

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.26181 & 26182 of 2005
&
W.P.M.P.Nos.28633 & 28635 of 2005

P.Kumar

...Petitioner W.P.No.26181 of 2005

Gnanadeepam

...Petitioner in W.P.No.26182 of 2005

vs

1. The District Revenue Officer
Vellore,
Vellore District.

2. The Tasildhar,
Arakkonam Taluk,
Arakkonam,
Vellore District

.... Respondents in the above W.Ps

COMMON PRAYER:

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the first respondent in Na.Ka.B2 62505/2003 dated 27.05.2005 and quash the same.

For Petitioners : Mr.N.Manokaran

For Respondents : Mrs. R.Janaki AGP

C O M M O N O R D E R

The cancellation of assignment made by the District Revenue Officer in his proceedings dated 27.05.2005 is under challenge in the present Writ Petitions.

2. Learned Counsel appearing on behalf of the writ petitioners articulated the case of the petitioners by stating that the father of the writ petitioners had applied for the grant of agricultural land for cultivation. The Second respondent in his proceeding dated 31.05.1993 assigned the land to an extent of 0.61.0 hectare in S.No.229/11 and 0.56.0 hectare in S.No.229/14 situated at Thandalam Village, Arakkonam Taluk in favour of the father of the writ petitioner in W.P.No.26181 of 2005 and to an extent of 1.61.0 hectares in S.No.229/7 situated at Thandalam Village, Arakkonam Taluk in favour of the father of the writ petitioner in W.P.No.26182 of 2005 at free of cost.

3. As per the conditions of the assignment order, the father of the petitioners had to convert the assigned land as a cultivable agricultural land within a period of 3 years from the date of assignment. Learned counsel for the petitioners states that their father had converted the barren land into an agricultural land by his hard work and was doing irrigation. The father of the writ petitioner in W.P.No.26181 of 2005 passed away on 09.12.1993, and thereafter, the petitioner is in possession and enjoyment of the property assigned in favour of his father. The petitioners also have put their efforts for the development of the cultivation in that assigned land. In paragraph No.4 of the affidavit filed in support of the writ petition in W.P.No.26181 of 2005 it is stated that the petitioner had erected a small construction on a portion of the land with a view to provide education to the down trodden community people living in that locality. Based on the complaints given by some ill-motivated persons the respondents had initiated action, conducted an enquiry and passed the impugned order, analyzing the assignment initially granted in favour of the father of the writ petitioners. Thus, the petitioners have constrained to move the present writ petitions.

4. Learned counsel for the petitioners states that if at all the authorities thought fit to cancel the assignment, the same shall be done only to an extent of the violation in respect of the construction put up by the petitioner and not the entire land.

5. Learned counsel for the petitioners urged this Court by stating that even the District Revenue Officer in the

impugned order has recorded the deposition of the writ petitioner stating that the petitioner had committed a mistake by constructing an Industrial Training Institute and the petitioner agreed to pay the penalty or any amount in this regard. Further, the petitioner had agreed to pay the land cost to the Government.

6. Relying on the said observation, the learned counsel for the petitioners states that when the petitioners themselves agreed to pay the land cost to the Government, the Government ought to have considered the case of the writ petitioners for the continuation of the Industrial Training Institute in that area.

7. The learned counsel for the respondents disputed the contention raised by the writ petitioners by stating that assignment was granted in favour of the father of the writ petitioners on 25.06.1993. The conditions of the assignment are unambiguous that the land assigned must be converted as cultivable land within 3 years. Further, the assignee or the legal heirs of the assignee alone is entitled to cultivate the land. The assignee cannot alienate or allow any third person to cultivate the assigned land. Further, it is stated that in the event of utilization, the assigned land for any other purpose the Government will take over the land from the assignee. The conditions stipulated in the assignment categorically elaborates that the assignee has no power to alienate or deal with the assigned land in any other manner. The restricted right conferred on the assignee is to use the land for agricultural purposes and not for any other purpose. In the event of violation of these terms and conditions stipulated in the assignment order, the Government has a right to take back the land assigned in favour of the assignee.

8. On a perusal of the impugned order dated 27.05.2005 it is seen that an enquiry was conducted in respect of the complaint made against the petitioners. The District Revenue Officer during the enquiry found that the writ petitioners had constructed an Industrial Training Institute for commercial purposes and offering various technical courses/trade courses for the students in the said Industrial Training Institute. It is an institution being run by the writ petitioners for profit purposes and, therefore, the authorities thought it fit to cancel the assignment granted originally in favour of the father of the writ petitioners. This apart the petitioners themselves

admitted the fact that they constructed an Industrial Training Institute in the assigned land and further offered that they are ready to pay the entire land cost to the Government. The very admission made by the writ petitioners shows that the writ petitioners are capable of paying the land cost in respect of the land wherein an Industrial Training Institute was constructed. The impugned order itself states that the writ petitioners approached the District Collector by way of an application seeking permission to pay the land cost and continue in possession.

9. When the petitioners are capable of paying the land cost then they cannot be considered under the category of poor agriculturist or a poor landless or houseless. The original assignee was the father of the writ petitioners in favour of whom the land was assigned considering the family condition and the other factors during the relevant point of time. On account of efflux of time the family had developed their fortune and the writ petitioners are able to construct a building, which is a technical institution and is earning more.

10. This being the factual position of the case nothing wrong for the Government to review all such cases, wherein the family acquired fortune on account of length of time. Undoubtedly, the original assessment was granted during the year 1993 to the father of the writ petitioners. Now the petitioners are ready to pay the entire land cost to the Government, which is self-evident that they are capable of purchasing a land in that locality. When the petitioners are capable of purchasing a land in that locality, this Court is of an opinion that the land is to be utilized for the public welfare and in the interest of the public by implementing the public schemes, so that the extent of land across the State are assigned/alloted in favour of the landless/houseless poor people in order to lead their livelihood. However, if those persons by virtue of length of time is able to acquire fortune then this Court is of an opinion that all such assignments are to be reviewed by the Competent Authority and initiate appropriate action for cancellation and utilize the public land for the welfare of the public at large.

11. This assignment was done long back considering the factor that the said lands were not useful for the public purposes. Thus, the Government thought during the relevant point of time to assign those lands to the poor, for the

purpose of developing agricultural activities. Now after a lapse of many years and in changed circumstances and on account of a drastic change in the social set up and the society, the decision taken long back is required to be reviewed by the competent authorities. A pragmatic approach is certainly required in respect of these issues. India being a fast developing nation has to review the policies, which were being implemented long back for some purposes. It is not as if the Government should continue the scheme forever. Schemes and Policies are subject to change considering the social changes and other developments occurring on account of various other reasons.

12. Thus, all such policies of assignment or allotment of land at free of cost by the Government must be reviewed periodically and the Government should ascertain whether the assignment granted long back is serving the poor person. If all such assignees have acquired fortune and their son or daughters or legal heirs are well off, then all such assessments are to be cancelled and the lands are to be taken back and to be utilized for the public purposes.

13. The fact remains that the land cost in urban, semi-urban and even in certain rural areas had considerably raised and the requirement of the lands for the public usage and for implementation of public policies are also highly necessary and warranted. The Government is acquiring land by invoking the provisions of the Land Acquisition Laws for the purpose of developmental activities like laying of roads and for implementation of other public projects. When large number of lands are already assigned and few men are making fortune, from and out of such assigned lands, which were assigned very longback, then the Government is under the Constitutional obligation to review all such assignments of lands granted at free of cost to the citizens and if it is found that those assignees are no more continuing as poor or landless persons, then the assignments are liable to be cancelled. Contrarily, on one hand, the Government assigned lands longback are now being under the possession and enjoyment of few persons, who all are making high fortune. On the other hand, the property rights of the citizen are taken away by invoking the provisions of the Land Acquisition laws. Certainly, such a situation is a contradiction and in violation of the constitutional principles and its Ethos. Thus, the Government has to adopt a pragmatic approach, so as to ensure that the acquisition of laws are minimized and the

assignments and allotments granted at free of cost to the persons are reviewed for the purpose of implementation of the Government policies.

14. In nutshell, the Government should provide priority for taking over the assigned / allotted lands at free of cost to the persons at the first instance and if no such assigned or allotted Government lands are not available, then alone the Government can resort to the acquisition of lands from the land owners.

15. Taking away the property right enshrined under Article 300-A of the Constitution of India is to be done by application of mind and by scrutinizing all the circumstances and possibilities. Contrarily, the public lands, which were assigned at free of cost can easily be taken away for the purpose of implementation of public policies. Thus, all such assigned lands in favour of few persons, who all are no more continuing as poor landless persons or needy people, then the Government should initiate steps to cancel the assignment and take over the property for the implementation of the public schemes.

16. It is brought to the notice of this Court that vast extent of lands had already allotted / assigned in favour of individual persons on many occasions on various grounds. However, the changed circumstances as of now is to be taken into consideration and appropriate actions are to be initiated for utilization of the said lands for the purpose of public schemes and in the interest of public at large. Thus, a pragmatic approach is required by the Government to implement the constitutional principles and perspectives. The equality clause, discrimination and welfare of the people are the core values enunciated in the Constitution. Even in the preamble, the justice, social, economic, equality of status and of opportunity and to promote among them all are the resolutions adopted. Such being the values of the constitutional principles, the State, while acquiring the land by invoking the acquisition laws, must think of the lands available with the few assignees/allottees, which were assigned or allotted longback at free of cost. These all are the minimum expectations of the people of this great Nation. However, the executives are mostly in hurry in invoking the land acquisition laws rather than adopting a pragmatic approach, so as to ensure that the public lands are utilized at the first instance.

17.Considering the factum of the case, the following orders are passed:-

(i) The relief as such sought for in the present writ petition stands rejected.

(ii) The Principal Secretary to Government, Revenue Department, Fort St.George, Chennai -600 009 is directed to issue a consolidated / comprehensive instructions to all the officials across the State to identify the assigned / allotted lands longback at free of cost in favour of the individuals / institutions / legal persons and initiate appropriate actions to review all such cases based on the current facts and circumstances of each case and thereafter, pass appropriate orders by affording reasonable opportunity to the persons, who all are in possession and enjoyment of all such assigned / allotted lands and thereafter, restore the possession of all such public lands and utilize the same for the welfare of the public at large and for implementation of public policies.

(iii) The Principal Secretary to Government, Revenue Department, Fort St.George, Chennai - 600 009 is directed to issue such a circular / consolidated instructions within a period of eight weeks from the date of receipt of a copy of this order. The instructions to be issued by the Principal Secretary to Government, Revenue Department should contain a clause that in the event of any failure on the part of the District administration / competent officials / concerned authorities, then suitable disciplinary actions will be initiated under the provisions of the Discipline and Appeal Rules.

18.With these directions, both the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

ska/rm/kak

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Revenue Officer
Vellore,
Vellore District.

2. The Tasildhar,
Arakkonam Taluk,
Arakkonam,
Vellore District

3. The Principal Secretary to Government,
Revenue Department,
Fort St.George
Chennai- 600 009

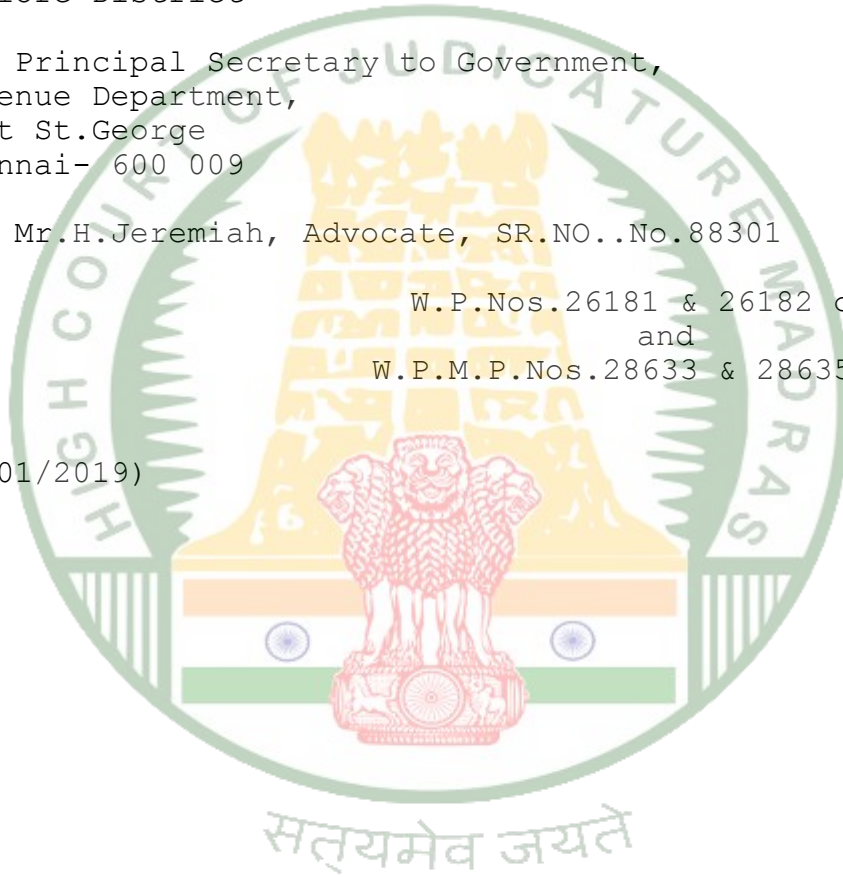
+2cc To Mr.H.Jeremiah, Advocate, SR.NO..No.88301

W.P.Nos.26181 & 26182 of 2005

and

W.P.M.P.Nos.28633 & 28635 of 2005

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