

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.30048 of 2007
and
M.P.No.1 of 2007

Order Reserved on
11.08.2014

Judgment Pronounced on
27.11.2015

Sri Ambal Mills Ltd.,
89A, Rathinasabapathy Street,
Co-operative Colony,
Coimbatore - 641 038.
Rep. by Director

... Petitioner

Vs.

1. The District Collector,
Coimbatore.

2. The Thasildhar,
Palladam,
Coimbatore District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the second respondent in O.Mu.12491/2006 B2 dated 20.11.2006 and quash the same and consequently direct the first respondent to assign the land measuring 14 cents comprised in S.No.698/2 of Samalapuram Village, Palladam Taluk as per the proceedings of the first respondent No.R.Dis. 61048/74 B5 dated 07.04.1975 in favour of the petitioner.

For Petitioner : Mr.V.N.Mohanraj

For Respondents : Mr.M.S.Ramesh
Additional Government Pleader

O R D E R

The short facts of the case are as follows:

The petitioner has submitted that the petitioner's mill was established during 1960. When the mill was started the petitioner company encroached an extent of 14 cents of land comprised in S.No.698/2 of Samalapuram Village, Palladam Taluk and constructed compound wall of mills, rest place for workers and time office of the mills. The petitioner company had been requesting the respondents herein to assign the land, in favour of the petitioner against its market value. Furtherance to which the Assistant Collector, Pollachi in his proceedings No.D.Dis 18473/74 A.2 dated 10.02.1975 requested the then Thasildhar Tiruppur to take steps to assign the lands in favour of the petitioner. The first respondent herein in his proceedings R.Dis. 61048/74 B5 dated 07.04.1975 had passed the orders to assign the lands after collecting double of the market value from the petitioner. Again the Additional District Collector, Coimbatore in his letter No.L.Dis 23713 - 79 dated 29.01.1979 gave instructions to the Thasildhar to submit assignment proposal in favour of the petitioner. The second respondent had already made the proposal and forwarded the same to the office of the first respondent.

2.The petitioner has further submitted that while so, as no steps had been taken to assign the lands in favour of the petitioner, a representation was made to the Sub-Collector Tiruppur on 23.10.2000. A further representation was made to the second respondent on 05.01.2006. He submits that the second respondent in his proceedings O.Mu.491/06 B2 dated 24.05.2006 had written to the petitioner that as the petitioner had sold the land and mill to third parties and the purchaser had plotted out the lands as house sites the land comprised in S.No.698/2 cannot be assigned.

3. The petitioner has further submitted that he wrote a letter dated 31.07.2006 to the second respondent stating that there was no proposal to sell any part of the petitioner's company land and alleged enquiry said to be conducted is baseless and there is no truth in it. In the same letter the petitioner company requested the second respondent to inform the correct double the market value of the property as per the order of the first respondent. He submits that the second respondent in his proceedings O.Mu.12491/2006 B2 dated 20.11.2006 had intimated the petitioner that during enquiry he came to know that the petitioner has proposals to plot out petitioner's company land as house sites and on that ground

had refused to accede to the petitioner's request for assignment of land. Aggrieved against the order of the second respondent made in his proceedings O.Mu.12491/2006 B2 dated 20.11.2006 the petitioner has no other alternative or efficacious remedy than to approach this Court. Hence, this writ petition has been filed.

4.The second respondent has filed counter affidavit and submitted the brief history of the case as follows:

- i. In the W.P.No.30048 of 2007 on the file of this Court, the petitioner viz. M/s.Sri Ambal Mills Limited, Coimbatore has challenged the encroachment of a portion of the Government Land for an extent of 0.05.5 hectares in S.F.No.698/2 of Samalapuram Village of Palladam Taluk in Coimbatore District for the past 38 years.
- ii. As per the rules and regulations of the encroachment Act, 'B' Memo was booked as a penalty in respect of the above case and as it was only with a pure commercial purpose the 'B' Memo charges were fixed on the basis of competitive rent at Rs.1000/- and was collected from the Fasli Year 1409.
- iii. The Writ Petitioner had encroached the above said portion of the Government land by way of constructing a compound wall and utilizing it as time office and rest place for the mill workers, which was purely with a profit earning motive.
- iv. On receipt of requisitions from the writ petitioner asking for the assignment of the above said encroached land, instructions were issued by the then Collector, Coimbatore and Assistant Collector, Pollachi to assign the land to the writ petitioners on collection of double the market value of the land.
- v. On field inspection it was found that they have demolished the building which existed on the encroached portion of the land and leveled the ground with bulldozers with ulterior motive of plotting it in to lay outs or something like that, for that matter.
- vi. As such the second respondent has refused for the proposed assignment of land in favour of the writ petitioner.
- vii. Hence the writ petitioner has now filed this writ petition as it he has got every right to get the above said encroached lands assigned in his favour, citing the routine actions, pursued

- by the authorities for the assignment.
- viii. The writ petitioner himself has accepted that the company had been encroaching the above said portion of the land since 1960 by way of constructing, a compound wall for mills, rest place for workers and time office which is purely run on a commercial basis with profit motive.
 - ix. The writ petitioner said that instructions were issued by the first respondent for the assignment of the above said portion of the encroached land on collection or double the market value.
 - x. If at all such instructions would have been issued by the respondents they were taken only as normal and routine course of actions by the respondents.
 - xi. The writ petitioner has alleged that no steps had been taken by the respondents to assign the lands in his favour even after repeated representations.
 - xii. It is submitted to this Court that perusal and pursuing further action on receipt of an application from anybody for assignment alone does not confirm any right over such assignment in favour of the writ petitioner. It is always review-able and subject to refusal due to some reasonable or genuine cause arising from time to time as the case may be.
 - xiii. The writ petitioner has stated that the second respondent in his proceedings O.Mu.491/06 B2 had informed that the petitioner had sold the land and Mill to third parties and the purchaser had plotted out the lands as house sites.
 - xiv. In this regard it is submitted that on enquiry and field inspection made by the sub-ordinates of the respondents it was obviously found that the building on the encroached portion of the land had been demolished and the ground leveled with some or other ulterior motive.
 - xv. The writ petitioner has stated that there is no proposal to sell any of the company's lands and the enquiry conducted was baseless.
 - xvi. Enquiry reveals that the above said company has not been functioning for the past ten years for reasons not known. Even though the lands were not sold, the respondent submits that on enquiry it was apprised so by the public on assumption.

Moreover widening of highways road in the above S.F.Nos. has also been proposed. Hence the petitioner cannot establish his right for the assignment just because of his request had been refused.

- xvii. The writ petitioner has stated that he has been grieved by the issue of the proceedings by the second respondent refusing the assignment.
- xviii. In this regard it is humbly submitted that the writ petitioner is at no loss due to the non-assignment of the encroached portion of the land because the writ petitioner is not belonging to the poorest class of the society. Instead the petitioner is a wealthy businessman who is running a mills for making profit and hence the contention of the petitioner is frivolous.
- xix. The writ petitioner has quoted some things as grounds for claiming the Government lands assigned in his favour.
- xx. All these grounds circulate only within the points stated totally in the affidavit and in the light of the above facts already submitted by the respondents, it is submitted to this Court that only with a view to curb the practice of grabbing of the Government land by Big Shots who are also the ultimate profit makers and further to cope up with the policy of the Government to pool whatever the Government waste lands available for the purpose of providing free house site pattas to the poorest of the society as ordered in G.O.Ms.No.854 Revenue Department dated 30.12.2006 and in Government Circular No.F1/27403/06 dated 22.01.2007, the second respondent has refused to assign the lands to writ petitioner. Hence, the second respondent prays to dismiss the writ petition.

5. The learned counsel appearing for the petitioner has submitted that the petitioner Mill has been started during 1960 and they occupied the land in Survey No.698/2 of Samalapuram Village, to an extent of 14 Cents, wherein a compound wall has been raised, besides the workers are also using the area as a place for rest. Under these circumstances, the petitioner Mill had made an application to the respondents to assign the said land in their favour, after receiving the market value of the land. On 10.02.1975, the Assistant Collector, Pollachi, had also sent a communication

to the Tahsildar, Tiruppur Taluk, to take steps to assign the said land in favour of the petitioner. The District Collector had passed an order, dated 07.04.1975, assigning the said land to the petitioner after collecting double of the market value of the said land. Accordingly, the Additional District Collector had given instructions to the Tahsildar to submit the assignment proposal. Subsequently, the assignment proposal had been forwarded to the District Collector, Coimbatore. Since the said proposal had not been implemented, the petitioner had made representations to the Sub Collector, Tiruppur and Tahsildar, Palladam, on 23.10.2000 and 05.01.2006 respectively. On receipt of the same, the Tahsildar had communicated to the petitioner stating that the land had been sold and the Mill belongs to third parties. The purchaser of the said land had plotted out the same as house sites. Therefore, the assignment proposal cannot be granted. Subsequently, the petitioner had sent another representation, dated 31.07.2006, to the Tahsildar, Palladam and revealed the current position that the land and the Mill are under his occupation and maintenance. However, the respondents had not considered his request. Subsequently, the second respondent had issued a demand notice to the petitioner, dated 13.12.2005 and demanded arrears of tax i.e. Rs.50,528/-. The mandatory tax had been remitted to the statutory authority on 17.01.2006. The Village Administrative Officer had also collected tax on 06.02.2012 and 11.02.2014. It clearly proves that the petitioner is still in occupation and enjoyment of the subject land.

6.The learned Additional Government Pleader appearing for the respondent has submitted that the petitioner had encroached the said lands and hence penal tax has been collected from him at the rate of Rs.1000/- for the fasli year from 01.04.2009. The petitioner has been occupying the said land for commercial purpose. The respondents had inspected the said property, when the existing building had been demolished and levelled the ground with bulldozers with the ulterior motive of plotting into plot layouts for personal gain. Therefore, the assignment proposal had been rejected. Hence, the learned Additional Government Pleader has prayed this Court to dismiss the writ petition.

7.On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the impugned order is not crystal clear with regard to the land, which had been plotted out. In the absence of documentary proof, the findings given by the second respondent

is not fit to be proceeded with further. Therefore, this Court directs the second respondent to issue an additional notice to the petitioner and conduct a comprehensive enquiry and pass orders on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

8. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs / krk

To:

1. The District Collector,
Coimbatore.
2. The Thasildhar,
Palladam,
Coimbatore District.

+2cc's to Mr.V.N.Mohanraj, Advocate, S.R.No.65047 & 64857
+1cc to the Government Pleader, S.R.No.65268

W.P.No.30048 of 2007
and
M.P.No.1 of 2007

PUR(CO)
CA(18/12/2015)

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