



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P. (MD) No.15358 of 2016

and

W.M.P (MD) Nos.11315 and 11316 of 2016

S.Vijaya Antony

... Petitioner

Vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Revenue Divisional Officer,
Sivakasi,
Virudhunagar District.

3.The Tahsildar,
Sivakasi,
Virudhunagar District.

... Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of the 2nd respondent in Mu.Mu.Aa2/4795/2015, dated 15.10.2015, with relating to the petitioner's property in survey Nos.30/30 and 30/31 of Alamarthupatti Village, Sivakasi Taluk, Virudhunagar alone and to quash the same and consequently, direct the respondents not to interfere with the peaceful possession and enjoyment of the petitioner's property in Survey Nos.30/30 and 30/31 of Alamarthupatti Village, Sivakasi Taluk, Virudhunagar.

For Petitioner : Mr.M.R.Sreenivasan
For Respondents : Mr.K.P.Krishna Doss
Govt. Advocate

ORDER



petitioner.

2. Originally, the land in dispute has been assigned in favour of one Tamilselvi and Subbiah Nadar by the third respondent in 1992. The petitioner purchased the above land in the year 2014 from the original assignee. Before conveying the properties to the petitioner, the original assignee has obtained a 'No Objection Certificate' from the third respondent/Tashildar by proceedings in MP. 2/12033/2013, dated 06.02.2014, and after purchase, the patta has also been transferred to the petitioner's name. Now, the second respondent, without giving any notice to the petitioner or the original assignee, cancelled the order of assignment on the ground that the original assignee violated the condition that they have not constructed any house in the assigned area and keeping the land as a vacant site till date. By the impugned order, assignment granted to the 47 persons was cancelled. Challenging the same, the above writ petition has been filed.

3. A counter affidavit has been filed by the second respondent, wherein, it is stated that originally the land was classified as 'unassessed waste' and reclassified as 'Natham Land' and granted assignment to various persons. Out of 47 persons, 42 assignees have not constructed house in the assigned lands. Based on the report submitted by the third respondent, a proposal for cancelling the assignment was given and notice was also published in the concerned Village. Since no objection for the proposal was received, the second respondent cancelled the patta.

4. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents.

5. The only ground raised by the second respondent for cancelling the patta is that the assignees did not construct any house at the assigned land as per the assigned conditions.

6. The learned counsel appearing for the petitioner produced a copy of the original order of assignment, wherein, a careful reading of the order of assignment, there is no such condition was imposed. Since there is no condition in the order of assignment that the assignees should put up construction within a reasonable time, the respondent cannot cancel the order of assignment on the ground that the assignees failed to put up construction in the assigned land. Apart from that, the impugned order was also passed without issuing proper notice to the assignees, and before passing the order of cancellation, the second respondent ought to have give an opportunity of hearing to the assignees. Even in the counter affidavit filed by the respondents, it is stated that only A-1 notice has been published in the Village and it is also not specifically stated as to whether any individual notice has been issued to the assignee or not, hence, the impugned order has been passed in total violation of principles of natural justice.



8. In the above-said circumstances, the impugned order passed by the second respondent is set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Virudhunagar District,
Virudhunagar.

2. The Revenue Divisional Officer,
Sivakasi,
Virudhunagar District.

3. The Tahsildar,
Sivakasi,
Virudhunagar District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 66623
+ 1 CC TO Mr.M.R.SREENIVASAN, ADVOCATE IN SR No. 66343

SKN

TE/KM : 12/12/2016 : 3P/6C

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