

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.07.2018

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

W.P.No.27132 of 2015

and

M.P.No.1 of 2015

and

W.M.P.No.8266 of 2016

P.Ramkumar

..Petitioner

vs

1.The Revenue Divisional Officer,
Kallakurichi,
Villupuram District.

2.The Thasildhar,
Kallakurichi,
Villupuram District.

3.Vimala

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the 1st respondent in his proceedings Na.Ka.No.A2/2725/2015 dated 07.08.2015 and quash the same as illegal, unlawful without jurisdiction.

For Petitioner : Mr.S.Venkatesh

For Respondents : M/s.A.Srijayanthi, Spl GP for R1 & R2
Mr.G.Balamanikandan for R3

O R D E R

The enquiry notice issued to the writ petitioner, directing him to appear before the Revenue Divisional Officer, Kallakurichi along with the documents on 17.08.2015 is under challenge in this writ petition.

2.The allegations against the writ petitioner is that the land assigns in his favour was sold to the third party within a period of ten years is in violation of the terms and conditions of the assignment imposed by the Government. The writ petitioner has executed a sale deed in favour of one, M/s.Papatthi on 08.07.2015. Thus, the learned Special Government Pleader is of an opinion that the writ petitioner has violated the terms and conditions of the assignment and therefore, he is not entitled to continue in the land allotted by the Government.

3.The writ petitioner states that the third respondent has given a false complaint against him and he has not even received the copy of the complaint. The first respondent issued summon notice dated 07.08.2015, calling the writ petitioner to attend an enquiry in respect of the complaint given by the third respondent, regarding the patta granted to the writ petitioner in Survey No.220. However, the petitioner attended the enquiry on 17.08.2015 and no enquiry was conducted on that day and the enquiry was adjourned to some other date. The petitioner submitted a representation on 17.08.2015 to the 1st respondent. The grievances of the writ petitioner is that the first respondent is unnecessarily conducting an enquiry at the first instance of some political persons in the local area.

4.This Court is of an opinion that the allegation of the writ petitioner is that the complaint given by the third respondent is false and politically motivated, contrarily, it is stated by the respondents that the writ petitioner has violated the terms and conditions of the assignment order issued by the Government. Thus, he is not entitled to continue in the Government land as per the assignment. These all are the disputed facts and circumstances, which is to be adjudicated by the competent authority based on the documents and based on the evidences available on record. Such disputed facts cannot be adjudicated in the writ proceedings under Article 226 of the Constitution of India.

5.Thus, the Revenue Divisional Officer rightly proposed to conduct an enquiry in these factual aspects. What is the challenge in this writ petition is an enquiry notice. Thus, this Court is of an opinion that the writ petitioner was attended the enquiry, placed all the records available with him and defend his case by availing opportunities to be provided by the Revenue Divisional Officer. The first respondent is bound to conduct an enquiry by providing opportunities to all the parties concerned and based on the statutes and the rules in force. It is needless to mention that the Revenue Divisional Officer, while performing such quasi judicial functions have to examine all the parties and the documents and by providing opportunity and thereafter take a decision and pass orders.

6.The learned Special Government Pleader is also of an opinion that the enquiry was conducted based on the representations submitted by the Tahsildar. However, all the documents are to be examined only during the course of the enquiry.

7.This Court is also of the view that a writ petition against a show cause notice can be entertained only on limited grounds and on exceptional circumstances. No writ can be entertained against a show cause notice when the proceedings are sub-judice before the competent authority. Intermittent interventions in such proceedings are not preferable in view of the fact that the competent authorities shall be allowed to complete the proceedings in all respects and take a final decision and communicate the same. The cause will arise to the aggrieved persons only on receipt of the final order in this regard. A writ against the show cause notice can be entertained only if the same was issued by an incompetent authority having no jurisdiction or an allegation of mala fides is raised or if the same is in violation of the statutory rules. Even in case of raising allegation of mala fides against the authority, it is necessary that such an authority against whom allegations are raised is to be impleaded as a party in the writ proceedings in his personal capacity. In the absence of any one of the legal grounds, no writ can be entertained and judicial review in this regard is limited. The Constitutional Courts are to be cautious while undertaking the process of judicial review against the show cause notice. Thus, this Court is of the view that intermittent interventions in these kind of matters are not certainly preferable and the institutional responsibilities are to be considered in this regard by the Courts also.

8.In view of the fact that the order impugned is an enquiry notice and it is left open to the writ petitioner to participate in the enquiry and place his defence and other documents before the enquiry officer by utilizing the proceedings to be provided.

9.Thus, this writ petition is devoid of merits and the same stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Revenue Divisional Officer,
Kallakurichi,
Villupuram District.

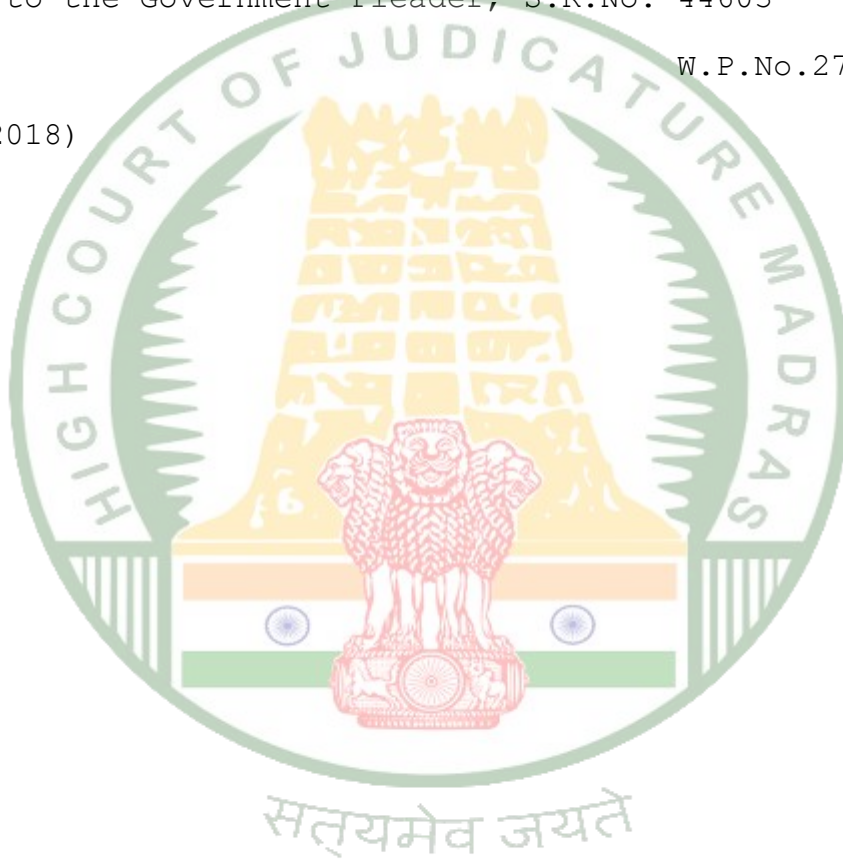
2.The Thasildhar,
Kallakurichi,
Villupuram District.

+1cc to Mr.G.BALAMANIKANDAN, Advocate, S.R.No.44356

+1cc to the Government Pleader, S.R.No. 44603

W.P.No.27132 of 2015

TR(12/07/2018)



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