

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 31/08/2015

DATED : 22/01/2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.25200 of 2008

and

M.P.No.2 of 2008

1. Michel Johnson
2. D.Inbaraj Petitioners

Vs.

1. The Assistant Commissioner of Land Reforms,
Coimbatore.

2. The Assistant commissioner,
Land Reforms,
Erode.

3. The Commissioner,
Land Reforms,
Chepauk,
Chennai.

4. The Tahsildar,
Tirupur Taluk,
Tirupur.

5. Balasubramaniam

6. Muthusamy

7. The Sub Registrar,
Sub Registrar's Office,
Tirupur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus calling for the records of the first respondent's proceedings bearing Na.Ka.No.542/MRIV/17-70 dated 18.06.1990 and quash the same and consequently direct the first respondent to restore the assignment in favour of the petitioners in respect of S.F.Nos.36/1B (3.61 Acres) and 38/1A (3.88 Acres), Nallur Village, Tirupur Taluk, Coimbatore District.

For Petitioners : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

For Respondents : Mr.P.Sanjay Gandhi
(for R1 to R4 and R7)
Additional Government Pleader

O R D E R

The short facts of the case are as follows:-

The first petitioner has submitted that the second petitioner is his friend who is also affected by the common order passed by the first respondent herein. He is well acquainted with the facts of the case and he is swearing to this affidavit on his behalf as well. He has further submitted that he was employed in Indian Air Force as an Airman in the year 1963. His initial appointment was at Bangalore and thereafter, he was transferred to various places including Jam Nagar, Shillong, Tambaram and Coimbatore. He was promoted as Warrant Officer and he retired from service in the year 1994. Similarly, the second petitioner was an Air Framing Technician in the Indian Air Force. He was appointed in the year 1953 at Ambala and after completing 18 months training, he was appointed as a Warrant Officer at No.2, N.C.C. Air Squadron, Trichy Road, Coimbatore in the year 1972. Like me, he also served at various centres across the borders of India and he was also placed at Coimbatore during the year 1974.

2.The first petitioner has further submitted that during their services at Coimbatore in and around 1974, they had the benefit of obtaining assignment of surplus lands. The Authorised Officer, Land Reforms, Coimbatore identified surplus lands and assigned few of the lands to several persons including himself and the second petitioner herein by order dated 21.12.1974 under reference No.47/MR IV/N1. Accordingly, an extent of 3.61 acres in S.F.No.36/1B was assigned to him by the first respondent under Assignment Deed No.185/ADM dated 22.04.1975. Similarly, the first respondent assigned an extent of 3.88 acres in S.F.No.38/1A in favour of the second petitioner and executed an Assignment Deed No.186/ADM dated 22.04.1975. These lands were assigned to them under the powers granted to the first respondent under Section 94 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Tamil Nadu Act 59 of 1961). At the time of assignment, they were working at Coimbatore and therefore his office address CPL No.261228, MT Section, AFAC, Coimbatore was taken note of by the respondents for the purpose of communication. Similarly, the second petitioner gave his address as No.556, Trichy Road, Coimbatore where he was residing then.

3.The first petitioner has further submitted that the assignment deed was issued to them under Form-F as per Rule 8 (6) of the Madras Land Reforms (Disposal of Surplus Land) Rules 1965. The conditions adumbrated therein only stipulates that the installments should made on or before the 31st of March every year commencing from 1975-1976 and the assignment was subject to the conditions specified in the Appendix. However the conditions never stipulated that they have to personally cultivate the land to obtain peaceful title over the same. It may not be out of place here to mention that the assignment in their favour was governed by the provisions of the Madras Land Reforms (Disposal of Surplus Land) Rules 1965. These Rules were amended in the year 1972 and the Rules were renamed the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules 1965 (hereinafter called the Rules). Even under the Rules enumerates certain conditions of assignment of which Rule (iv) stipulates that "the assignee shall engage himself in the direct cultivation of the land assigned". However the proviso to this Rule says: "provided that this condition shall not be applicable to persons referred to in Rule 5 (1) (v) and persons who are physically or mentally disabled, woman including widows and old persons who have no dependants or family members to do cultivation on their behalf."

4.The first petitioner has further submitted that Rule 5 (1) (v) exempts a person who is or who has been a member of the armed forces including persons who had served in the Indian National Army. He has further submitted that being a Member of the armed forces, they are the petitioners are exempted to personally cultivate the land even after an assignment is made in their favour. He has further submitted that the Appendix (conditions) clearly stipulates that after the value of the land, buildings and trees are paid in full the land will vest absolutely on the assignee. Further the conditions further made it clear that the assignment shall not be modified or cancelled after the lapse of 5 years. He submits that they had paid the entire sale consideration and had therefore become the absolute owners of the property. He submits that after retirement and after settling down his family, in order to make the best use of the land, he filed an application dated 19.07.2004 before the second respondent herein seeking his help to measure the land. By way of reply, the second respondent by his circular dated 04.09.2004 informed him that the lands do not belong to them since their assignments were cancelled by the first respondent by his proceeding Na.Ka.No.542/MR IV/17-70 dated 18.06.1990 for the reason that they had not cultivated the lands assigned to them. He submits that only after walking the corridors of the first respondent several times, they could get a copy of the aforesaid order dated 18.06.1990. They were not served with any original copy. However a copy furnished to them is

herewith produced. He submits that the first respondent claimed that he had issued a notice to them informing them about cancellation of assignments and since they have not received the notice the first respondent had cancelled the assignment. He submits that the first respondent has never issued any notice to them as claimed by him. That apart the first respondent has totally overlooked the fact that they have become the absolute owners of the property by paying the entire sale consideration and on account of the terms of the assignment deed which clearly places a fetter on the first respondent to cancel an assignment after the lapse of 5 years. The assignment in their favour was in the year 1974 whereas they seek to cancel it by an order dated 18.06.1990.

5.The first petitioner has further submitted that the reason mentioned in the impugned order passed by the first respondent dated 18.06.1990 is per se erroneous. Firstly because the assignment in their favour is governed by the provisions of the Madras Land Reforms (Disposal of Surplus Land) Rules, 1965 which clearly states that once the entire payment is made the assignee becomes the absolute owner of the property. Secondly even assuming that the provisions of the Rules would apply to them, under the provisions of Rule 5(1) (v) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 they are exempted from cultivating the land personally. While the statute has given such a protection to the person serving the Indian National Army, the first respondent has no authority to cancel the assignment made in their favour even without due notice to them. He submits that he has paid the entire amount of Rs.1,332.50 even during the year 1981 (13.01.1981) and became the absolute owner of the property. Similarly the second petitioner also paid the entire amount on 13.01.1981 and became the absolute owner of the property. This inspite of the fact that the assignment deed gave them 19 years time to pay the sale consideration. They were also given to understand that the first respondent has re-assigned the lands in favour of the respondents 5 and 6 even without giving due notice to them.

6.During the year 2003, they approached their Advocate Mr.Ulaganathan of Coimbatore District who advised them to file a writ petition before this Court. Accordingly, they made all arrangements to file the same in order to quash the impugned order. The learned Advocate informed them that he has filed a writ petition bearing No.17151 of 2005 before this Court and he would inform them the result of the same. Believing his words they remained very complacent about the same. Thereafter, since they did not get any information from the counsel, they made enquiries and came to know that such a writ petition was not at all filed as claimed by their erstwhile counsel.

7.The first petitioner has further submitted that they were under the bonafide impression for all these years that their writ petition would be listed and they will obtain some favourable orders. It was with a shock that they have now come to understand that the writ petition had not at all been filed. Therefore being remediless, they are now forced to file the present writ petition with a delay of four years for no fault of their. He submits that they were neither negligent nor wanton in proceeding with the case but the delay was beyond their control for the reason as aforesaid. He has further submitted that the order of the first respondent in cancelling of their allotment is per se erroneous and is liable to be set aside. The first respondent failed to issue notice to them before passing such an order. The first respondent has also violated the provisions of law and inferred that they are also bound to cultivate the land in order to enjoy the benefit of assignment. Hence, this writ petition is filed.

8.The third respondent has filed a counter affidavit on behalf of the respondents 1 to 4 and resisted the above writ petition. A brief fact of the case is furnished as below:

(i)It is submitted that an extent of 15.38 acres was declared as surplus from the holdings of one Thiru.Senthilnathan as per the notification under Section 18 (1) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, as amended published in the Tamil Nadu Government Gazette dated 31.10.1973. The above lands were taken possession from the landowner Thiru.Senthilnathan on 12.11.1973. Following the declaration of lands as surplus, the assignment proceedings were initiated under the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 hereinafter referred as the 'Rules', by inviting applications for assignment in Form 'B' on 08.12.1973. The notice in Form 'B' was published in the Village on 18.12.1973. In response the 'B' notice, 7 applications were received and under Rule 8 (2), notice in Form 'D' inviting objections, if any was issued on 25.01.1974 and was published in the places as contemplated under the Rules. Then after conducting enquiry under Rule 8 (3) of the Rules, an order of assignment under Rule 8(4) of the Rules was passed on 09.08.1974 assigning the lands to 4 persons. Among the 4 persons the petitioners were assigned lands as detailed below:

1.Thiru.Michel Johnson (1st petitioner) SF.No.36/1B- 3.61 acres

under category 5(1)(v)

2.Thiru.Inbaraj (2nd petitioner) SF.No.38/1 - 3.88 acres
under category 5(1)(v)

(ii)Then notice in Form 'E' was issued on 02.11.1974 to all the assignees directing them to remit the land value fixed for the land assigned to them. The petitioners, assignees

paid the first installment of land value and got the Deed in Form 'F' executed in favour of them on 22.04.1975.

(iii) Subsequently, in the year 1990, on a complaint received from one Thiru.Kuppusamy that the lands assigned to the petitioners remain uncultivated and the lands are lying waste and that both are not residing in the village, an enquiry was conducted on 18.05.1990 and the enquiry report of the Special Revenue Inspector (Land Reforms), Tiruppur dated 23.05.1990 reveals that the land assigned to both the petitioners remain uncultivated for years together and lying waste and that the whereabouts are not known. As the conditions of assignment had been violated by the petitioners, a show cause notice was issued to them on 04.06.1990 to show cause why their assignment cannot be cancelled on violation of conditions of assignment. The notices could not be served to them as they were not residing in the village and hence it was served by affixture. As no explanation were received from them, orders of cancellation of assignment was passed on 18.06.1990 cancelling the assignment made in favour of the petitioners on the ground that they had not cultivated the land assigned to them.

(iv) Then re-assignment proceedings were initiated against the above extent of 7.49 acres and after following the procedures laid down under the Rules, the above extent was assigned to 5 persons on 06.08.1990. Then on the remittance of land value in one lump sum by the re-assignees, the Deed in Form 'F' were executed in favour of them on 20.08.1990. The lands have also been handed over possession to the re-assignees on 22.08.1990 by the Sub Inspector of Survey and Special Revenue Inspector (Land Reforms), Tiruppur.

(v) Against the orders of cancellation of assignment dated 18.06.1990, the petitioners filed the present writ petition.

9. The third respondent has further submitted that the petitioners have narrated the facts leading the assignment of land to the petitioners. It has submitted that though under the proviso to Rule 9(1)(iv) of the Rules, 1965, direct Cultivation is not applicable to persons referred under Rule 5 (1)(v) of the Rules, the lands should be put to use for cultivation by any other means. But the petitioners without doing cultivation by any other mode left the lands uncultivated years together. Therefore, the cancellation of orders of assignment is legal and sustainable in law.

10.(i) The third respondent has further submitted that as per Rule 9(1)(iii)(a) of the Rules, the land will vest absolutely on the assignee only after the value of land is paid in full or after the conditional period of 20 years from the date of assignment order whichever is later.

(ii) It is submitted that the first petitioner paid the first installment of Rs.87.50 on 18.11.1974 and the second

petitioner paid the first installment of Rs.102.12 on 18.11.1974. As per condition No.8 of the Deed of Conveyance in Form 'F', the land will absolutely vest in assignee after the value is paid in full. But, as per condition No.6, the land assigned shall not be sold or otherwise alienated before the expiry of a period of ten years from the date of assignment or before the payment of the value of the land, building and trees thereon in full whichever is later. The period of conditional period was extended to 15 years as per G.O.Ms.No.1358, Revenue Department dated 21.06.1979 and again extended to 20 years as per G.O.Ms.No.1713 Revenue Department dated 12.11.1987. Therefore till the expiry of 20 years i.e. upto 08.08.1994 (i.e. from the date of order of assignment on 09.08.1974), the assignees would be only limited owners and not the absolute owners. Therefore the contention of the petitioners that the petitioners become the absolute owner of the assigned land is against law and deserves no consideration.

(iii) It is submitted that on violation of conditions of assignment by the assignees, the assignment can be cancelled at any time before the expiry of conditional period of 20 years. Only if the Appellate Authority under Rule 10 of the Rules satisfies that there has been material irregularity in the procedure or that the order was grossly inequitable or that it was passed under a mistake of fact, he may set aside, cancel or in any way modify the order within a period of 5 years. Therefore, the cancellation of assignment is in order and as per law.

(iv) It is submitted that the contention of the petitioners that the first respondent never issued a notice to the petitioners is devoid of merit as the petitioners were not residing in the village and their whereabouts were not known, the notices were served by affixture as contemplated under Rule 4 of the Rules. Therefore, the contention of the petitioners that the notices were not served on the petitioners is devoid of merit and deserves no consideration.

11. The third respondent has further submitted that the petitioners have enlightened the delay caused in filing the present writ petition and therefore there is no remarks to offer in these paragraphs. It has further submitted that as stated supra, prior to the cancellation of assignment, a show cause notice was issued on 04.06.1990 to show cause why their assignment could not be cancelled on the ground of non cultivation of the assigned land. But since they were not residing in the village and their whereabouts were not known, it was served by affixture as contemplated under Rule 4 of the Rules, 1965. Further, the petitioners being assignees under the category 5(1)(v) of the Rules, they need not engage in direct cultivation but they should put to use the land for cultivation by other means. Therefore, as due notice was issued to them and as they violated the conditions of

assignment, the order passed cancelling the assignment is in accordance with law and valid.

12.The third respondent has further submitted that the persons falling in the category of Rule 5(1)(v) of the Rules need not engage in direct cultivation of land assigned to them, but they should put the land under cultivation by other means. This contention therefore deserves no consideration. It has further submitted that as per Rule 9(1)(iii)(a), the land will vest in the assignee only, after the payment of land value in full or after the expiry of the conditional period of twenty years whichever is later. Therefore, this contention is devoid of merit and deserves no consideration. It has further submitted that on violation of conditions of assignment by the assignees, the assignment can be cancelled at any time before the expiry of conditional period of 20 years. Only if the Appellate Authority under rule 10 of the Rules satisfies that there has been material irregularity in the procedure or that the order was grossly inequitable or that it was passed under a mistake of fact, he may set aside, cancel or in any way modify the order within a period of 5 years. Therefore, the cancellation of assignment is in order and as per law.

13.The third respondent has further submitted by paying the land value in full, the petitioners will not get the absolute ownership over the land assigned to them. Only by paying the land value in full and after the conditional period of 20 years is over, the assignee, the petitioners will get the absolute ownership over the land as per rule 9(1)(iii)(a) of the Rules. Therefore this contention is liable for rejection. It has further submitted that before cancellation of assignment, an opportunity was extended to them by issuing a show cause notice to them on 04.06.1990 and as they were not residing in the Village and their whereabouts were not known, it was served by affixture as per rule of the Rules. It has further submitted that the orders of cancellation of assignment made to the petitioners had been done only after following the procedures laid down under the Rules. On cancellation of assignment, the land assigned to the petitioners vested in Government and therefore after following the procedures laid down under the Rules, orders of Re-assignment was passed on 06.08.1990. Therefore, this contention also fails.

14.The learned counsel appearing for the petitioners submits that the second petitioner is also an affected person by the common impugned order passed by the first respondent. The first petitioner had been employed with the Indian Air Force as an Airman in the year 1963 and he had rendered his service at various locations and was retired from service as Warrant Officer, likewise the second petitioner also served at

various locations. In the year 1974 both petitioners had served at Coimbatore location in and around the year 1974. Under these circumstances, the respondents have acquired surplus lands and the same was assigned to the petitioners and others by assignment order dated 21.12.1974. As per the order, the first petitioner has been assigned to an extent of 3.61 acres and the second petitioner has been assigned an extent of 3.88 acres.

15.The very competent counsel further submits that the assignment deed had been issued to the petitioners under Form-F as per the Land Reforms Rule. One of the candidates as per the assignment order, the installments shall be paid on or before the 31st of March every year, commencing from 1975-1976. The petitioners have not violated any conditions of the assignment order. The assignees / petitioners have themselves directly involved in the cultivation, further the person / assignee physically or mentally disabled woman including widows and old persons, who have no dependants or family members to under cultivation on their behalf, as such both the petitioners are exempted to personally undertake the cultivation of land since they are retired persons from the Army i.e. at their advanced old age stage. The petitioners have paid the entire land value, as such they have become owners of the property. Under these circumstances, the petitioners had levelled an application dated 19.07.2004 before the second respondent in order to measure the land. The second respondent had informed by his impugned order dated 18.06.1990 that the petitioners assignment order has been cancelled by the first respondent since they have not cultivated the said land. The said order had not been furnished on the petitioners.

16.The said order is erroneous since without conducting any comprehensive enquiry before cancelling the assignment. Both petitioners had paid the entire land costs. Hence, the learned counsel entreats the Court to set aside the impugned order.

17.The learned Additional Government Pleader appearing for the respondents 1 to 4 and 7 submits that an extent of 15.38 acres was declared as surplus lands from the holdings of one Senthilnathan as per the notification under Section 18(1) of the Tamil Nadu Land Reforms Act. The subject lands were taken possession from the land owner on 12.11.1973. After acquiring the said land, applications were invited for assignment and 7 applications were received and assignment of land to 4 persons, including the petitioners. Subsequently, Form-E was issued to all the assignees directing them to remit the land value fixed for the land assigned to them. The petitioners have remitted the first installment of land value and received the deed of F executed in favour of the

petitioners dated 22.04.1975. Thereafter, a complaint has been received from one Mr.Kuppuswamy stating that the petitioners continue to kept the land uncultivated, hence a detailed enquiry was conducted on 18.05.1990 by the Special Inspector, attached to Land Reforms, Tirupur, the said complaint was proved, therefore a show cause notice was issued to them, but the notices were not served on them since they are not residing there, hence the assignment order was cancelled. Subsequently, re-assignment proceedings were initiated over the subject lands and the same was allotted to the 5 persons and Form-F was executed in favour of them on 20.08.1990 and the lands have also been handed over possession to the re-assignees on 22.08.1990 by the Sub-Inspector of Survey and Special Revenue Inspector (Land Reforms), Tiruppur.

18.The very competent counsel further submits that now the re-assignees are in possession and enjoying the said property. After a lapse of 20 years the above writ petition has been filed, hence, it is not maintainable. Therefore, the very competent counsel entreats the Court to dismiss the above writ petition.

19.Considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed set of papers, it is seen that the cancellation order has been passed on 18.06.1990 and the above writ petition has been filed in the year 2008, after a lapse of 18 years, further the subject lands have been allotted to 5 persons, who are re-assignees and they are in occupation in their respective allotments by the competent authorities on 22.08.1990. All the re-assignees have not been included as necessary parties, further the petitioner has not produced vital documents namely Chitta and Adangal from the Village Administrative Officer to prove their case that the subject lands are in cultivation from the date of the original assignment order dated 22.04.1975. Therefore, the above writ petition does not generate much force in order to establish their case. Hence, it is dismissed.

20.In the result, the above writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

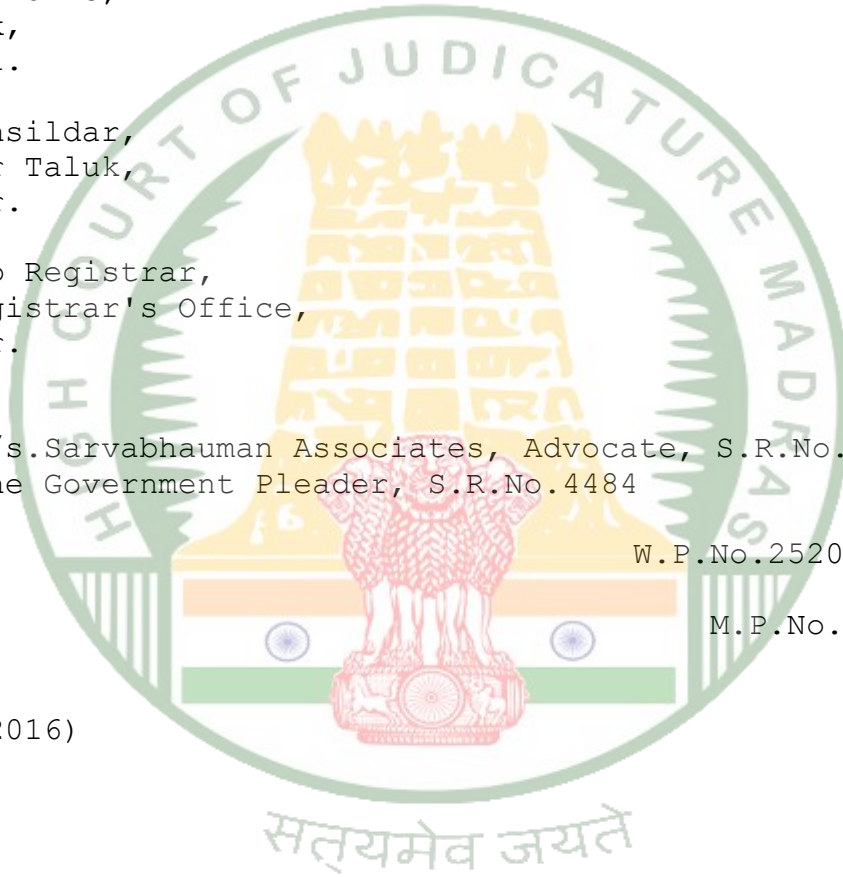
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Tirupur.
5. The Sub Registrar,
Sub Registrar's Office,
Tirupur.

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.4218

+1cc to the Government Pleader, S.R.No.4484

W.P.No.25200 of 2008
&
M.P.No.2 of 2008

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