



W.A(MD)No.894 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.06.2023
Pronounced on : 21.12.2023

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

W.A.(MD)No.894 of 2013
and
MP(MD)Nos.2 & 3 of 2013

- 1.The Government of Tamilnadu,
Rep by the Secretary to Government,
Revenue Department,
Secretariat, Chennai – 9.
- 2.The Principal Secretary and Commissioner of
Land Administration Department,
Chepauk, Chennai.
- 3.The District Collector,
Madurai District, Madurai.
- 4.The District Revenue Officer,
Madurai District, Madurai.
- 5.The Revenue Divisional Officer,
Madurai District, Madurai.
- 6.The Tahsildar,
Madurai South, Madurai District, Madurai.



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7.The Village Administrative Officer,
Avaniapuram Town Panchayat,
41, Avaniapuram Village,
Madurai South Taluk,
Madurai District.

.. Appellants / Respondents

Vs.

1.S.Mariammal (Died)

... Respondent/1st Respondent

2.The Assistant Director,
Ex.Servicemen Welfare Board,
Welfare Office,
Madurai -16.

... 2nd Respondent/2nd Respondent

3.Chinna Thulasimani

.. Respondent

(R3 is substituted for R1 vide Court order dated 19.07.2017 made in CMP(MD)No.6537 of 2017 in WA(MD)No.894 of 2013)

PRAYER: Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 28.08.2012 made in W.P.(MD)No.14125 of 2010 and allow the writ appeal.

For Appellants : Mr.Ravindran,
Additional Advocate General
assisted by Mr.J.Ashok,
Additional Government Pleader

For R1 : Died

For R3 : Mr.Ajmal Khan (Senior Counsel)
for M/s.Ajmal Associates



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JUDGMENT

WEB COURT K.K.RAMAKRISHNAN, J

This appeal has been filed to set aside the order of the learned single Judge passed in W.P.(MD)No.14125 of 2010, dated 28.08.2012.

2. The deceased first respondent filed W.P.(MD)No.14125 of 2010 to quash the impugned order in letter No. 514/Me Mu.3(2)/2007, dated 11.09.2007 issued by the first appellant/the Secretary to Government, Revenue Department, Secretariat, Chennai-9, first respondent, confirming the order passed by the third appellant/the District Collector, Madurai District, Madurai, dated 24.03.1999 in Na.Ka.No.31/5087/97 and the consequential order passed by the sixth respondent/the Tahsildar, Madurai (South), Madurai District, Madurai, dated 10.04.1999 in Na.Ka.No.803/95/C2 and consequently prayed for a direction, directing the respondents to issue patta to her, for the lands comprised in S.Nos. 226/2A, 265/2, 265/6 to an extent of 3 acres and 37 cents situated in Avaniapuram Village, Madurai South Taluk, Madurai District.



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3. The case of the deceased first respondent/petitioner before the

Writ Court is as follows:-

The deceased first respondent was petitioner before the writ Court. According to her, her husband joined the Military service in the year 1941. Since he suffered injuries during his service in the year 1947, he was discharged from his duty. Subsequently, he was died. She made an application to the revenue authorities/appellants herein for assignment of land as per G.O.Ms.No.1750, dated 13.05.1963 claiming land as a widow of Ex-serviceman. She further stated that the land to an extent of 3 acres 37 cents in survey No.226/2A, 265/2 and 265/63, situated in Avaniyapuram Village, Madurai South Taluk, Madurai District was allotted to her in the year 1966. The said land was measured and handed over to her in the presence of revenue officials and panchayat officials and patta was not issued to her. She had paid the necessary charges for measuring the land and for getting patta. She was continuously cultivating the said lands un-interruptedly by making “R” memo charges from 1966 onwards. She made representation to the third appellant to issue patta on 13.06.1966. The third respondent/appellant sent a communication to her informing that the 6th appellant is directed to consider the representation. In the meantime, panchayat also passed



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resolution expressing its consent to grant the assignment, in the year 1994. The 6th respondent before the writ Court has sent a communication requesting about her willingness to get the land upon payment of market value. She also consented to pay the market value. Subsequently, the third respondent sent the impugned communication dated 24.03.1999 stating that the lands claimed by her are valuable lands and as the said lands have been entered in the prohibition book, the lands could not be allotted to a private person. Similar order also passed by the sixth respondent on 10.04.1999. Therefore, she sent the representation to the first respondent/Government on 22.04.1999 to consider her case as widow of Ex-serviceman. She also filed W.P.No.8746 of 1999 before this Court challenging the said orders. This Court directed the first respondent to consider her representation dated 22.04.1999 within a period of six months from the date of receipt of the communication of the order, by order dated 25.04.2001. In view of the entry made in the prohibitory book and impugned order passed in the year 1999, the authorities refused to receive “B” memo charges. In the meantime, the sixth respondent herein in the writ petition informed the 7th respondent that a proposal in Ref.Na.Ka.No.12367/1999/C2 dated 08.08.2002 has been sent to the third respondent herein to grant patta in favour of her



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after receiving the market value. Panchayat also has resolved to grant patta in favour of her. The said recommendation also sent to the first respondent Government. In the meantime, she sent a communication to consider her case on the basis of this Court order dated 25.04.2001. The 8th respondent in his communication informed to her that her request was rejected by the Government by passing the impugned order dated 11.09.2007. Then, after she applied the said order copy under the Right to Information Act, and obtained Xerox copy on 11.06.2010 and filed this writ petition to quash the impugned order and to grant assignment of the said lands.

4. The respondents have not chosen to file any counter affidavit and made the following submissions before the Writ Court:-

i) The impugned order of the first appellant dated 11.09.2007 was challenged belatedly in the year 2010 without any explanation for the said delay and hence, the impugned order is liable to be sustained.

ii) After considering the market value of the lands, its utility in future and conversion of the near by lands into the house sites, the Government has rejected the claim of the writ petitioner. Therefore, the



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reasoning of the Government is not a subject matter to the judicial review.

iii) The said land also cannot be used for the agricultural activities.

5. The learned Single Judge considering the relevant provisions of the Board Standing Orders and various Official Memorandum of the Government and reports of the officials, has allowed the writ petition and directed the first respondent to grant Patta to the above said lands on collection of the market value determined by the Revenue Authorities within two months from the date of receipt of the order by passing the impugned order dated 28.08.2012. Assailing the said order, the Government officials namely, the respondents 1 to 7 before the Writ Court filed this appeal and raised, various grounds stated in the memorandum of grounds of appeal.

6. The learned Additional Advocate General appearing for the appellants submitted that the petitioner made a claim on 13.06.1966 after a long delay from the date of the death of her husband i.e., 25.04.1954. The respondent has not furnished any materials and records to show her incessant agricultural activities in the above said lands.



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6.1. He further submitted that the lands were already declared as valuable lands and the said lands are within the prohibited distance of Head quarters of District and since the child of the deceased respondent is in Government service, she is not entitled to make a claim under Ex-serviceman quota or scheduled caste landless poor. Further, the Government also took a policy decision that the lands are not assignable lands. The said fact cannot be set aside by the learned Single Judge.

6.2. He further submitted that the land is situated in the heart of the city and the same is required for the public purpose. Even as per the guideline value, the value of the land is more than 5 crores and as per the market value, the value of the land is more than 50 crores.

6.3. He further submitted that in the said circumstances, the said land is being kept for the public purposes of the Government and the same cannot be assigned in favour of the deceased first respondent. More particularly, the original writ petitioner died during the pendency of the writ appeal and now, the claim made by the impleaded legal heir is a



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retired Government Employee, receiving pension and his family is a wealthy family. In the petitioner's communication itself, it is stated that the present impleaded petitioner has not taken care of the original writ petitioner and hence, he is not entitled to seek the assignment of the said land.

6.4. Apart from that, the legal heirs of the present petitioner are well settled in life. i.e., one son is a Judicial Officer. Another son is a practicing Advocate of this Court. In the said circumstances, on factual aspects also, he cannot claim the said lands.

6.5. Apart from that, no evidence was produced on the side of the petitioner to show her possession in the above said land from 1966 onwards. In the said circumstances, the learned Single Judge has committed error in setting aside the impugned order passed by the first respondent based on the order of the respondents 5 and 6 namely, the appellants 1, 3 and 6 herein.



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7. This Court considered the rival submissions made by both the parties and perused the records and the relevant provisions of Board Standing Orders.

8. In this writ appeal following issues arise:

Whether the writ Court order in issuing direction to the appellants to grant assignment to the original writ petitioner for the lands in Survey Nos.226/2A, 265/2, 265/6 situated in Avaniyapuram Village, Madurai South Taluk, by holding that she is entitled to said assignment on the ground that she is Scheduled Caste Widow of Ex-Service man is correct ?

9. The following dates and events are essential to decide the above issue:

<i>Sl.Nos.</i>	<i>Dates</i>	<i>Events</i>
1.	1941	The writ petitioner's husband joined in the Indian Army.
2.	1947	He met with an accident and he was discharged from Army.
3.	1954	He died.
4.	13.06.1966	The writ petitioner gave a representation to issue assignment patta in respect of the Survey Nos.226/2A, 265/2, 265/6. On the basis of the G.O.Ms.No.1750 dated 13.05.1963.



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5.	24.03.1999	The third respondent passed the impugned order stating that the lands are valuable lands and the same was not granted in favour of individual persons and the same was also required for future purpose and made suitable entry in the prohibition book.
6.	10.04.1999	The sixth respondent also passed the similar impugned order.
7.	22.04.1999	The petitioner sent a representation to the first respondent.
8.	25.04.2001	This Court in W.P.No.8746 of 1999 directed to consider the petitioner's representation dated 22.04.1999.
9.	10.05.2002	The sixth respondent sent his recommendation to the fifth respondent to assign the land to the writ petitioner, in respect of Survey Nos. 226/2A, 265/2.
10.	25.06.2002	The fifth respondent forwarded the sixth respondent's recommendation dated 10.05.2002 to the fourth respondent.
11.	05.10.2002	The fifth respondent forwarded the same to the land Commissioner Chepauk, Chennai, with his recommendation.
12.	26.09.2005	The petitioner made the representation to the first respondent.
13.	11.09.2007	The first respondent passed the impugned order, rejecting her claim on the ground that the lands are valuable lands, the nearby lands are converted into house sites and hence there is no use for agricultural activities and the lands are situated near by Madurai Corporation.
14.	29.11.2007	The Deputy Director, Ex-Serviceman Welfare Board, sent a communication about the impugned order passed by the first respondent and same was issued to the writ petitioner on 11.12.2007.



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15.	01.03.2010	The petitioner made a request to the respondent Nos.1, 2, 4 and 6 to furnish the impugned order under the Right to Information Act.
16.		W.P.(MD) No.14125 of 2010 filed before this Court to quash the impugned orders dated 11.09.2007, 24.03.1999 and 10.04.1999
17.	28.08.2012	Writ Court allowed the writ petition

10. The writ petitioner/Mariyammal's husband was Thulasimani. According to her, he joined the Indian Army in the year 1941 and he met with an accident while he was in service in the year 1947. Therefore, he was discharged from Army. Subsequently, he died in the year 1954. They have one son. After the demise of her husband, she submitted an application to the respondent Nos.1 to 6 to give assignment to an extent of 3 acres and 37 cents in the survey No.226/2A, 265/2 and 265/6B situated in Avaniyapuram Village, Madurai South Taluk, Madurai District, in the year 1966. She also stated that she was in possession and enjoyment of the said land from the year 1966 onwards. She also claimed that she spent huge amount in making the said land into cultivable. The Revenue Authorities also issued B memo, kist and revenue tax. She also claimed that the sixth respondent Panchayat sent a recommendation to address her request of assignment in the year 1987. She further claimed that the sixth respondent in the year 1990, 1991 and 1993 sent a



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communication seeking her consent to pay the market value of the land.

She further stated that in the year 1996, the respondent Nos.4, 5 and 6 demanded bribe to give the certificate regarding the market value of the said property. Finally, the fifth respondent directed her to appear for enquiry on 16.12.1998. After the enquiry the third respondent, passed the impugned order dated 24.03.1999 stating that *the said lands are un-assessed Government(sarkar) vacant “valuable lands” and the same was required for future Government purpose and hence the same could not be allotted to the private persons and said lands are entered in the prohibitory book.*

11. The writ petitioner made the representation to the various authorities and the sixth respondent also passed the similar impugned order on 10.04.1999. Without challenging the said orders, the petitioner made a representation to the first respondent dated 22.04.1999. Thereafter, the petitioner filed a Writ of Mandamus, in W.P.No.8746 of 1999 directing the first respondent to consider her representation. In the said representation and the writ petition, she claimed that she was entitled to the assignment on the ground that her husband was an Ex-Serviceman. On 25.04.2001, this Court directed the first respondent to



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consider the same and pass order on merits. The first respondent passed the impugned order declining to accept her request giving the following reasons:

(i) The lands in Survey Nos.265/2 and 265/6B are located in different places.

(ii) The said lands are valuable lands situated adjacent to the Madurai corporation and included in the prohibitory book and therefore, assignment cannot be made in favour of private persons.

(iii) The lands adjacent to the said claimed lands are being converted into house sites and therefore there is every possibility that agricultural activities can not be carried out even if the assignment is made.

(iv) The writ petitioner's entitlement to get the assignment of land as a widow of the ex-serviceman is considered on the basis of the following relevant board standing order:

20. Persons who are eligible for assignment of the lands under Revenue Standing Orders are :

(3) Who are eligible for assignment:-

(i)----

(ii)----

(ii)(a) The serving personnel or Ex-Servicemen are eligible for assignment of Government waste land (available



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for assignment) only for bonafide rehabilitation purposes and that assignments to the serving personnel and Ex-servicemen cannot be claimed as a matter of right.

(ii)(b) ----

(ii)(c) *The categories of eligible poor persons namely being members of Scheduled caste/Scheduled Tribes and Ex-Servicemen and their dependants etc., should not be considered, when one has become a Government Servant. The financial status and the income are to be taken into consideration on assignment. B.P Form 758(B), dated 21.10.1978.*

12. From the above reading of the provisions, it is clear that

(i) Before entertaining the claim of the Ex-serviceman to assignment, it should be seen surplus waste land are available for assignment.

(ii) The Ex-serviceman cannot claim the assignment of the Government's waste land as a matter of right.

(iii) They should have established that the same was required for *bonafide* rehabilitation purpose.

(iv) Once any of the member of the claimant *has become a Government servant*, the claim of assignment should not be considered.

13. In the category of the Ex-serviceman, the claimant cannot made a claim as a matter of right as per the Board standing order. As per



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the Board Standing order, relief to the Ex-serviceman is granted only “For Bonafide rehabilitation purposes”. In this case, the Ex-serviceman died in the year 1954 and the writ petitioner, claimed to assign the land in the year 1966. In the meantime, his only son got the Government Job. From the record, it is seen that there is no true disclosure of benefit received by the writ petitioner after the discharge of her husband from the military service. There was no disclosure relating to the receipt of the pension after the death of her husband. It is not in the pleadings of the writ petitioner that they were not rehabilitated till 1966. In the said circumstances, the writ petitioner has also not established the requirement of the assignment for *bona fide* rehabilitation process.

13.1. It is the duty of the writ petitioner to disclose the accurate particulars regarding their economic condition and financial status. As per the scheme, when one of the claimant's family member become a Government servant, the claim of assignment should not be considered. The financial status and the income of the said Government servant also has to be taken into consideration to decide the eligibility to make application to get assignment. But, the original writ petitioner suppressed the factum of her son working as a technical assistant in the Postal



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Department. In order to circumvent the said disqualification, the writ petitioner had not disclosed about the Government Job of her only son in the representations submitted by her and also in the pleadings before this Court.

13.2. Before the writ Court, the impugned order of the third appellant dated 24.03.1999 was challenged. The third appellant passed the said impugned order on the basis of the his order dated 05.08.1998 and the inspection report submitted by the third appellant dated 10.07.1998. In the communication of the fourth appellant dated 10.07.1998, the fourth respondent stated that the writ petitioner's son was working in the postal department and hence, the land was not assignable. The petitioner also has stated in her representation dated 24.04.1999 about the communication dated 05.08.1998. In spite of the said knowledge, the writ petitioner has not disclosed that her son was working in the Government Department. But, the writ Court had not considered the above disqualification and allowed the writ petition without even considering that the writ petitioner has no right to make application as per the scheme to get the assignment. The Government, therefore filed this writ appeal disclosing the above fact along with other grounds. This



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Court, admitted the writ appeal and granted stay of the operation of the writ Court order to grant assignment. In the background of the stay, the eligibility of the writ petitioner is to be considered. Before considering the petitioner's eligibility, the petitioner died. Therefore, the present third respondent filed the substitution petition in the writ appeal to claim the right of assignment in W.A.M.P.No.6537 of 2017. In the said W.A.M.P.also the third respondent has not disclosed the true facts. The Government also furnished number of documents about the economic status of the impleaded respondent and also the writ petitioner ie., in the said impleading application, he has not stated about the receipt of pension, his elder son is working as a Judicial Officer and another son is a practicing Advocate of this Court.

13.3. Therefore, in all aspect, the writ petition has to be dismissed on the ground of suppression of the material facts. The Board Standing order clearly stated that the claim of categories of the eligible poor person namely being the members of scheduled caste, scheduled tribes and ex-service man and *their dependents* should not be considered, when one has become Government Servant. The financial status and the income has to be taken into consideration on assignment. In order to



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circumvent the said disqualification, the writ petitioner and the present third respondent suppressed the above status. Hence, the claim of the petitioner should not be entertained and she was guilty of “*suppressio veri*,” “*expressio falsi*”. Meaning of the “*suppressio veri*,” “*expressio falsi*” as held by the Hon'ble Supreme Court in *Dilip N. Shroff v. CIT [(2007) 6 SCC 329] SCC at p. 359, para 71* is as follows:

“suppressio veri would amount to concealment, suggestio falsi would amount to furnishing of inaccurate particulars.”

13.4. In this case, the original writ petitioner's son is present impleaded respondent. He was working in the postal department as Central Government Employee. Therefore, she was not entitled to make application to claim the benefit of widow of ex-serviceman and also landless scheduled caste poor person. Hence, she intentionally suppressed the said material fact and made the claim. Similarly, now the impleaded respondent also not disclosed that his son is a Judicial Officer and another son is a practicing Advocate before the High Court. His family is well off economically. Therefore, the writ petitioner was guilty of *suppressio veri*.



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13.5. In this case, the writ petitioner never disclosed the income of her only son and the benefit received by her after the death of her husband from the department including the pension received by her and she failed to disclose the true facts relating to the economic status and claimed as landless ex-serviceman poor widow. Further, the impleaded petitioner also never disclosed the income of his son namely the Judicial Officer and practicing Advocate and his service benefit and pension. Hence, the writ petitioner is guilty of *suggestio falsi*.

13.6. In view of the above facts, the writ petitioner and the present third respondent are disqualified to claim the assignment in the category of eligible poor persons namely being the member of Scheduled caste and Ex-servicemen.

13.7. It is well settled principle that at any stage of the proceedings, if a party to the proceedings brought to the knowledge of the Court about any suppression of the material fact in obtaining the favourable order by committing fraud, the Court has jurisdiction to set aside the same. In this aspect, it is relevant to note the following



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principle laid down by the Hon'ble Supreme Court in the case of

S.P.Chengalvaraya Naidu Vs. Jaganath reported in **1994 1 SCC 1**

“Fraud avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

14.Claim of the petitioner in respect of the valuable lands

The specific case of the writ petitioner in the original representation and the pleadings is that she was widow of ex-serviceman, she is entitled to claim benefit under the G.O.Ms.No.1750 dated 13.05.1963. Under clause 20 of the Board Standing order, the ex-serviceman is entitled to claim only the available waste land. In this case, the third appellant directed the fourth appellant to assess the claim of the writ petitioner. The fourth appellant assessed the entire topography and potentiality of the said land and also the case of the original writ petitioner and made the following recommendation:



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தலப்பார்வை குறிப்பு:

வட்டத்தின் பெயர்: மதுரை (தெற்கு)

கிராமத்தின் பெயர்: அவனியாபுரம்

தலப்பார்வை நாள்: 10.7.1998

மதுரை தெற்கு வட்டம், அவனியாபுரம் புல எண்.226/2ஏ, 265/2, 265/6பி ஆகிய புல எண்கள் 10.07.1998 அன்று மதுரை தெற்கு வட்டாட்சியர், தலைமையிடத்துத் துணை வட்டாட்சியர், வருவாய் ஆய்வாளர், அவனியாபுரம், நில அளவர், கிராம நிர்வாக அலுவலர், அவனியாபுரம் ஆகியோருடன் இடப்பார்வை செய்யப்பட்டது.

புல எண்.226/2ஏ (பரப்பு 0.18.0)

(தீர்வை ஏற்படாத சர்க்கார் தரிசு)

இந்த இடம் அவனியாபுரம் - பெரியார் நகர் செல்லும் சாலையிலிருந்து “சேர்மத்தாய் மகளிர் கலைக் கல்லூரிக்கு” செல்லும் சாலையில் வடக்கு பக்கம் அமைந்துள்ளது. தெற்கே சாலையும் கிழக்கு பக்கம் சாமநத்தம் கிராமமும், வடக்கே புல எண்.225 க்குரிய பட்டா நிலங்களும் உள்ளன. இந்த இடத்தில் நடப்புப்பசலியில் மனுதாரர் உழவடை ஏதும் செய்யவில்லை. தரிசாக உள்ளது.

புல எண்.265/2 (பரப்பு 0.89.0)

(தாழ்த்தப்பட்ட ஆதி திராவிடர்களுக்கு ஒதுக்கப்பட்ட இடம்)

இந்த இடம் அவனியாபுரம் - குசவன்குண்டு சாலையில் கிழக்குப் பக்கத்தில் உள்ளது. இதனை சுத்திய ஏனைய பக்கங்களில் பட்டா நிலங்கள் உள்ளன. மனுதாரர் ஒப்படை கோரும் நிலம் ஒரு சிறு பகுதி உழவடை தரிசாகவும் ஏனைய பகுதி கருவேல முட்செடியாகவும்



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புல எண்.265/6பி (பரப்பு - 0.29.0)

தாழ்த்தப்பட்ட ஆதி திராவிடர்களுக்கு ஒதுக்கப்பட்ட இடம்:

இந்த இடம் அவனியாபுரம் - குசவன்குண்டு சாலையில் கிழக்குப் பக்கத்தில் உள்ளது. இந்த இடத்திற்கு தெற்கே சிவகங்கை மாவட்டம் ஈச்சாவோடை கிராமம் உள்ளது. வடக்கே புல எண்.265/5ஏ, 5பி பட்டா நிலங்களும் கிழக்கே புல எண்.263-க்கு உரிய பட்டா நிலங்களும் உள்ளன. நடப்பு பசலியில் உழவடை ஏதும் இல்லை.

இந்த இடத்தை அனுபோகம் செய்யும் திருமதி.மாரியம்மாள் என்பவர் தமக்கு இலவசமாக ஒப்படை செய்ய வேண்டும் எனக் கோரியுள்ளார். இவரது மகன் அஞ்சல் துறையில் பணிபுரிந்து வருகிறார். எனவே இவருக்கு இலவசமாக நிலம் ஒப்படை செய்ய இயலாது.

நிலமதிப்பு நிர்ணயம் செய்ய "Delta" நிலத்தையும் பார்வையிட்டேன். வட்டாட்சியர் மற்றும் கோட்டாட்சியர் பரிந்துரை செய்த கிரயத்தொகை ரூ.11,20,746/- சரியாக உள்ளது. இந்த தொகையை நோக்கும் போது நிலம் மதிப்பு வாய்ந்த நிலமாகத் தோன்றுகிறது. மனுதாரரும் பிரஸ்தாப நிலத்தில் தொடர்ந்து சாகுபடி செய்யவில்லை. இக்கிராமத்தில் பெரும்பாலான நிலங்களில் வேலிகருவை



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செடி உள்ளது. ரோடு ஓர நிலங்களில் வீட்டடிமனைகளாக விற்பனை செய்யப்பட்டு வருகிறது. எனவே. மனுதாரருக்கு ஒப்படை செய்ய வேண்டியதில்லை. அரசின் பிற்கால உபயோகத்திற்காக இந்நிலங்களை தடையாணை புத்தகத்தில் பதிவு செய்து ஒதுக்கி வைக்கலாம்.

14.1. The said recommendation was re assessed and accepted by the third appellant. Thereafter, the third appellant passed the order on 05.08.1998 to declare the said land as a valuable land and the said decision was taken in the interest of larger public interest as a matter of policy. The Government in the impugned orders declared the land claimed by the petitioner are valuable lands on the ground that the said lands are situated adjacent to the Madurai Corporation and the surrounding lands are developed as house sites. The said decision of the Government is made on the assessment of the entire facts. The individual has no right to claim the land meant for larger public. When a decision is taken in the larger interest, the individual has no role and get denuded of the said object. A welfare state must serve for larger public. The contents of the same is as follows:

மதுரை மாவட்ட ஆட்சித்தலைவர் அவர்களின் நடைமுறைகள்:

முன்னிலை: திரு.மு.காசிவிஸ்வநாதன், இ.ஆ.ப.,

ந.க.எண்.1/5087/97

நாள்:05.08.98



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பொருள்: மதுரை தெற்கு வட்டம் - அவனியாபுரம் கிராமம் புல எண்கள்: 226/ஏ (0.18.0), 265/2 (0.89.0) மற்றும் 265/6பி (0.29.0) தீர்வை ஏற்படாத சர்க்கார் தரிசு - தடையாணைப் புத்தகத்தில் பதிவு செய்தல் - ஆணைகள்.

பார்வை: 1. மதுரை வருவாய் கோட்டாட்சியர் கடிதம் ந.க.எண். 1458/98, நாள்: 26.05.98.

2. சம்பந்தப்பட்ட இதர ஆவணங்கள்.

ஆணைகள்:

மதுரை தெற்கு வட்டம், அவனியாபுரம் கிராமம் புல எண்கள். 226/ஏ 0.18.0 ஹெக். மற்றும் புல எண். 265/2 0.89.0 ஹெக் மற்றும் 265/6பி 0.29.0 ஹெக் (தீர்வை ஏற்படாத சர்க்கார் தரிசு நிலங்கள்) மிகவும் மதிப்பு வாய்ந்த நிலங்களாக இருப்பதால் அரசின் பிற்கால உபயோகங்களுக்கு தேவைப்படும் என்றும் கருதப்படுகிறது. இதன் தற்கால மதிப்பு ரூ.11,20,746/-.

2. எனவே, மேற்படி நிலங்கள் மதிப்பு வாய்ந்த நிலமாக இருப்பதால் எதிர்காலத்தில் அரசுக்கு தேவைப்படும் என்று கருதப்படுவதாலும் தனிநபர் எவருக்கும் ஒப்படை செய்வதைக் தடைசெய்வதற்காக மதுரை தெற்கு வட்டம், அவனியாபுரம் கிராமம் புல எண். 226/ஏ 0.18.0 ஹெக். மற்றும் புல எண். 265/2 0.89.0 ஹெக் மற்றும் 265/6பி 0.29.0 ஹெக். (தீர்வை ஏற்படாத சர்க்கார் தரிசு) நிலங்களை தடையாணைப் புத்தகத்தில் பதிவுகள் செய்ய ஆணையிடப்படுகிறது.

/உ.ப.உ.ந/

(ஓம்) என்.கோவிந்தராஜலு,

மாவட்ட ஆட்சித் தலைவருக்காக,

மதுரை.

14.2. This Court considered the entire records. The said decision of



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the Government is made on the assessment of entire facts in the larger interest, in order to achieve the complete social justice. Therefore, this Court finds no reason to interfere in the decision making process as there is no violation of article 14 of Constitution of India.

14.3. Further the writ petitioner never challenged the said declaration of the authorities. The authorities declared the land as a valuable land considering the above fact as a matter of policy and the same was taken in the larger interest of the public. When thousands and thousands of eligible scheduled caste landless poor persons are hankering for the house sites, the writ Court without taking into account of the bonafide decision of the Government to treat the land for future development as a house sites, erroneously directed the Government to grant assignment in favour of the writ petitioner whose family lost their character of landless poor persons on the premises that the impleaded respondent already became a Government servant, even on the date of the application. The Hon'ble Supreme Court repeatedly held that when the Government took a decision in the larger interest of the public, the Court has no jurisdiction to interfere with the said decision. In this case, the decision of the Government to treat the land as valuable by order



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dated 05.08.1998 is never challenged and the third appellant and the first appellant passed the impugned order after considering the entire facts and topography of the land. In the said circumstances, the writ Court has no jurisdiction to interfere with the decision of the Government for the benefit of the single ineligible individual. In this aspect, it is relevant to extract the following judgment of the Hon'ble Supreme Court:

P.T.R. Exports (Madras) (P) Ltd. v. Union of India, (1996) 5 SCC 268

3. .. The court leaves the authority to decide its full range of choice within the executive or legislative power.

Afcons Infrastructure limited Vs. Nagpur Metro Rail Corporation Limited and another, 2016 16 SCC 818

However, the constitutional courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute its view for that of the administrative authority.

In other words, a mere disagreement with the decision making process or the decision of the administrative authority is no reason for a constitutional Court to interfere. The threshold of mala fides, intention to



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favour someone or arbitrariness, irrationality or perversity must be met before the constitutional Court interferes with the decision-making process or the decision.

BALCO Employees' Union (Regd.) v. Union of India, (2002) 2 SCC 333

Conclusion

92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved.



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Lala Ram v. Union of India, (2015) 5 SCC 813

8. Undoubtedly, the enhanced licence fee being 13 times the earlier licence fee amount, seems excessive, and such an observation was also made by the Hon'ble Railway Minister in his order dated 11-4-1981, but the enhanced licence fee would be illusory if the same is compared with the prevailing licence fee in the said market as applicable to private shops. A welfare State must serve larger public interest. Salus populi (est) suprema lex, means that the welfare of the people is the supreme law. A State instrumentality must serve the society as a whole, and must not grant unwarranted favour(s) to a particular class of people without any justification, at the cost of others. However, in order to serve larger public interest, the State instrumentality must be able to generate its own resources, as it cannot serve such higher purpose while in deficit. Merely because the appellants have been occupying the suit premises for a prolonged period of time, they cannot claim any special privilege. In the absence of any proof of violation of their rights, such concession cannot be granted to them.

9. A welfare State denotes a concept of Government, in which the State plays a key role in the protection and promotion of the economic and



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social well being of all of its citizens, which may include equitable distribution of wealth and equal opportunities and public responsibilities for all those, who are unable to avail for themselves, minimal provisions for a decent life. It refers to “greatest good of greatest number and the benefit of all and the happiness of all”. It is important that public weal be the commitment of the State, where the State is a welfare State. A welfare State is under an obligation to prepare plans and devise beneficial schemes for the good of the common people. Thus, the fundamental feature of a welfare State is social insurance. Anti-poverty programmes and a system of personal taxation are examples of certain aspects of a welfare State. A welfare State provides State-sponsored aid for individuals from the cradle to the grave. However, a welfare State faces basic problems as regards what should be the desirable level of provision of such welfare services by the State, for the reason that equitable provision of resources to finance services over and above the contributions of direct beneficiaries would cause difficulties. A welfare State is one, which seeks to ensure maximum happiness of maximum number of people living within its territory. A welfare State must attempt to provide all facilities for decent living, particularly



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to the poor, the weak, the old and the disabled i.e. to all those, who admittedly belong to the weaker sections of society. Articles 38 and 39 of the Constitution of India provide that the State must strive to promote the welfare of the people of the State by protecting all their economic, social and political rights. These rights may cover, means of livelihood, health and the general well-being of all sections of people in society, specially those of the young, the old, the women and the relatively weaker sections of the society. These groups generally require special protection measures in almost every set up. The happiness of the people is the ultimate aim of a welfare State, and a welfare State would not qualify as one, unless it strives to achieve the same. (See also Dantuluri Ram Raju v. State of A.P. [(1972) 1 SCC 421] , N. Nagendra Rao & Co. v. State of A.P. [(1994) 6 SCC 205 : 1994 SCC (Cri) 1609] and N.D. Jayal v. Union of India [(2004) 9 SCC 362] .)

15. The writ Court without considering the communication of the fourth respondent dated 05.08.1998 made reliance on the recommendation made by the subsequent fourth respondent dated 05.10.2002, which has no legal sanctity in the eye of law. The said



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communication dated 05.10.2002 is illegal on the ground that the Government already made the entry in the prohibitory book with direction not to give assignment to any person. The Subordinate has no jurisdiction to act contrary to the Government decision. The writ Court erroneously made reliance on the said illegal recommendation. In the year 1966, the petitioner had no right to get assignment ie., not even had right to make the application on the ground of the disqualification. Even on the date of filing the writ petition before this Court in the year 1999, she and her family member were disqualified from making application on account of their economic status, ie on the date her only son was the Central Government Servant. After her demise, the said son is disqualified on account of his son being a judicial officer and another son being a practicing Advocate in the High Court. Even though the said disqualification does not form part of the impugned orders, the third respondent's impugned order based on the recommendation of the fourth respondent communication dated 05.08.1998 contained the said disqualification. It is well settled principle that in the interest of the society and Government, the Court has jurisdiction to look into the reason beyond the impugned order and the same is fortified by the following judgment of the Hon'ble Supreme Court:



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All India Railway Recruitment Board v. K. Shyam Kumar, (2010) 6 SCC 614

45. We are of the view that the decision-maker can always rely upon subsequent materials to support the decision already taken when larger public interest is involved. This Court in Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasara Samiti [(1998) 9 SCC 236] found no irregularity in placing reliance on a subsequent report to sustain the cancellation of the examination conducted where there were serious allegations of mass copying. The principle laid down in Mohinder Singh Gill case [(1978) 1 SCC 405] is not applicable where larger public interest is involved and in such situations, additional grounds can be looked into to examine the validity of an order. The finding recorded by the High Court that the report of CBI cannot be looked into to examine the validity of the order dated 4-6-2004, cannot be sustained.

PRP Exports v. State of T.N., (2014) 13 SCC 692

8.... In our view, the Division Bench of the High Court is right in examining the subsequent events as well in a case where larger public interest is involved. This Court in All India Railway Recruitment Board v. K. Shyam Kumar [(2010) 6 SCC 614: (2010) 2 SCC (L&S) 293] distinguished Mohinder Singh Gill case [(1978) 1



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SCC 405] , stating when a larger public interest is involved, the Court can always look into the subsequent events. Relevant paragraph of the judgment is extracted hereinbelow: (K. Shyam Kumar case [(2010) 6 SCC 614 : (2010) 2 SCC (L&S) 293] , SCC p. 631, para 45)

“45. We are of the view that the decision-maker can always rely upon subsequent materials to support the decision already taken when larger public interest is involved. This Court in Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasara Samiti [(1998) 9 SCC 236] found no irregularity in placing reliance on a subsequent report to sustain the cancellation of the examination conducted where there were serious allegations of mass copying. The principle laid down in Mohinder Singh Gill case [(1978) 1 SCC 405] is not applicable where larger public interest is involved and in such situations, additional grounds can be looked into to examine the validity of an order. The finding recorded by the High Court that the report of CBI cannot be looked into to examine the validity of the order dated 4-6-2004, cannot be sustained.”

Internet & Mobile Assn. of India v. RBI, (2020) 10 SCC 274

M.S. Gill Reasoning



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177.... 63 Moons Technologies Ltd. v. Union of India [63 Moons Technologies Ltd. v. Union of India, (2019) 18 SCC 401] , this Court clarified that though there is no broad proposition that M.S. Gill [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] test will not apply where larger public interest is involved, subsequent materials in the form of facts that have taken place after the order in question is passed, can always be looked at in the larger public interest, in order to support an administrative order.

15.1. But the writ Court without considering the above basic concept, erroneously passed the order in issuing writ of mandamus to grant the assignment to the ineligible person.

16. The writ petitioner averred in the writ petition that in the year 1966, she was in possession of three acres 37 cents in Survey No.226/2A, 265/2, 265/6B situated in Avaniyapuram Village which was handed over to her in the presence of the revenue officials and she was continuously cultivating the lands in question. In the considered opinion of this Court, the writ petitioner made a false plea in the affidavit that the authorities



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handed over the possession in the year 1966 before granting the patta and assignment and from that date onwards, she was continuously cultivating the land. To prove the same, she had not produced any records except some B memo. To prove the same, she produced some Adangal and B memo. In the adangal, the Survey No.265/2B is mentioned. The said land was a running channel as per the self serving report of the Tahsildar dated 10.05.2002. But the adangal produced by the writ petitioner also included the said land as if the land was used for cultivation of the crops. Therefore, the *bonafides* of the said documents are lost. Further, the stray incident of making payment of the revenue charges could not be treated as any conferment of the right of cultivation.

17. The authorities filed the documents before this Court and specifically stated that she and her family member never cultivated the land. The topography of the land also revealed that there was no cultivation. Till date, there was no record adduced on the side of the writ petitioner to show her legal possession on the basis of the legal right. In the said circumstances, the stray incident of making payment of revenue charges confers no right at all as held by the Hon'ble Supreme Court in various judgments and also stray act of trespass, or possession has not



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matured into settled possession. More particularly, relating to the

Government land, mere acceptance of revenue tax cannot stop the state

from challenging the ownership of the land. In the case of **State of A.P. v.**

Star Bone Mill and Fertiliser Company, reported in **(2013) 9 SCC 319**

22.The courts below have failed to appreciate that mere acceptance of municipal tax or agricultural tax by a person, cannot stop the State from challenging ownership of the land, as there may not be estoppel against the statute. Nor can such a presumption arise in case of grant of loan by a bank upon it hypothecating the property.”

Poona Ram v. Moti Ram, reported in **(2019) 11 SCC 309 :**

15. But merely stray or intermittent acts of trespass do not give such a right against the true owner. Settled possession means such possession over the property which has existed for a sufficiently long period of time, and has been acquiesced to by the true owner. A casual act of possession does not have the effect of interrupting the possession of the rightful owner. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force.

18. The similar issue arise before this Court in **W.P.No.13035 of**

2004, one of us (**Justice R.Suresh Kumar**) had held as follows:



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15. Moreover, only for the public purpose, the Government lands are being utilised and therefore, it cannot be given to the landless poor category or to the members of the petitioner's, who are claimed to be the retired Government servants.

16. Further, as submitted by the learned Government advocate appearing for the respondents, none of the members of the petitioner's association would be eligible to claim the assignment under the landless poor category, as the income should be less than Rs.16,000/- per annum. Moreover, it is the claim of the respondent that most of the members of the petitioners are well settled, since they are having land or household property either in the town of Hosur or in the outskirts and in the vicinity of the town and taluk. Therefore, for all these reasons, according to the learned Government Advocate, that the plea of the petitioner rejected by the first respondent can be fully justified.

17. The said contention of the learned Government advocate can be accepted in view of the factual position and therefore, the petitioner cannot seek any indulgence of this Court as against the impugned order, since it is not a matter of right to seek for allotment of house site from the Government



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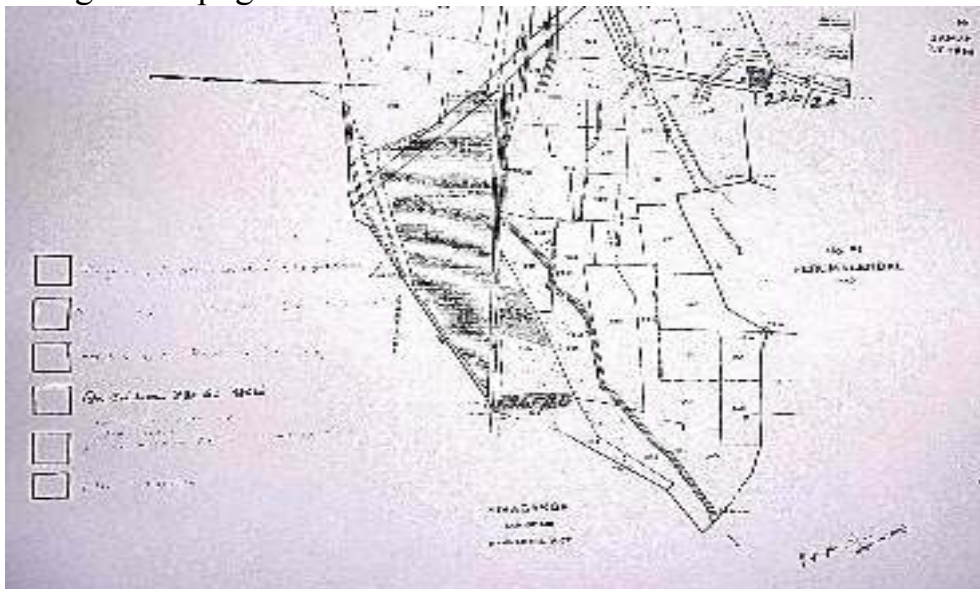
19. The writ Court recording a finding that there was no bar to assign the valuable lands to the scheduled caste landless persons on receipt of the market value is contrary to the Board Standing order. The writ Court completely misunderstood the claim of the writ petitioner. The writ petitioner made a claim as a wife of the Ex-servicemen. In the said circumstances, the writ Court mixed up her claim as a poor landless scheduled caste persons and widow of ex-serviceman. In both the categories, she is not entitled to claim the assignment. On the date of the filing the writ petition before this Court in the year 1999 to consider her representation itself she had no right. On that day, her only son was working as Government Servant. Further, after her demise, the impleaded respondent also lost his right to continue the claim on the ground that his son is working as a Judicial Officer and another son is a practicing Advocate in High Court and hence, the entire family lost the status of the landless poor. Apart from that, Therefore, as per the report filed by the Government during the pendency of the writ petition dated 27.02.2018 and 06.03.2018, the impleaded respondent has no right of making the plea that they are doing cultivation, more particularly, when the lands were declared long back as valuable lands and nearby lands were converted into house sites.



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20. The lands are likely to be converted into house sites in the near future also should not be assigned. The said decision is taken by the Government as a matter of policy. Even in this case, the petitioner has not established that they were cultivating the land. The Government also considered the topography of the lands of the three survey numbers. *From the following topography produced before the Court* and also the specific finding of the sixth respondent in its recommendation dated 10.05.2002, one of the survey number is a channel and hence the finding of the writ Court that the Government has not taken pragmatic approach in passing the impugned order is liable to be set aside.



21. The Government took the rational view to keep the land for the future development. It is not the case of the writ petitioner that



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Government taken different views to different persons. In the said circumstances, the writ Court's finding that the Government acted irrationally is not correct.

22. One other factual infirmity in the order of the writ Court is that the writ Court heavily relied on the recommendation of the sixth respondent dated 10.05.2002. In the said recommendation, the authority recommended only to grant assignment to two survey numbers. The authority specifically declined to grant any assignment relating to Survey No.265/6B on the reason that the same is a channel. The writ Court issued mandamus even relating to the said survey number. In the said circumstances, the writ Court both on legal and factual aspect has not correctly decided the matter.

23. It is well settled principle that in considering the validity of the judgment of the Court below, the subsequent event also is to be taken into consideration in the interest of the public and the same is fortified by the judgment in *Pasupuleti Venkateswarlu v. Motor and General Traders*, reported in (1975) 1 SCC 770 at page 772 wherein the Hon'ble Justice Krishna Iyer, held as follows:



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4. *..First about the jurisdiction and propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and*



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meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.

Emphasized

24. The said subsequent event of disqualification, on the part of the impleading petitioner has to be considered on the basis of the above said report filed by the Government. The writ petitioner lost her right to claim assignment under the category of Scheduled Caste and landless Ex-serviceman for the reason that she suppressed the fact that her only son is Government Servant. After her demise, the said son, retired from service also suppressed the fact that his son is a Judicial Officer. The constitutional Courts repeatedly held that the parties shall disclose true facts to get the relief under Article 226 of the Constitution of India. But in this case, writ petitioner and the impleaded respondent namely the writ petitioner's son in writ appeal after her demise has not disclosed anything. They also not denied the report filed by the Government relating to the status. Hence, this Court considering the above aspect, holds that the writ petitioner had no locus to make application under the



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landless poor Ex-serviceman quota to get the assignment. Further, she approached this Court without disclosing the true facts and got order from the writ Court. The writ Court has also not considered the said fact and granted relief to the ineligible persons.

25. The constitutional Court exercising the power under Article 226 of the constitution of India are to be more vigilant to protect the Government land from usurping the said land by the land grabbers by submitting the representation without true facts. The government of Tamil Nadu already formulated policy not to assign any land located within 16 km from the District Head Quarters vide., *Government order in G.O.(P) No.376, Revenue Department, dated 08.03.1988, and the Letter of the Principal Secretary and Commissioner of Land Administration, Ezhilagam, Chennai in Letter No.F3/27323/2005, dated 22.08.2010, the Government lands located within 16 Kms from the District Headquarters should not be assigned to anybody and must be kept vacant for future Government public purposes.*

25.1. Apart from that, as stated above, in this case, Government passed a separate order dated 05.08.1998 to keep with land as a valuable



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land and corresponding entry also made in the prohibitory book. Even though Government has not filed counter affidavit, the documents relied by the writ Court disclosed the same. But, Writ Court failed to consider the same, therefore, in the considered opinion of this court, the Writ Court has erroneously allowed the writ petition.

26. In view of the above discussions, this Court is inclined to allow the appeal and set aside the order passed by the writ Court in W.P.(MD)No.14125 of 2010 dated 28.08.2012. No costs. Consequently, connected miscellaneous petitions are closed.

[R.S.K.,J.] & [K.K.R.K., J.]

21.12.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
sbm



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To

WEB COPY

1. The Secretary to Government,
Government of Tamilnadu,
Revenue Department,
Secretariat, Chennai – 9.
2. The Principal Secretary and Commissioner of
Land Administration Department,
Chepauk, Chennai.
3. The District Collector,
Madurai District, Madurai.
4. The District Revenue Officer,
Madurai District, Madurai.
5. The Revenue Divisional Officer,
Madurai District, Madurai.
6. The Tahsildar,
Madurai South, Madurai District, Madurai.
7. The Village Administrative Officer,
Avaniapuram Town Panchayat,
41, Avaniapuram Village,
Madurai South Taluk,
Madurai District.
8. The Assistant Director,
Ex.Servicemen Welfare Board,
Welfare Office, Madurai -16.
9. The Additional Government Pleader,
Madurai Bench of Madras High Court, Madurai.



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W.A(MD)No.894 of 2013

**R.SURESHKUMAR, J.
and
K.K.RAMAKRISHNAN, J.**

sbn

Pre delivery Judgment made in
W.A.(MD)No.894 of 2013
and
M.P.(MD)Nos.2 & 3 of 2013

21.12.2023