms.No. 245 Revenue (R 2 (2) of the first respondent Government becomes liable to be quashed.

14. It is pathetic to note in the case in hand that the Government having assigned the property in favour of the petitioner and others on account of its inability to evict the encroachers not only admits its follies, which is undesirable on the part of the Government but also yielding of the pressure of the encroachers at the instance of political interference passed the impugned order has been passed assigning the properties already assigned in favour of the petitioner and others, in favour of the encroachers which is rather un-becoming on the part of the respondent government.

15. No proper or tangible reasons have also been assigned by the Government for having taken up the stand to assign the properties in favour of the encroachers even without cancelling the earlier assignments made in favour of the petitioner and 4 others, which goes without an explanation.

16. For all the above discussions held, this Court is unable to see any justification or legality attached to the impugned order, which is only tainted with illegality and becomes liable to be quashed, as sought for by the petitioner in the above writ petition.