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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Writ Petition (MD) No.1318 of 2011
and

M.P (MD) Nos.3 of 2011 and 1 of 2012

- 1.L.N.R.Chandrasekaran
- 2.L.N.R.Janardhanan
- 3.L.N.R.Rajan
- 4.L.N.S.Rajaram (died)
- 5.L.N.V.Subramanian
- 6.L.N.V.Viswanathan (died)
- 7.L.N.V.Natarajan
- 8.L.N.V.Simmachandran
- 9.L.N.R.Balasubramanian
- 10.L.N.T.Sathiyamoorthy
- 11.L.N.S.Jeyaseelan
- 12.L.N.K.Surendranathan (died)
- 13.O.S.Mothimai

(13th petitioner is substituted
of the deceased 4th petitioner vide
court order dated 19.10.2016 in
W.M.P (MD) No.13850 of 2016)

- 14.C.V.Chamundeeswari

(14th petitioner is substituted
of the deceased 6th petitioner vide
court order dated 19.10.2016 in
W.M.P (MD) No.13852 of 2016)

- 15.P.R.Sathiya Priya

- 16.L.N.S.Praveenkumar

(Petitioners 15 & 16 are substituted
of the deceased 12th petitioner vide
court order dated 19.10.2016 in
W.M.P (MD) No.13851 of 2016)

... Petitioners

Vs.

- 1.The District Collector,
Madurai.

- 2.The Revenue Divisional Officer,
Madurai North,
Madurai 625 020.

- 3.The Tahsildar,
Madurai North,
Madurai 625 020.



4.The Village Administrative Officer,
Koilpappakudi Village,
Madurai North Taluk,
Madurai.

5.The Senior Divisional Manager,
State Marketing Manager (KRIBHCO)
Krishak Bharati Co-operative Ltd.,
Module Nos.1, 2 & 3 /
SIDCO Garment Complex,
Thiru.Vi.Ka.Industrial Estate, Guindy,
Chennai 600 032.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records leading to the proceedings of the 1st Respondent No.Na.Ka.66350/10/Y1 dated 01-11-2010 and quash the same and direct redelivery of the land measuring 30.78 cents of land in Survey No.231/2 Kovil Pappakudi Village in Madurai North Taluk under Patta No.495 to the petitioners.

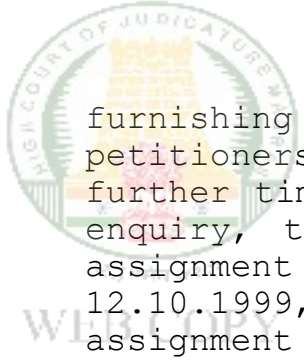
For Petitioners : Mr.L.N.V.Subramanian
For Respondents 1-4 : Mr.T.R.Janarthanam,
Additional Government Pleader.

For 5th Respondent : No appearance

ORDER

The case of the petitioners is as follows:-

The petitioners are the owners of the land measuring 30.78 cents in Kovil Pappakudi Village, Madurai North Taluk, Madurai District comprised in old S.No.1 and New Survey No.231/2. According to the petitioners, the said land was assigned along with another 10 cents totally measuring 40 cents to their forefathers, who were all brothers and sons of L.N.S.Subbier, viz., L.N.S.Ramalingam, L.N.S.Venkatram, L.N.S.Sankarachari and L.N.S.Thulasiram on 10.04.1947. After the demise of L.N.S.Subbier, the petitioners and the legal representatives of the deceased L.N.S.Subbier were in possession of the assigned land. They had constructed houses with the compound wall and the building assigned with Door Nos.86 to 89 in Ward No.3. On their request, the Special Tahsildar, had initially granted a patta in Form IV. Subsequently, a meeting was conducted on the village chavadi and since no objections were received, patta No.495 was issued in favour of the petitioners on 20.05.1998. The assignment made in 1947 was also recognised by the Divisional Development Officer, Madurai in his proceedings dated 05.04.1977. The assigned 40 cents of lands was partitioned among the owners, by a partition deed dated 16.03.1983, registered as document No.6359/1983, dated 19.10.1983. On 15.06.1999, the third respondent had issued a letter stating that joint patta No.495 was obtained by



furnishing false particulars and an enquiry was contemplated. The petitioners had given a reply on 24.06.1999 and had sought for further time to produce the original assignment order. Pending the enquiry, the petitioners had applied for a copy of the original assignment order. The second respondent by the notice dated 12.10.1999, had directed the petitioners to produce the original assignment order failing which an adverse inference would be drawn against the petitioners. Hence, the petitioners filed W.P.No.20020 of 1999 and by an order dated 15.06.2009, the said writ petition came to be dismissed with liberty to the petitioners to file a copy application of the assignment order made in the year 1947 and further, directed the Revenue Divisional Officer to postpone the enquiry for a period of two months. According to the petitioners, though they had made an application for the certified copy of the assignment order on 04.07.2009, neither a copy of the assignment order was furnished nor was an enquiry held. In this background, the petitioners submitted that on 10.11.2010, some persons had forcibly entered into the petitioners lands and taken possession of it. They had also handed over a copy of the proceedings of the District Collector dated 01.11.2010 whereby the petitioners land was directed to be allotted in favour of the fifth respondent for establishing 'Soil Testing Lab and Farmers Service Centre'. Aggrieved against the said order, the present writ petition has been filed.

2.The respondents 1 to 4 in their counter affidavit have stated that there is no record to prove that the forefathers of the petitioners were granted with the assignment to an extent of 40 cents of land in the year 1947. The said lands are classified as village natham. According to them, the petitioners connived and some how obtained a temporary patta and that they had not approached the authorities for mutation of the revenue records. The Village Panchayat Council of Koilpappakudi Village had resolved to cancel the assignment in favour of the petitioners and the lands be earmarked for public use. The Village Administrative Officer has also filed a report stating that no houses were constructed in the said lands. Based on the resolution and the report of the Village Administrative Officer an enquiry was conducted. However, the petitioners did not attend enquiry and sought for further time. Under these circumstances, they had filed W.P.No.20020 of 1999 and this Court had dismissed writ petition with liberty to the petitioners to file a copy application and directed the Tahsildar, Madurai North, to furnish a copy within two months. Inasmuch as no copy of assignment order was available, the same could not be furnished to the petitioners. Hence on 06.05.2010, the patta granted in favour of the petitioners was cancelled and it was sent to the petitioner through post on 06.05.2010. Consequently, by the impugned order dated 01.11.2010, the subject lands were assigned in favour of the fifth respondent for the purpose of formation of 'Soil Testing Lab and Farmers Service Centre'.

<https://hcservices.ecourts.gov.in/hcservices/>

3.I have carefully considered the arguments put forth by

the respective counsels and I have perused the documents filed along with the writ petition as well as the original records produced before me by the respondents.

4. One of the main grounds raised by the petitioners is that they were not aware of the proceedings of the second respondent cancelling their patta since neither prior notice was given nor the said order was communicated. The original records pertaining to the cancellation of patta was perused. From the records, it is seen that the second respondent while passing orders on 06.05.2010 cancelling patta had not issued any notice to the petitioners. Admittedly, the patta stood in the name of the petitioners and it was the bounden duty of the second respondent to issue a proper notice calling for their objections before an order was passed cancelling the patta.

5. Section 10 of the Patta Passbook Act, 1983 imposes certain guidelines as to the procedure for making corrections to the entries in the patta. One of the conditions prescribed therein is that all the parties interested in the land should be given a reasonable opportunity of hearing before any entry is made. In the present case, it is not in dispute that the patta No.495 in the name of the petitioners. As such, there was no impediment on the part of the second respondent to issue prior notice to the petitioners calling for their objections before the order of cancellation was passed. Likewise, the original records reveal that the order of cancellation was despatched to the petitioners. This fact is disputed by the petitioners. The original records do not evidence the receipt of such a notice. As such, it would only lead to drawing an adverse inference that the respondents had neither issued prior notice to the petitioners while cancelling the patta nor did they send a copy of the cancellation order to them.

6. The order under challenge in the present writ petition is with regard to the assignment of the subject lands in favour of the fifth respondent for the purpose of formation of 'Soil Testing Lab and Farmers Service Centre'. When the petitioners had earlier approached this Court by filing W.P.No.20020 of 1999, this Court by an order dated 15.06.2009 had observed as follows:

"In view of the above, the writ petition is dismissed, however with liberty to the petitioners to approach the Government with a copy application for supply of the assignment of patta issued in the year 1947. It is stated by the learned counsel for the petitioners, at this juncture, that such application was made to the Tahsildar, Madurai North on 18.11.1999, but so far the same has not been furnished. Therefore, the petitioner is directed to make a fresh copy application in this regard along with a copy of this order. If any such application is made, the Tahsildar, Madurai North is directed to furnish copies documents required by the petitioners, if the same are available, within a period of two months from the date of receipt of the said copy application. The Revenue Divisional Officer is consequently directed to postpone the enquiry under challenge in this writ petition for a period of two



months from today. No costs."

7. Pursuant to the said order, the petitioners had made an application to the second respondent on 04.07.2009 seeking for a certified copy of the assignment, dated 10.04.1947. Since there was no reply to the petitioners application, the petitioners had sent three reminder letters on 18.09.2009, 22.04.2010 and 15.09.2010. The fact that the petitioners have made an application for the certified copy of the assignment order, is not disputed by the respondents. On the other hand, the respondents in the counter affidavit have stated that since copies of assignment orders were not available, it could not be furnished and that the petitioners were aware of this fact.

8. I am unable to accept the contention of the respondents. When the copy application was pending with the third respondent, nothing prevented him from informing the petitioners that such copy of order of assignment was not available with them. More so, in view of the specific direction of this Court, to consider the petitioners application for issuance of the certified copy of the assignment order was made, it would have been appropriate for the respondents to give a reply to the representation and then take further steps with regard to the reassignment of the lands. The respondents without considering the petitioners application, which was pursuant to the orders of this Court, unilaterally had chosen to pass the impugned order dated 01.11.2010 to reassign the land in favour of the fifth respondent. The proceedings as such is in violation of the principles of natural justice.

9. Thus, it is seen that the respondents while cancelling the patta No.495 and while passing the impugned order reassigning the lands in favour of the fifth respondent have failed to give due opportunity to the petitioners. The petitioners had also produced documents before this Court relating to their house tax assessment and the tax receipts. A copy of the registration partition deed dated 19.10.1983 was also produced before me. When there are sufficient revenue records standing in the name of the petitioners, it would have been appropriate for the respondents to give a fair and reasonable opportunity to them before passing the impugned order as well as cancelling the patta. As such, the order passed by the second respondent cancelling the patta is non est in the eye of law. Under these circumstances, I am of the considered view that the petitioners have made out a case warranting this Court to interfere with the impugned order.

10. For all the above said reasons, the impugned order dated 01.11.2010 passed by the first respondent is quashed. Consequently, the first respondent is directed to redeliver the lands measuring 30.78 cents in old S.No.1 and New Survey No.231/2, Kovil Pappakudi Village in Madurai North Taluk, to the petitioners, within a period of one month from the date of receipt of a copy of this order.



11. With the above observation, the writ petition stands allowed. No costs. Consequently, M.P(MD)Nos.3 of 2011 and 1 of 2012 are closed.

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Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Madurai.

2. The Revenue Divisional Officer,
Madurai North,
Madurai 625 020.

3. The Tahsildar,
Madurai North,
Madurai 625 020.

4. The Village Administrative Officer,
Koilpappakudi Village,
Madurai North Taluk,
Madurai.

+3 cc to Mr. L.N.S.SETHU RAMAN, Advocate, Sr.No: 7703

+1cc to M/S Special Government Pleader, Sr No.7915

SMS

MAS/MR:20.02.2017:6P/9C

Pre delivery Order made in
Writ Petition (MD) No.1318 of 2011
and
M.P(MD)Nos.3 of 2011 and 1 of 2012
10.02.2017