

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-02-2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.4427 & 4428 OF 2013

S.K.Kesavanathan
D.Mahendran

... Petitioner in W.P.4427/13
... Petitioner in W.P.4428/13

-Vs-

1. The District Collector,
Coimbatore District at
Coimbatore.
2. The Sub-Collector,
Pollachi.
3. The Tahsildar,
Pollachi. ... Respondents in both W.Ps.

Petitions under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, to call for the records relating to the order of the third respondent made in Na.Ka.No.15115/2012/A2, dated 26.07.2012, and the consequential order of the first respondent made in Na.Ka.No.17190/2012/A2, dated 08.02.2013, quash the same and consequently direct the respondents to act on the basis of the No Objection Certificate, dated 25.07.2012.

For petitioners : Mr.L.Chandrakumar

For respondents : Mr.R.Rajeswaran,
Special Government Pleader

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O R D E R

Petitioners have filed these Writ Petitions, challenging the order, dated 08.02.2013, in and by which, the petitioners' request for No Objection Certificate for developing the property purchased by them has been rejected, by the first respondent. The first ground on which the impugned order has been challenged is that though No Objection Certificate was granted to the petitioners on 25.07.2012, the same was cancelled on the very next day i.e., on 26.07.2012, without opportunity.

2. In the counter affidavit, the respondents do not place any material to show that any inquiry was conducted. Obviously, inquiry could not have been conducted, because, cancellation was made within one day. The petitioners' case is that the authority, after perusing all the records and being satisfied, has granted No Objection Certificate to the petitioners. Now, the issue would be, as to, whether the petitioners are entitled to purchase the lands in question or is there a condition which prevents the vendors from selling the land, at any point of time.

3. In the counter affidavit filed by the third respondent, at page 4, it has been stated that the lands were assigned to the persons belonging to SC and BC and also others, and, in terms of B.P.Rt 2269 (B), dated 25.05.1973, in the cases where conditional patta was issued, the conditions were valid only for 30 years and after that the conditions are not valid.

4. If that be the case, the authority has to examine, whether there was such condition at the time of assignment of lands. If there was such a condition in the assignment order, the next issue to be seen is, whether there was any transaction done within the period of thirty years. In the counter affidavit filed by the third respondent, it is stated that in terms of Rule 15 (3) (1) of the Revenue Standing Orders, the assigned lands shall not be alienated for a period of ten years from the date of assignment and in the event of the assignees wishing to dispose of the lands after the above period, they should obtain prior permission.

5. Learned counsel for the petitioners would submit that such a condition would not stand attracted to the case of the petitioners, since the first transaction took place after about forty years. This submission also needs to be verified and this can be done only if a thorough inquiry is conducted. The order passed by the first respondent/District Collector, dated 08.02.2013, also has been passed without conducting any inquiry and solely based on the petitioners' representation. Since property rights are involved, it would be in fitness of things for the District Collector, to conduct an inquiry and then take a decision in the matter. However, the competent authority to grant No Objection Certificate is only the Tahsildar, who had initially granted No Objection Certification, which was cancelled on the very next day.

6. Thus, considering the above facts and circumstances of the case, and in the absence of factual clarity in the counter affidavits of the respondents, this is a fit case, where the matter has to be remitted for fresh consideration, for conducting a detailed inquiry and thereafter the authority should proceed in accordance with law.

7. Accordingly, these Writ Petitions are allowed, and the order passed by the third respondent, dated 26.07.2012 and the order passed by the first respondent respondent, dated 08.02.2013, as well as the order passed by the Tahsildar, dated 25.07.2012, initially granting No Objection Certificate, are all set aside, and the matter is remitted to the first respondent for fresh consideration. The first respondent shall nominate a senior officer, who shall conduct an inquiry into the matter, examine all the documents produced by the petitioners, and after notice to all concerned, submit a detailed report to the first respondent, who shall pass final orders on merit and in accordance with law. The above direction shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dixit

To

1. The District Collector,
Coimbatore District at
Coimbatore.
2. The Sub-Collector,
Pollachi.
3. The Tahsildar,
Pollachi.

+2cc's to Mr.L.Chandrakumar, Advocate, S.R.No.11796
+1cc to the Government Pleader, S.R.No.12083

W.P.Nos.4427 & 4428 OF 2013

CNR(CO)
CA(02/03/2016)