

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.124 of 2015

and

M.P.No.1 of 2015

1.Joint Commissioner (Land Reforms),
Collectorate Complex,
Villupuram-605 602.

2.The Commissioner,
Land Reforms Department,
Chepauk,
Chennai-600 005.

Appellants

Vs.

A.Karpagam

Respondent

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 28.08.2014 made in W.P.No.31502 of 2012.

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records pertaining to proceedings of the first respondent, Joint Commissioner Rc.No.A1/320/148/2009 dated 15.12.2009 and quash the same and consequently to direct the first respondent to allot and give possession of the land 1 acre of dry land in S.No.192/5 of Kelambakkam Village.

For Appellants : Mr.N.Sakthivel, GA

For Respondent : Mr.M.Narendran
for M/s.King & Partridge

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal arises from the order dated 28.8.2014 passed in W.P.No.31502 of 2012. The respondent herein, who

was the writ petitioner, questioned the legality and validity of the order dated 15.12.2009 passed by the first appellant, whereby the land, bearing S.No.192/5 admeasuring 1 Acre in Kilambakkam village, Chengalpattu Taluk, Kanchipuram District assigned on 27.5.1998 to the writ petitioner, was cancelled on the ground that the land was required for public purpose as indicated in the show cause notice dated 6.8.2009.

2. The learned Single Judge, having considered all aspects of the matter, came to the conclusion that the land was assigned way back on 27.5.1998. Without making allotment of the said land, the said assignment has been cancelled on vague ground of requirement for public purposes without there being any mention of the specific purpose and for which the land in question was required. It was further observed that the grounds assigned in the cancellation order was improved in the counter affidavit. In the counter affidavit, it was stated that the land assigned to the petitioner was abutting the National Highways of GST Road, surrounded by Colleges, schools, offices, industrial and residential development area and the same cannot be used for agricultural purposes. Thus, the impugned order was passed resuming the land by cancelling the assignment in favour of the petitioner.

3. The show cause notice dated 6.8.2009 states that the assignment was subject to the conditions stipulated under Rule 9 of the Tamil Nadu Land Reforms (Disposal of Surplus Lands) Rules. It was clearly prescribed under Rule 9(1)(iii)(b) that at any point of time, if the land is required for public purpose, the said assignment may be cancelled.

4. In response, the petitioner had submitted a reply on 16.9.2009, objecting to the cancellation of the assignment. Subsequently, by the impugned order dated 15.12.2009, the assignment of land was cancelled without specifying the public purpose for which it was required.

5. Rule 9(1)(iii)(b) of the Tamil Nadu Land Reforms (Disposal of Surplus Lands) Rules, 1965 reads as under :

“(b) If at any time before the expiry of the period specified in sub-clause (a) above the land assigned is required for any public purpose, the assignment shall be modified or cancelled and the land shall be resumed by Government. In such cases the annual value fixed under Schedule III of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Tamil Nadu Act 58 of 1961), for use of the land from the date of assignment to the date of resumption by Government and the loans and advances, if any,

granted for the improvement of the land on the security of the land will be recoverable from the assignee. Subject to adjustment of such dues, the assignee shall be entitled to refund of the instalments of land value paid by him and reimbursement of the cost of any permanent improvement effected or any structure such as wells, buildings etc., erected on the land at his own expense for agricultural purposes or for his own residence."

6. There is no dispute that the land can be resumed if there is specific public purpose and when without resumption of land in question, the public purpose cannot be achieved. However, the authorities are required to specify the public purpose in the show cause notice as well as in the order passed thereon. On perusal, it was found that there is no specific public purpose mentioned except the land is required for public purpose.

7. In the counter affidavit, the respondents had improved the reasons by giving public purpose that they received representations from Government departments, Government organizations, like MMDA, ELCOT, IIT and Neyveli Lignite Corporation and CMDA for reserving the land for developing it for public services.

8. The learned Single Judge held that for want of any specific mention about the requirement of public purpose, the impugned order was not proper and accordingly, the same was quashed, directing the authorities to assign the land allotted to the petitioner, within a period of eight weeks from the date of receipt of copy of the order.

9. We have heard the learned counsel appearing for the parties and also considered the rival submissions and perused the pleadings and documents appended thereto.

10. On perusal of papers, it is evident that specific public purpose was not stated in the show cause notice and also in the impugned order. The authorities cannot resume the land taking shelter under the provisions of Rule 9(1)(iii)(b) of the Tamil Nadu Land Reforms (Disposal of Surplus Lands) Rules, without specifying the specific public purpose, for which the land was required to be taken back. The appellant authorities have endeavored to improve the reasons by way of the counter affidavit, which cannot be accepted. If the specific purpose is not stated in the show cause notice, the very purpose of giving show cause notice before cancellation of assignment is defeated, as the noticee has no opportunity to put forth proper objection / representation to the show cause notice. The subsequent improvement in the counter affidavit cannot be taken into consideration. Thus, the order of the learned Single Judge is flawless, just and proper, warranting no interference.

11. Resultantly, the writ appeal is dismissed. No costs.
Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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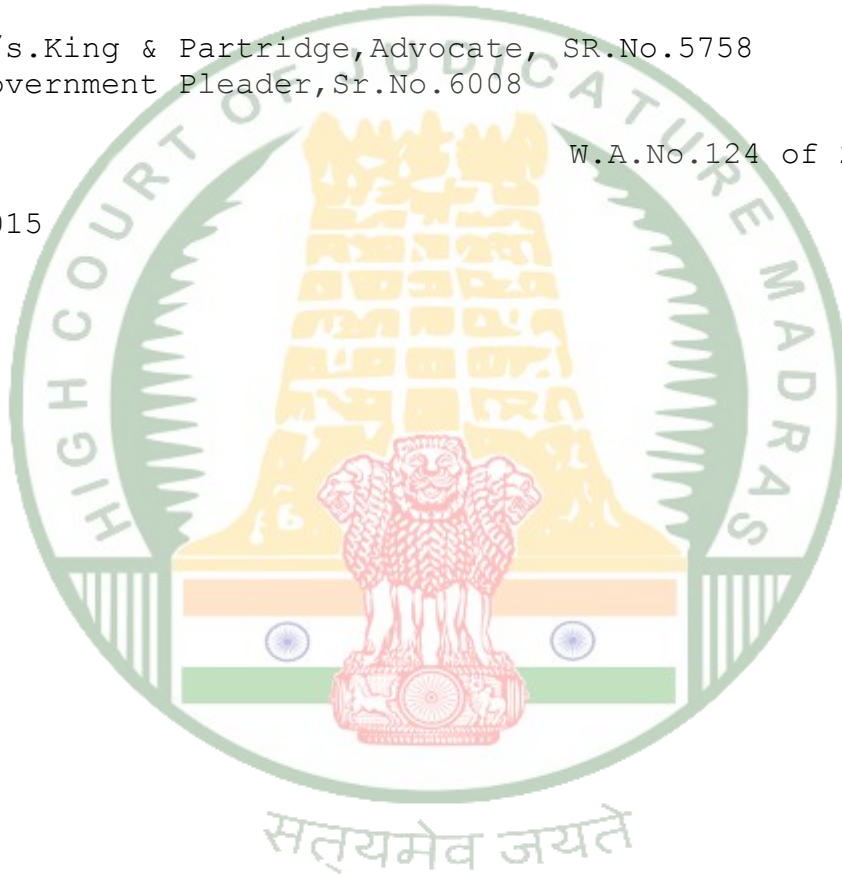
To

2 cc to M/s.King & Partridge, Advocate, SR.No.5758

1 cc to Government Pleader, Sr.No.6008

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