

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	22/03/2018
Delivered on	01/10/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.34418 of 2013 &
M.P.Nso.1 & 2 of 2013 & 1 of 2014 &
W.M.P.No.2896 of 2017

K.Duraisamy .. Petitioner

Vs.

1.The District Collector,
Collector Office, Erode.

2.The District Revenue Officer,
Brough Road, Erode.

3.The Revenue Divisional Officer,
Brough Road, Erode.

4.Dr.T.C.Gnanasekaran .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records passed by the second respondent in Na.Ka.No.8211/2012/A4, dated 30.11.2013 in connection with the property in Survey No.401/24, Villarasampatti Village Erode and quash the same as arbitrary, malafide and against the principles of natural justice.

For Petitioner :Mr.V.Balamurugane

For Respondents :Mr.N.Manikandan,
Government Advocate for R1 to R3
Mr.N.Manokaran for R4

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O R D E R

The prayer in the Writ Petition is to quash the order of the third respondent dated 30.11.2013, in and by which, the assignment made in favour of the petitioner for the property in Survey No.401/24, Villarasampatti Village Erode, was cancelled.

2. The case of the petitioner is that an extent of 110 square metres in Survey No.401/24 of Villarasampatti Village was assigned for construction of dwelling house and when the petitioner put up a small hut with thin roof, the assignment was cancelled in contravention of the principles of natural justice.

3. The third respondent filed a counter refuting the allegations of the petitioner and it is further stated that 110 square metres of Natham house site was assigned in favour of the petitioner at free of cost for the purpose of construction of dwelling house on 28.01.2008. Since the land was not utilized for the purpose it was granted and the assignment was obtained on concealment of material facts, a show cause notice was given for cancellation of assignment, but the petitioner has not availed the opportunity and did not give proper reply to the show cause notice and hence, the assignment was cancelled for violation of assignment conditions.

4. The fourth respondent has filed a counter stating that the land measuring an extent of 1.28 3/4 acres in R.S.Nos.283/7 and 283/8B, Villarasampatti Village was sold by the petitioner's mother Mrs.Samiyathal, through a registered sale deed dated 19.01.2007 and his father was also an attesting witness to the document. Pursuant to the sale, he was given possession of the property and he could reach his lands through the cart track, which runs through R.S.No.401/17 and 401/24, which is also mentioned in the sale deed dated 19.01.2007 and the parent document dated 14.06.1995. However, the petitioner with an ulterior motive got patta in Survey No.401/24 and filed frivolous litigations in O.S.No.554 of 2012.

5. The fourth respondent has further stated that the petitioner has not put up any residential house in R.S.No.401/24 and he has been permanently residing at Door No.95/1, Sembampalayam, Villarasampatti Village, which is evident from the cause title in O.S.No.554 of 2012 and his representation / complaint dated 31.10.2012. In this regard, the fourth respondent had given a criminal complaint, which is registered against the petitioner in Crime No.47 of 2102 by the District Crime Branch, Erode for the offences under Sections 120B, 420, 465, 468, 471 and 294(b) and 506(ii) IPC and another case was registered for causing damage to his property worth of Rs.1,26,000/- in Crime No.100 of 2014 on the file of Erode North Police Station. In the counter it is further stated that after selling the property vide sale deed dated 19.01.2007, the writ petitioner along with his family members colluded together and obtained a compromise decree in O.S.No.159 of 2007, dated 10.11.2010.

6. Heard Mr.V.Balamurugane, learned counsel for the petitioner; Mr.N.Manikandan, learned Government Advocate for

the respondents 1 to 3 and Mr.N.Manokaran, learned counsel for the fourth respondent and perused the materials available on record.

7. In the instant case, the Tahsildar, Erode assigned land in favour of the petitioner to an extent of 110 square metre in Survey No.401/24 of Villarasampatti Village in Erode Taluk, through his letter dated 28.01.2008 on the condition that the assignee shall construct a residential house within a period of six months. The assignment was sought to be cancelled by the third respondent on the grounds that the land was not utilized for construction of house within the stipulated time and the assignment was obtained suppressing the fact that the petitioner and his family owns other properties and the assignment was obtained with an intention to prevent the fourth respondent to reach his property. Though the third respondent issued a show cause notice dated 18.11.2013 calling for explanation from the petitioner, the perusal of the reply of the petitioner dated 27.11.2013 shows that instead of giving proper explanation, he sought informations from the third respondent with regard to allotment of free house sites in Villarasampatti Village in favour of other persons and the basis on which, the show cause notice was issued stating that he owns property and the basis of issuance of notice and the relevant documents. The petitioner sought information for his 18 questions to enable him to give a reply. The third respondent after affording an opportunity to the petitioner cancelled the assignment by his order dated 30.11.2013, which is under challenge in the Writ Petition.

8. The case of the petitioner is that he had already put up a small hut in Survey No.401/24 pursuant to assignment order dated 28.01.2008 and obtained electricity service connection. As rightly pointed by the learned Government Advocate and the counsel for the fourth respondent, the petitioner did not construct a residential building and he put up only a small hut for housing cattle. As observed above, the grant carries a condition and if any condition is violated, the Authorities have right to resume the land. In other words, for the show cause notice dated 18.11.2013, the petitioner did not furnish his reply along with necessary documents to show that there is no violation of assignment conditions and he had already put up a residential house and he has been residing therein since 2008. On the contrary, the address provided by the petitioner to the suit In O.S.No.554 of 2012 and the representation / complaint dated 31.10.2012 would categorically establish that the petitioner is residing at Door No.95/1, Sembampalayam, Villarasampatti Village, Erode Taluk. It is further to be noted that the petitioner without exhausting an alternative remedy before the second respondent, filed the Writ Petition bypassing the appeal remedy. The Civil Litigations and Criminal Proceedings prima facie establish that the writ petitioner with

an ulterior motive had obtained patta, for which, he is not entitled to and it was rightly cancelled by the third respondent after providing ample opportunity and also based on the inspection report.

9. For the foregoing reasons, I find no merit in the Writ Petition. Accordingly, the Writ Petition fails and the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District Collector,
Collector Office, Erode.

2.The District Revenue Officer,
Brough Road, Erode.

3.The Revenue Divisional Officer,
Brough Road, Erode.

+1 cc to Mr.N.Manokaran,advocate,sr.68014

+1 cc to Govt.Pleader,sr.68737

+1 cc to Mr.P.Muthukumarasamy,advocate,sr.67953

krd 23/10

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