

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 22.06.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.17645 of 2015

and

M.P.No.1 of 2015

V.P.Arumugam

.. Petitioner

Versus

- 1 The District Collector
Coimbatore District Coimbatore-641 018.
- 2 The District Revenue Officer
Coimbatore-641 018 Coimbatore District
- 3 The Thasildar
Annur Taluk Coimbatore District. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of certiorari, Calling for the records pertaining to the impugned Notice made in Na.Ka. No.82/2015 dated 11.6.2015 (served on 16.6.2015) issued by the 3rd respondent quash the same.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.Rm.Muthukumar (for R1 to R3)
Government Advocate

O R D E R

By consent, the writ petition is taken up for final disposal.

2. The petitioner would state that his father late Palaniappan was in possession and enjoyment of un-assessed waste land admeasuring to an extent of 1.35 acres bearing S.No.108/4, Kunrathur Village, Avanashi Taluk, Coimbatore District and it was his ancestral property and continued to be in possession and he was doing agricultural activities in the said land, during his life time. Father of the petitioner died on 14.10.1978 and thereafter, his mother applied for patta in the year 1983 and Thasildar, Avinashi, has processed the said application and forwarded the same to the Revenue Divisional Officer, Tiruppur vide letter dated 31.03.1985, who in turn recommended the grant of assignment patta in the name of his mother late Palaniammal.

3. The 2nd respondent has invited objections by issuing a public notice and since none objected, the 2nd respondent has fixed the value of the land as Rs.7,425/- and granted the assignment patta in favour of his mother, in Ni.Mu.No.173670/85 dated 27.08.1985 and Board Standing Order No.15(3). The 3rd respondent in turn has also granted assignment patta in Form-D-BR No.1/1395, grant No.1/1986 subject to terms and conditions incorporated therein.

4. According to the petitioner, their mother Palaniammal was carrying on cultivation and continued to be in possession and enjoyment till her demise on 05.12.1998. The petitioner would further claim that he along with his two brothers and one sister are the legal representatives of deceased Palaniammal and they subsequently, entered into the family partition by means of registered Document No.2544/2006 dated 07.06.2006 and divided the properties and petitioner claims to be in possession of 'A' schedule property admeasuring to an extent of 30 cents in S.No.108/4 and mutation has been effected.

5. It is the specific case of the petitioner that few Realtors, who are the close associates of local MLA approached this petitioner to sell his property and since he expressed his unwillingness, pressurized the 3rd respondent to issue the impugned notice dated 11.06.2015, by calling upon the petitioner, his brothers and sister to show cause as to why assignment patta should not be cancelled and aggrieved by the same, he has filed this writ petition.

6. Mr.N.Manokaran, learned counsel appearing for the petitioner would submit that the impugned show cause notice on the face of it exhibits predetermination of mind on the part of the 3rd respondent, as he has already reached the conclusion that the petitioner and others had violated the conditions of the assignment order.

7. It is the further submission of the learned counsel appearing for the petitioner that the 3rd respondent being the subordinate to the 2nd respondent has usurped the jurisdiction to issue the impugned notice and on that ground also the impugned order is liable to be set aside and would further contend that admittedly the lands in question have not been sold, but, there was partition effected between the petitioner, his brothers and sister and therefore, the said reason is factually incorrect and prays for interference.

8. This Court heard the submissions of Mr.Rm.Muthukumar, learned Government Advocate, who accepts notice on behalf of the respondents and would contend that in respect of the show cause notice, the petitioner has also submitted his representation dated 13.06.2015 and therefore, the 3rd respondent may be directed to consider and dispose of the said response to the show cause notice in accordance with law, within a stipulated time.

9. This Court has carefully considered the rival submissions and also perused the materials placed before it.

10. A perusal of the impugned show cause notice would disclose that the 3rd respondent has already reached the conclusion/ predetermned the issue that the petitioner, his brothers and sister, had violated the conditions of the assignment.

11. It is well settled position of law that while, issuing a show cause notice, the concerned authority is not expected to predetermine the issue, but, precisely it was done by the 3rd respondent and hence on that sole ground, the impugned order warrants interference. It is also the submission of the learned counsel for the petitioner that the lands in question have not been sold and though, the 2nd respondent is vested with the jurisdiction to issue show cause notice, the 3rd respondent has usurped the jurisdiction. This Court is of the considered view that the said points can also be urged by the petitioner's brothers and sister at an appropriate time. In the light of reasons assigned above, the impugned order warrants interference.

12. In the result, the writ petition is partly allowed and the impugned order passed by the 3rd respondent is set aside. The 2nd respondent is at liberty to issue show cause notice as to why the assignment patta shall not be cancelled and on receipt of the same, it is open to the petitioner, his brothers and sister to submit their response and on receipt of the same, the 2nd respondent is directed to provide them an opportunity of personal hearing and thereafter, adjudicate the matter on merits and in accordance with law as expeditiously as possible and till then, respondents shall defer further decision to dispossess the petitioner, his brothers and sister in respect of the lands in question. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

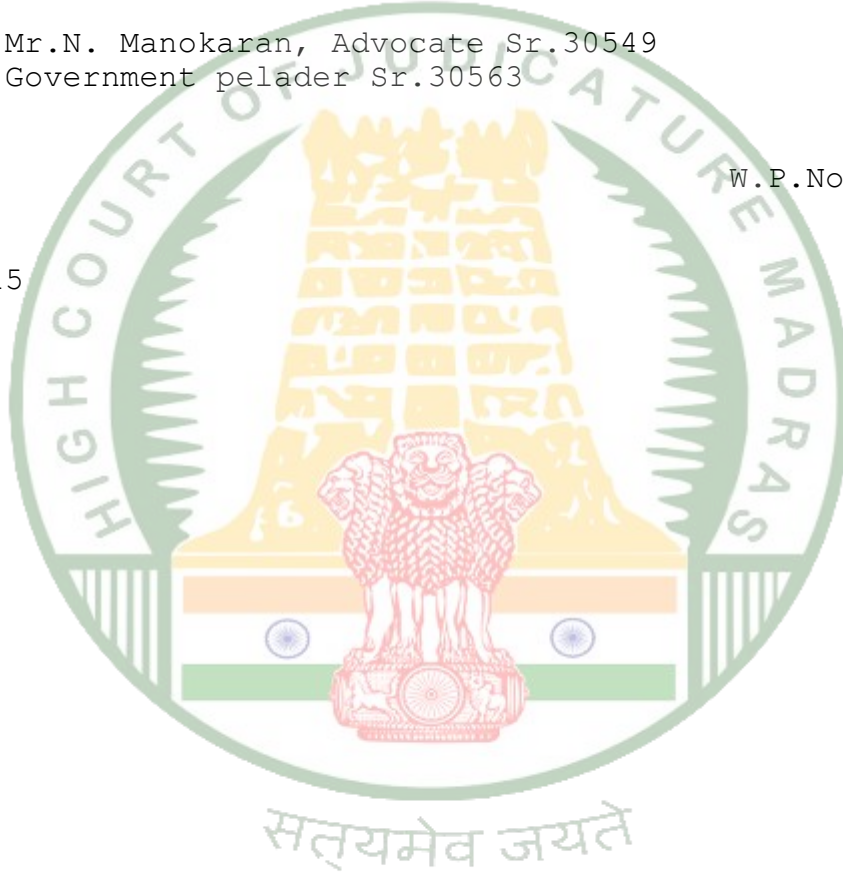
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To

- 1 The District Collector
Coimbatore District, Coimbatore.
 - 2 The District Revenue Officer
Coimbatore-641 018 Coimbatore District
 - 3 The Thasildar
Annur Taluk Coimbatore District.
- + 1 cc to Mr.N. Manokaran, Advocate Sr.30549
+ 1 cc to Government pelader Sr.30563

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