

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10-10-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.6027 of 2013

1. M.E.Mari
2. M.E.Murugan

... Petitioners

..Vs..

1.The Principal Secretary to Government,
Revenue Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Kancheepuram,
kancheepuram District.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st Respondent in G.O. (நிலை) No.44, Revenue (நிமு.3(2) dated 12.02.2013 and quash the same and further direct the respondent to consider the claim of assignment of land to the petitioners in accordance with regulations/procedures as laid down in Board Manual/ Standing order and of the Government and of the other relevant records and proceedings in this regard.

For Petitioners : Mr. K.S.Narayanan

For Respondents-1&2 : Mr.R.S.Selvam,
Government Advocate.

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O R D E R

The order of rejection issued by the first respondent Government in respect of the claim of the writ petitioners to assign the land under their possession and enjoyment in G.O. (Nilai) No.44, Revenue (Ni.Mu.3(2)) Department dated 12.02.2013 is under challenge in this writ petition.

2. The learned counsel for the writ petitioners made a submission that the first petitioner is the elder brother of the second petitioner and they are cultivating the land which is under their possession and enjoyment. The petitioners belong to schedule caste community and they are of landless poor family. The petitioners hail from Madurantakam and permanently reside at Melakandai Village in the Madurantakam Taluk. The petitioners are cultivating and doing agricultural work in a piece of land measuring 2.43 Hectares (6.00 Acres) of land of G.G.P classified Punja Poramboke Land in S.No.52 of the Melkandai Village from 1970 on wards. In the Jamapandy held in the year 1974 by the Government, the Revenue Divisional Officer in his proceedings K.Dis.Pr.932/74, dated 20.05.1974 granted temporary permission to the writ petitioners to enter upon the said land and do the agricultural activities. It is contented that the petitioners have improved the said land by digging a big well for cultivation and the crops were cultivated every year by utilizing the water from the said well.

3. The learned counsel appearing on behalf of the writ petitioners made a submission that undoubtedly the land is classified as "Punja Poramboke" and grazing land. However the temporary permission was granted to the writ petitioners to do agricultural activities in the said land measuring about 6 acres and they are continuing their agricultural activities even today. The petitioners are in possession and enjoyment of the said land right from the year 1974 and therefore, they are entitled for assignment as per the standing orders of the Revenue Department. The standing order provides that such grazing lands shall be assigned in favour of poor landless people for their livelihood. Thus the benefit of the said standing order is to be extended by assigning the said land. In respect of the impugned order of rejection issued in G.O.(Nilai) No.44, Revenue (Ni.Mu.3(2)) Department dated 12.02.2013, the first respondent had not considered the standing order and other relevant factors raised by the writ petitioners in their application. At the outset, it is contented that the writ petitioners are in possession and enjoyment of the said land of 6 acres for long years are doing agricultural activities. This apart the writ petitioners are of the landless poor family and therefore they are entitled for assignment. It is further contented that the first respondent Government had not considered the ground raised by the writ petitioners with reference to the standing orders of the Revenue Department. In support of the said contentions, the learned counsel referred the judgment of the Larger Bench of the High Court of Andhra Pradesh in the case of Land Acquisition Officer cum R.D.O. and others Vs. Mekala Pandu and others reported in 2004 (3) CTC 19, wherein the Larger Bench held that the entire issue relating to assignment of land by the Government to the landless poor

farmers and the weaker sections of the society is required to be considered in a proper perspective. The assignment is not a gratis but the constitutional obligation imposed upon the State. It is in the nature of public assistance. The assignees are constitutional claimants. While interpreting the provisions relating to grant of assignment of land by the Government to the vulnerable sections of the society, this Court has to bear in mind the Constitutional commands enshrined in Part - IV of the Constitution of India. The learned counsel for the writ petitioners referred paragraphs 15 & 16 of the judgment, which read as under.

"15. The State Government in discharge of its constitutional obligations launched special programmes from time to time for assignment of Government waste lands to landless poor persons and weaker sections of the society. The policy for assignment of Government waste lands is evident from various Board Standing Orders and the rules framed under the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli so far as the Telangana area is concerned. The rules regarding assignment of lands and the conditions incorporated in D-Form pattas as well as other forms of pattas not only prohibit alienation of such lands but also provide for its resumption as well as re-grant to eligible persons. The Board Standing Orders as well as the rules provide for assignment of lands to landless poor and weaker sections of the society, both for the purpose of providing house sites and agricultural lands.

16. A. landless poor person is one who owns not more than one acre of wet or five acres of dry land and is also poor. The lands at the disposal of the Government shall be assigned only to landless poor persons who directly engage themselves in cultivation. The maximum extent of land which may be assigned to a single individual shall be limited to one acre wet or five acres dry, subject to the proviso that in computing the area lands owned by the assignee shall be taken into account, so that the lands assigned to him together with what is already owned by him does not exceed the total extent of one acre of wet or five acres of dry land, (i) The assignment of lands shall be free of market value; (ii) lands assigned shall be heritable but not alienable; (iii) lands assigned shall be brought under cultivation, within three years; (iv) no land tax shall be collected for the first three years except for the extent if any, which has already been brought under cultivation. Water rate shall, however, be charged if the lands are irrigated with Government water; and (v) cultivation should be

by the assignee or the members of his family or with hired labour under the supervision of himself or a member of his family."

4. Paragraph 28 of the judgment states that "The assignment policy itself is the result of unending struggle over allocation of collective resources. It was the egalitarian promise of a welfare State sought to do away with the vestiges of feudalism and unequal social order. Allocation of collective resources to the weaker sections of the society is an aspect of distributive justice. Social justice is the signature tune of the Indian constitution. The struggle for freedom has been not only political but also economic and social.

5. This court is of an opinion that all the Constitutional principles laid down by the Larger Bench of Andra Pradesh High Court has been reiterated by the Hon'ble Supreme Court of India time and again. There cannot be any second opinion in respect of the constitutional principles and perspectives laid down by the Larger Bench of the High Court of Andra Pradesh. However, this Court has to consider the facts and circumstances of the present case so as to ensure that such a directive principle and the constitutional mandates are implemented without causing any discrimination and by following the noble principles of equality. The Constitution of India ensures the equality as well as the welfare benefits are to be extended to the similarly placed persons. There cannot be any discrimination in respect of grant of such welfare benefits to all the persons who all are otherwise eligible. Thus the judgment referred by the learned counsel for the petitioners is of public importance and there cannot be any deviations in respect of the legal principles laid down by the larger bench.

6. However, this court has to find out whether such principles can be adopted in respect of the case of the writ petitioners for assignment of the land to an extent of 6 acres, which is classified as Punja Poramboke, which is a grazing land.

7. The learned Government Advocate appearing on behalf of the respondents, brought to the notice of the Court that the Government imposed a ban regarding assignment of such Punja Poramboke land in G.O.No.186, Husbandry and Fishing Department, dated 11.02.2001. In view of the fact that the Government imposed a ban for grant of assignment of such poramboke lands, the case of the writ petitioners were not considered. Secondly, it is contented that the writ petitioners are in possession of six acres of land and therefore the Government will not be in a position to assign such vast extent of land in favour of one or two individuals. The impugned order also states that in the event of assigning such vast extent of land in favour of some individuals, there is a possibility of law and order problem in

that village. There may be such similar claims from all other persons and there is a possibility of unrest amongst the minds of the village people. For instance, if the State grants such a vast extent of land in favour of some individuals, then the same will create not only wrong precedent but also create an unrest in the minds of the people who are residing in the locality. It will create an unnecessary doubt in the minds of the people in respect of the implementation of the welfare schemes uniformly and for the benefit of such similarly placed persons. Thus it is not as if the petitioner can claim such vast extent of land for the purpose of assignment. What is now contemplated is to allot land to the poor landless persons for their livelihood. That does not mean that six acres of land is to be assigned. All are subjective satisfaction and further this court cannot formulate such policy of assigning the land to the poor landless persons.

8. It is for the welfare state to formulate the welfare schemes for the benefit of poor landless people. In the event of formulating such schemes, the Government normally impose terms and conditions for grant of assignment or allotments. The authorities competent while implementing such welfare schemes cannot discriminate the persons and the benefit to be extended to all the similarly placed persons. This apart the authorities competent are bound to follow the terms and conditions stipulated in the scheme strictly and scrupulously. Unguided allotment or assignment will certainly create not only law and order problem, but also the people will lose faith in respect of the welfare schemes to be formulated and implemented by the state.

9. It is contented that the petitioners are in possession and enjoyment of the said land for many years. When the petitioners occupied the land, there was no such complication or suspicion in that locality. Now on account of exorbitant land cost, the State cannot assign such a vast land in favour of few individuals. Now the land cost is certainly on higher side and therefore the allotment or assignment in favour of the individuals to such extent of land will cause lot of issues amongst the people of that village at large.

10. This Court is of an opinion that all the Government lands are to be utilised for the public welfare and in the interest of public. Even the State cannot assign or allot land at their whims and fancies. Water bodies and water resources and other grazing lands are to be utilised for the purpose for which the classification is made. Such lands cannot be utilised for the benefit of few individuals. However, such Government lands are classified for the welfare of the people at large. The same cannot be assigned or allotted in favour of few individuals for their personal gains and for the interest of

such individuals. All such public lands are to be utilised for the welfare of the public by implementing all Government schemes. If such vast extent of lands are allotted or assigned in favour of few individuals, future development in respect of public schemes will be paralysed. After assignment or allotment the land cannot be taken back by the State. In the event, the Government decides to construct Government offices or to utilise the lands for public purpose the same cannot be done. Therefore, the Government should have a clear scheme and plan in respect of allotment of such poramboke lands in favour of some individuals. Planning and development is of paramount importance. The Government has to decide in respect of such future developments and plannings. In the absence of considering all these aspects, the interest of the public will certainly be prejudiced. Mere possession of Government land will not confer any right on the individuals to seek assignment. Undoubtedly the petitioners were given a temporary permission to cultivate the land. If at all the petitioners are continuing cultivation, the same will not confer any legal right for seeking assignment of Government land. It is an admitted fact that the writ petitioners are not claiming any title or ownership in respect of the land in their possession. The writ petitioners are seeking assignment from the competent authorities. However, such assignments are to be made only with reference to the Government orders and the factual situations prevailing in that locality. Thus, the assignment of Government lands can never be claimed as a matter of right. It is for the Government to take a policy decision in this regard and such lands can be assigned only by formulating scheme and such schemes are to be implemented amongst all the similarly placed persons. There cannot be any discrimination in respect of implementation of such welfare schemes. This being the principles to be followed, this Court is of an opinion that the order of rejection passed by the first respondent is in accordance with the established legal principles and there is no infirmity as such.

11. The learned counsel for the writ petitioners urged this Court by stating that the writ petitioners are also of poor landless family and therefore they are entitled for assignment. Even in such cases, the petitioners have to approach the Government for assignment or allotment of the land on par with all other similarly placed persons only in the event of formulating and implementing welfare schemes. It is not as if, the writ petitioner can simply file an application and the authority shall assign the land with reference to certain standing orders and with reference to Government orders. Even the State has no authority to assign the lands in its whims and fancies. All such public welfare schemes are to be implemented only by following the constitutional principles and the

constitutional mandates. Even the State assigns such land in favour of such individuals contrary to the constitutional principles, such policies are liable to be reviewed by the Courts. Thus, it is not as if, the Government is empowered to exercise its discretion arbitrarily and in violation of the constitutional principles. If such vast extent of land is allotted in favour of few individuals by the State, the same will affect the rights of all other citizens. In order to favour few individuals, the constitutional rights of all other citizens can never be infringed. Thus, the State has got limitations even for assigning the land in favour of few individuals. All such lands are to be utilised for public welfare and in the interest of public. The State is also bound to exercise the discretion in a judicious manner and by following constitutional mandates. Thus, this court is of an undoubted opinion that the power of assignment conferred on the Government is also restricted and is to be exercised sparingly and within the parameters laid down by the Constitution of India.

12. Under these circumstances, the grounds raised in the writ petition for assigning the vast extent of land measuring about six acres in favour of the writ petitioners cannot be considered and furthermore, it is contended that the Government imposed a ban for grant of such assignment in respect of the grazing lands. This being the factum, the writ petitioners have not established any acceptable legal grounds for the purpose of considering the relief as such sought for in this writ petition. Thus, the following orders are passed.

(i). The impugned order passed by the first respondent in G.O.(Nilai) No.44, Revenue (Ni.Mu.3(2)) Department dated 12.02.2013 stands confirmed.

(ii). The respondents are directed to identify all the Government poramboke lands, grazing lands, water bodies and water resources in the entire locality and evict all those encroachers by following the procedures contemplated under the Tamil Nadu Land Encroachment Act, 1905 and Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 which are applicable.

(iii). In respect of the writ petitioners, the respondents are directed to evict the writ petitioners from the Government land and in the event of implementing any scheme for the welfare of poor landless people, the case of the writ petitioners is also to be considered, if the petitioners are otherwise eligible and qualified in accordance with the terms and conditions stipulated in the scheme.

(iv). The District Collector, Kancheepuram District is directed to identify all such Government poramboke lands, water bodies and water resources and evict all

such encroachments and utilise the lands for the welfare of the people and to implement the welfare schemes.

(v). The District Collector is directed to conduct periodical review meetings of the officials concerned and issue suitable orders or instructions to identify encroachments and evict encroachers by following procedures. If there is any failure on the part of the officials concerned, the District Collector is bound to initiate departmental disciplinary proceedings against the said officials under the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The District Collector is directed to issue circulars to all the officials concerned to ensure that all the public lands, water bodies, water resources and public properties are protected in the manner prescribed under the law.

13. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

lok/ebsi

To

1.The Principal Secretary to Government,
Revenue Department
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Kancheepuram,
kancheepuram District.

+1cc to Mr.K.S.Narayanan, Advocate, S.R.No. 70103
+1cc to the Government Pleader, S.R.No. 70574

W.P.No.6027 of 2013

SSV(CO)
GN(13/11/2018)