

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2015

CORAM

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.17611 of 2009 &
M.P.No.2 of 2009

1.SUBBULAKSMI

2.SHANTHI

3.DEIVANAI

4.SUNDARI

5 VIJIYA

[PETITIONERS]

Vs

1 THE DISTRICT COLLECTOR
THRIUPPUR DISTRICT
THIRUPPUR

2 THE SPECIAL TAHSILDAR
ADI -DRAVIDAR WELFARE
KANGEYAN, KANGEYAM TALUK
THIRUPPUR DISTRICT

[RESPONDENTS]

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari , to call for the records of the 2nd respondent culminating in and by his proceeding N.LA21/90 A dated 24.07.2007 and quash the same so far as the petitioners are concerned.

For Petitioners .. Mr.V.Bharathidasan

For Respondents .. Mr.R.Vijayakumar
Addl.Govt.Pleader

O R D E R

With the consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2. Heard Mr.V.Bharathidasan, learned Counsel appearing for the petitioner and Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents.

3.The learned counsel appearing on either side agree that the issue involved in this Writ Petition is squarely covered by the order of this Court made in W.P.No.3259 of 2008 dated 26.11.2010 [D.ANANDHA RANI v. THE DISTRICT COLLECTOR, ERODE DISTRICT AND ANR], wherein very same impugned order dated 24.07.2007 was quashed, giving liberty to the respondents to hold fresh enquiry, if warranted, after giving due notice and due opportunity to the petitioner for being personally heard. The operative portion of the order reads as follows:

" 10. Even otherwise, admittedly the petitioner and 19 other allottees in respect of whom the impugned order of cancellation passed are not personally served with any notice for the enquiry. The pre and post enquiry notices are as per the averments contained in the counter affidavit affixed on survey stone in the respective plots. As the notice is not personally served on the allottees they did not appear for the enquiry. It is noteworthy to mention at this juncture, that the plot allotted to the petitioner and others is vacant site and as per one of the conditions contained in the assignment order the allottees are required to complete the constructions upon the land within 36 months from 02.06.2006 which is the date of allotment and as the enquiry is said to have commenced within one year the allottees could not be expected to be in actual occupation of the land as such the explanation sought to be given by the respondent that as the allottees are not in actual possession of the property the service of notice through affixture on the survey stones is sufficient service cannot at all be accepted.

11. The facts remain undisputed are that the impugned order of cancellation is made without personally serving notice to the allottees and without making the copy of the complaint available to them and without giving due opportunity to them to know the nature of the complaint and to raise their objection and to participate in the enquiry and to make their objections against the contents of the enquiry report. As rightly argued by the learned counsel for the petitioner, at every stage

the allottees are kept ignorant of the proceedings initiated against them.

12. In so far as the petitioner is concerned the reason given in para 4 in the counter filed by the 2nd respondent is that she is ineligible to get the allotment as her father in law owns house with vacant sit which is sufficient to put up house. But, the respondents have not produced any supportive document, the respondents have also not brought to the notice of the court about any rule or order which renders the applicant to be ineligible, in the event of any other member of the family in the relationship of in laws owns vacant plot.

13. Further the 2nd respondent has except referring to the proceedings of the District Collector, not mentioned the ground on the basis of which 20 out of 32 allottees are held to be ineligible for free house site patta. The failure to do so renders impugned order totally non speaking order. Further the order of assignment does not reserve any authority upon the authority concerned to make unilateral cancellation of the same on any of the grounds mentioned herein.

14. Viewing from any angle, the impugned order of cancellation is arbitrary, unfair, illegal, contrary to the procedure known to law and is in violation of the principles of natural justice and is legally and factually unsustainable and is liable to be quashed in so far as the petitioner is concerned, who is shown as serial No.17 in the impugned order.

15. In the result, the writ petition is allowed by quashing the impugned order in so far as the petitioner is concerned with liberty given to the respondent to hold fresh enquiry if warranted after giving due notice and due opportunity to the petitioner for being personally heard. No costs. Consequently, connected miscellaneous petition is closed."

4.In the result, the Writ Petition is allowed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpa

To

1 THE DISTRICT COLLECTOR
THRIUPPUR DISTRICT
THIRUPPUR

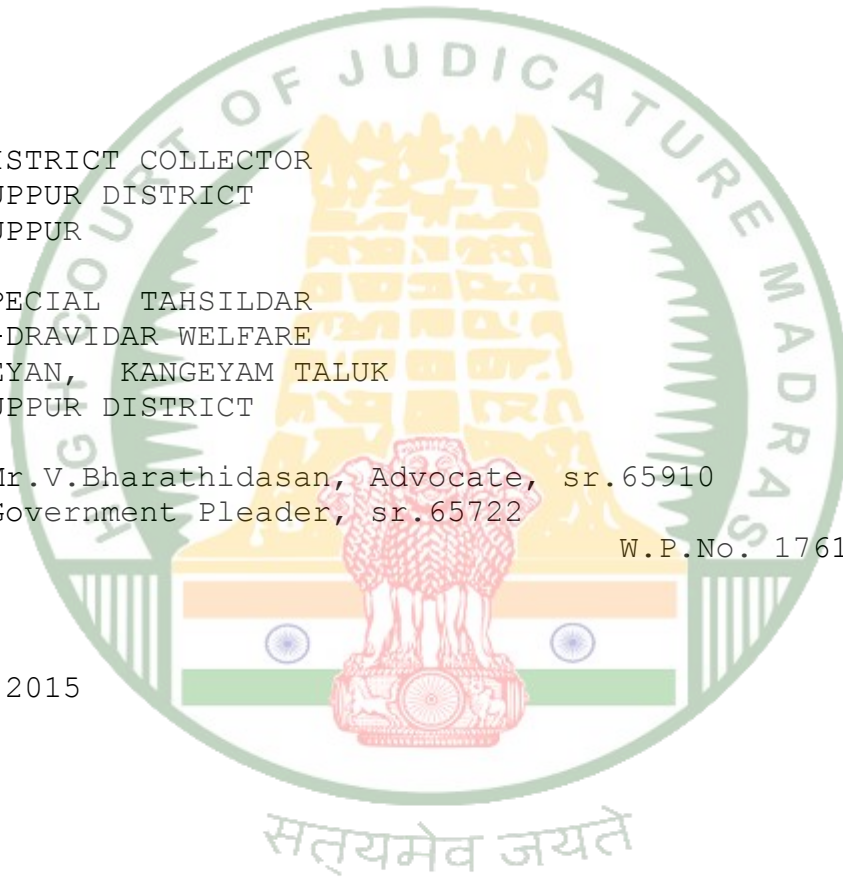
2 THE SPECIAL TAHSILDAR
ADI -DRAVIDAR WELFARE
KANGEYAN, KANGEYAM TALUK
THIRUPPUR DISTRICT

+1 cc to Mr.V.Bharathidasan, Advocate, sr.65910

+1 cc to Government Pleader, sr.65722

W.P.No. 17611 of 2009

rv co
kra 22.12.2015



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