

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2018

CORAM :

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

W.P.No.36623 of 2003
and
W.P.M.P.No.44494 of 2003

Shanmugam

... Petitioner

.Vs.

1.The Special Commissioner
And Commissioner of Land Administration,
Chepauk,
Chennai - 600 005.

2.The District Revenue Officer,
Collectorate, Karur.

3.The Revenue Divisional Officer,
Kulithalai.

4.The Tahsildar, Taluk Office,
Kulithalai.

5.Rajalingam

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, calling for the records of the 1st respondent vide his proceedings in ROC No.G1/30574/2000 dated 16.10.2003 and quash the same.

For Petitioner : Mr.V.R.Anna Gandhi

For Respondents: Mr.Akhil Akbar Ali
Government Advocate
for R1 to R4

: Mr.K.S.Navin Balaji
for M/s.Sarvabhauman Associates
for R5

O R D E R

The prayer sought for herein is for a writ of certiorari calling for the records of the 1st respondent in relation to his proceedings in ROC No.G1/30574/2000 dated 16.10.2003 and quash the same.

2. The necessary facts which are to be noticed for the disposal of this writ petition are as follows :

(i) The petitioner's father one Maruthai had been in occupation and enjoyment of the land at Survey No.242/7 of Kalladai Village, Kulithalai Taluk, Karur District. For the said occupation of the poromboke land, B-Memo notices were issued and at one point of time, the father of the petitioner was also evicted from the encroachment. Subsequently, the petitioner made an application to the revenue authorities to assign the land at Survey No.242/7 under landless poor category.

(ii) Based on the said application and after considering the same, the revenue authorities assigned 0.40.5 Hectare of land in Survey No.242/7 at the said village to the petitioner vide proceedings dated 09.02.1993.

(iii) However, the said assignment given in favour of the petitioner was objected by one Rajalingam Gounder and some other village people, on the ground that, there is a temple called Karuppannasamy temple, which is located in Survey No.242/3, adjacent to Survey No.242/7. It is the claim of the objectors that, in order to reach the said temple, the land at Survey No.242/7 assigned to the petitioner was used as a pathway. Moreover during the festive seasons, the said land assigned to the petitioner was utilised by the village people for gathering and participating in the festivals of the temple.

(iv) Based on the said objection, the Revenue Divisional Officer concerned, i.e. the third respondent herein, after having a spot enquiry, had passed an order on 22.10.1997, stating that there was sufficient pathway to go to the said Karuppannasamy temple and therefore the land assigned to the petitioner need not be disturbed.

(v) Felt aggrieved over the said order passed by the third respondent, Rajalingam and other village people had preferred an appeal to the second respondent, i.e., District Revenue Officer, Karur District. After having gone into the appeal filed by Rajalingam and others, the second respondent vide order dated 09.07.1998, directed to cancel the assignment given to and in favour of the petitioner. As against the said order passed by

the second respondent, the petitioner preferred an appeal before the first respondent, i.e. the Special Commissioner and Commissioner of Land Administration.

(vi) After personal enquiry, the first respondent, vide his proceedings dated 10.06.1999, passed an order stating that, even though assignment of the land was given to the petitioner, the petitioner was not able to cultivate the land within a period of three years, which was one of the conditions. However, since the petitioner contended before the first respondent that, he was prevented by other community people by force from cultivating the land, i.e., the reason why the petitioner has not able to cultivate his land. Therefore, taking into account the said factor, the first respondent decided to give further time to the petitioner to cultivate the land and also directed that, the assignment given in favour of the petitioner therefore shall be restored and the cancellation of the assignment made by the second respondent, i.e. the District Revenue Officer, Karur District is set aside. The Land Commissioner further directed that, the issue can be reviewed after three years.

(vii) Aggrieved over the said order, dated 10.06.1999 passed by the first respondent, the fifth respondent, who is one of the villager, had filed a writ petition before this Court in W.P.No.11497 of 2000. In the said writ petition, this Court by order, dated 01.11.2011 had observed that, the writ petitioner was not heard before the order was passed by the Land Commissioner. Therefore a direction was given to the Special Commissioner, i.e., the first respondent herein to give an opportunity to both the petitioner herein as well as the fifth respondent before deciding the Revision filed before the first respondent and to pass orders therein. Till the final orders to be passed by the first respondent, as directed by this Court, the status quo as on 10.06.1999 shall be maintained.

(viii) Pursuant to the said directive issued by this Court as stated above, the revision was taken up for consideration by the first respondent and after giving an opportunity to both the petitioner as well as the fifth respondent, ultimately, the first respondent has passed an order on 16.10.2003. By the said order, the first respondent has decided that, since the petitioner even though assignment was given long back and further time of three years was given by the orders of the first respondent in the year 1999 itself, was not able to cultivate the land assigned to him. One of the conditions for assignment of the land to the petitioner was that, if the petitioner is not able to cultivate the land for three years period, it shall be

treated as a violation of the condition and based on which, the assignment given to the petitioner can be cancelled.

(ix) In the said context, the first respondent, after having found that the petitioner has not cultivated the land for three years period and was considered that non-cultivation as violation of one of the conditions imposed by the revenue authorities, at the time of assignment, the first respondent decided to cancel the assignment given in favour of the petitioner by confirming the order passed by the second respondent, i.e. the District Revenue Officer. Aggrieved over the said order passed by the first respondent dated 16.10.2003, the petitioner has filed this writ petition with the aforesaid prayer.

3. I have heard Mr.V.R.Anna Gandhi, learned counsel for the petitioner who would submit that, the third respondent, the Revenue Divisional Officer, after having inspected the spot, has come to a conclusion that, the land assigned to the petitioner is no way affecting the ingress and egress to the said temple as there had been enough space for approaching the temple, apart from the land assigned to the petitioner. Hence the third respondent vide order dated 22.10.1997, decided not to interfere with the assignment.

4. He would further submit that, when that being the position, the cancellation now made by the first respondent through the impugned order only on the basis of non-cultivation of the land assigned to him is totally unjust. The learned counsel would also submit that, the fact that the petitioner was prevented from cultivating the land assigned to him by the other village people was made known to the first respondent, however having recorded the same, the first respondent ought not to have cancelled the assignment.

5. The learned counsel for the petitioner in alternative, made a plea that, even though in the impugned order, the first respondent has directed the second respondent to select alternative site, if available, in the same village and assign the land to the petitioner, no action has been taken towards that direction by the second respondent so far. Therefore, the learned counsel appearing for the petitioner would submit that, the impugned order for more than one reason is liable to be interfered with and the assignment given in favour of the petitioner has to be sustained / restored.

6. Per contra, Mr.Akhil Akbar Ali, learned Government Advocate appearing for the respondents 1 to 4 would submit that,

the assignment was not cancelled through the impugned order on the ground that, there was no alternative site for approaching the Karuppannasamy Temple. Therefore, the reasoning given by the third respondent, in his order dated 22.10.1997 would no way connected with the reasoning given by the first respondent in deciding the issue as reflected in the impugned order.

7. The learned Government Advocate would further submit that, whoever may be the landless poor, in whose favour if the land is assigned under the landless poor category, certain conditions are imposed. If any one of such condition is violated by the assignee, then the assignment is liable to be cancelled. In this regard, the law is well settled. Therefore, the learned Government Advocate would submit that, in the case in hand, since admittedly the assignee / the petitioner has not cultivated the land for more than three years inspite of the long rope has been given to him by the first respondent, which is one of the condition imposed on him as a condition of assignment, on that ground, the first respondent has cancelled the assignment. At the same time, the first respondent taking into consideration of the landless status of the petitioner, in fact rightly has given a direction to the second respondent, the District Revenue Officer to select alternative site in the village, if available and assign the land to the petitioner.

8. In this context, the learned Government Advocate would submit that, the revenue authorities, who are the respondents herein would scrupulously follow the said directions issued by the first respondent in the impugned order for identifying an alternative site for the purpose of assignment to the petitioner. In all these years, such a course of action was not adopted by the respondents herein, because of the pendency of the writ petition.

9. I have considered the rival submissions made by the learned counsel appearing for the parties and also perused the materials placed before this Court.

10. As has been rightly pointed out by the learned Government Advocate appearing for the respondents 1 to 4, the impugned order cancelling the assignment given in favour of the petitioner was not on the ground that, the land assigned to the petitioner was to be utilised as a pathway for reaching the temple, which is located adjacent to the assigned land. But the fact remains that, assuming that there had be an alternative pathway through which the temple can be reached by the village

people as found by the third respondent / the Revenue Divisional Officer, the fact situation is that, the petitioner was not able to cultivate the land assigned to him for several years. This has been admitted by the petitioner before the first respondent, of course stating the reason that the other village people are preventing the petitioner from making cultivation. If at all, the village people preventing the petitioner from making cultivation in the assigned land, the course of action to be adopted by the petitioner is to approach the appropriate law enforcing agency. However, there is no whisper to show that such an attempt has been made by the petitioner.

11. Assuming that the petitioner is not able to cultivate the land because of the over powering objection from the village people, the said situation would definitely prevail forever in that village and therefore, it is not an instant problem for the petitioner but it is a perennial one, where the petitioner would be placed in a position not to cultivate the land forever. Therefore viewing this issue from correct perspective, the first respondent has come to a right conclusion that, instead of permitting the petitioner to take possession of the assigned land for the purpose of cultivation, he can be given alternative land, so that the petitioner at least would be able to cultivate the alternative land to be assigned to him. That is the reason why a direction was given by the first respondent in the impugned order, directing the second respondent / the District Revenue Officer to select alternative site, if available in the same village and assign to the petitioner.

12. Though such a direction was given by the first respondent and the same has not been injuncted or stayed by this Court, such a direction given by the first respondent so far has not been implemented by the other respondents. Even though a reason has been given by the learned Government Advocate stating that because of the pendency of the writ petition, such direction given by the first respondent was not complied with, this court is not accepting the said reason for such a huge delay for more than fifteen years in not complying with the direction issued by the first respondent.

13. Be that as it may, after having considered the merits of the case by perusing the records and in view of the discussions made above, this Court is of the view that, the impugned order would be sustained, including the portion given by the first respondent to select and give an alternative site to the petitioner.

14. Resultantly, this writ petition is disposed of with a direction to the second respondent and his subordinates in the revenue department, who are the respondents herein, to immediately take efforts to comply with the directions issued by the first respondent in the impugned order dated 16.10.2003 in identifying the alternative land for the purpose of assignment to the petitioner. In this regard, the assistance of the petitioner can also be utilised by giving notice to him. Once the revenue authorities identify the alternative land in the village, the same can be immediately assigned to the petitioner. Once such assignment is given, the petitioner shall comply with the conditions of assignment including cultivation. It is also made clear that, once such alternative land is assigned to the petitioner, the same shall not be disturbed by any village people and the petitioner shall be free to cultivate such assigned land and the same shall be ensured by the revenue authorities and the law enforcing agencies. The needful as per the aforesaid direction shall be undertaken by the respondents within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mkn/tsvn

To

1.The Special Commissioner
And Commissioner of Land Administration,
Chepauk, Chennai - 600 005.

2.The District Revenue Officer,
Collectorate, Karur.

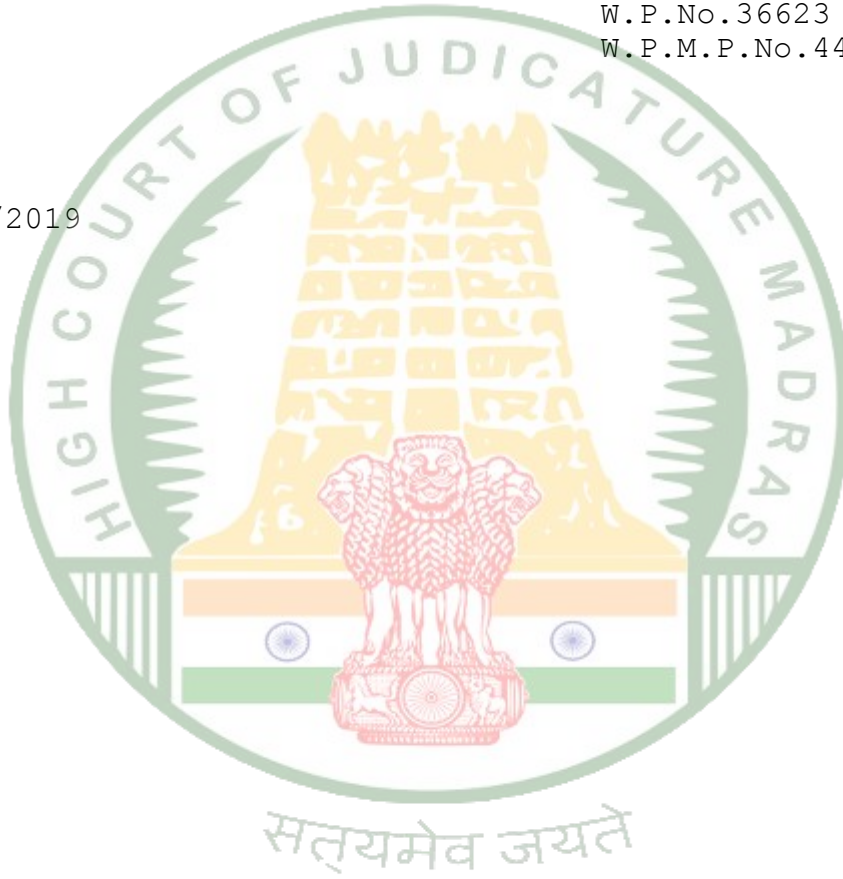
3.The Revenue Divisional Officer,
Kulithalai.

4.The Tahsildar, Taluk Office,
Kulithalai.

+1cc to M/s.Sarvabhauman Associates Sr.76859
+1cc to Mr.V.R.Anna Gandhi, Advocate Sr.76874
+1cc to the Government Pleader Sr.77668

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W.P.M.P.No.44494 of 2003

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