



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.07.2018

CORAM

THE HONOURABLE MR. JUSTICE M. S. RAMESH

W.P. (MD) No.515 of 2018

and

W.M.P (MD) No.511 of 2018

K.Elango

Rep. by his Power of Attorney

R.Raja Mahesh

... Petitioner

vs.

1. The District Collector
Dindigul District.

2. The Town and Country Planning
Rep. by Assistant Director
No.4, Hakeem Ajmal Khan Road,
Chinnachokkikulam, Madurai- 625 002.

3. The Tahsildar
Taluk Office, Kodaikanal
Kodaikanal Post, Dindigul District.

4. The Commissioner of Town and Country Planning
No.807, Anna Salai, Chennai- 600 002.

5. The State of Tamil Nadu
Rep. by its Additional Principal Secretary
Commissioner of Land Reforms
Chepauk, Chennai- 600005

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records relating to the impugned order made in Na.ka.No.2206/2016-MM3 dated 19.12.2017 passed by the first respondent and quash the same and direct the first respondent to issue No Objection Certificate and process the application by the second respondent to send the layout plan along with the connected records to the fourth respondent so as to enable him to pass necessary orders in respect of the property comprised in S.No.285/2, Vilpatti Village, Kodaikanal Taluk, Dindigul District in terms of the certificate issued on 27.02.2015 and 18.04.2017 in Mu.Mu.No.1136/2015 and Na.Ka.No.2206/2016 Ma.Ma3 respectively issued by the third respondent.

For Petitioner :

Mr.N.S.Karthikeyan

For Respondents :

Mr.J.Gunaseelan Muthiah

Additional Government Pleader.

**ORDER**

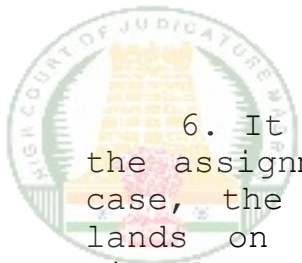
The petitioner had purchased the subject land in survey number 285/2 measuring an extent of 1.22 hectare in Vilpatti Village, Kodaikanal Taluk, Dindigul District. The subject lands were originally assigned to one Venkatasamy on 08.03.1973. After the lapse of 38 years, the petitioner had purchased the same. When the petitioner had approached the first respondent herein seeking for approval under the Hill Area Conservation Act, the same came to be rejected through the impugned order dated 19.1.2017 on the ground that as per the Government letter dated 15.07.1997, the assignment is liable to be cancelled in violation of the building plan even after 10 years from the date of assignment and there is no provision in Revenue Standing Orders to grant permission to utilise the land assigned for agricultural purposes for other purpose. Challenging the same the present writ petition has been filed.

2. The learned counsel for the petitioner submitted that the Government letter dated 15.07.1997 has no relevance to the present case on hand. By citing the Government letter dated 15.07.1997, the learned counsel submitted that the said guidelines will be applicable to the assignment made after 19.12.2017. He would further submit that the respondent herein had granted approval for atleast 17 assigned lands in the same locality for which purpose he relied upon the sanction obtained on 07.11.2017 under the Right to Information Act as well the certificate of VAO which evidences that the land in question were assigned lands. It is the submission that the impugned order rejecting the petitioner's request for approval is bad in law.

3. The learned Government Advocate by relying upon the Government circular submitted that since the petitioner intends to convert the lands that were assigned for agriculture purpose into layout, the approval cannot be granted in the absence of any provision under the Revenue Standing Orders. He would further contend that the Government Order relied upon by the first respondent in the impugned order clearly suggests that in case of violation found after the period of ten years from the date of assignment the Government is empowered to cancel the assignment and as such there is no infirmity in the impugned order passed by the first respondent herein.

4. I have given careful consideration to the submissions made by the respective counsels.

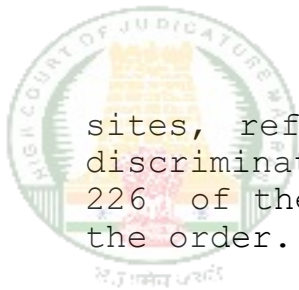
5. It is seen that by a circular dated 27.03.2008, the Government had ordered that conveyance of the assigned land made after ten years can be done only after prior approval from the concerned authorities. In the said circular there is a specific mention to the effect that such a condition would be applicable to the assignments that are made after 09.11.1979.



6. It is needless to point out that the circular will not bind the assignments that were made prior to 09.11.1979. In the instant case, the petitioner's predecessor was assigned with the subject lands on 08.03.1973 and as such even as per the Government circular, prior permission was required for converting the assigned land. In this context, it is useful to refer the observations made by the Division Bench of the Court in a judgment dated 30.01.2002 passed in W.A.No.33 of 2000 which reads as follows:

"2. An extent of 1 Acre and odd comprised in S.F.Nos.1747,1 748/3 and 1748/4 situated at Cuddalore was assigned to the Writ Appellant on 23.01.1973 fastened with some conditions. One condition which is relevant is that the assignee should bring the land for cultivation within a period of three years from the date of assignment. This is not violated. The other condition is that the assignee should not alienate the land by sale, gift or mortgage etc for a period of ten years from the date of assignment. According to the authorities, this condition is violated. But the authorities have lost sight of the fact that the sale was after 23 years of assignment. An embargo was there to the effect that the assignee should not alienate the land within a period of ten years. But in the instant case, the sale was effected after a period of 23 years. It is submitted that the said condition viz sale should not be made within a period of ten years, has been lifted and there is absolute prohibition of sale. But the same was only by Government Order dated 09.11.1979 and the same cannot act retrospectively. As such, we do not find any illegality in the sale of land by the Writ Appellant and accordingly the order of the learned Single Judge and the authorities cancelling the assignment in favour of the appellant are set aside".

7. The learned counsel also relied upon the information obtained under Right to Information Act which evidences that 17 assigned sites in the Vilpatti village came to be converted to other purposes without any approval of the first respondent herein. The Village Administrative Officer has also certified that these 17 lands are assigned lands. A specific ground has also been raised in the affidavit stating that the petitioner alone has been discriminated while other assigned lands have been accorded approval. The first respondent herein has filed a counter affidavit with vague averments that approvals granted by the first respondent cannot be taken as an excuse. Considering the petitioner's case, I am unable to accept the reasonings stated in the counter statement of the first respondent in this regard. When the first respondent has chosen earlier to grant approval for 17 assigned lands permitting them to convert the same into housing



sites, refusing the petitioner's similar request would amount to discrimination and this Court exercising its power under Article 226 of the Constitution of India would be empowered to set aside the order.

8. In the light of the above observation, the impugned order dated 19.12.2017 passed by the first respondent is set aside and consequently the first respondent is directed to pass fresh orders on the petitioner's application granting approval under Hill Area Conservation Act with in a period of six weeks from the date of receipt of a copy of this order.

9. With the above observation, the writ petition stands allowed. No Costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

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5. The Additional Principal Secretary
Commissioner of Land Reforms
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+1cc to Mr.N.S.Karthikeyan, Advocate, SR.No.73908.

+1cc to Special Government Pleader, SR.No.73867.

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