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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.12331 of 2018

and

W.M.P. (MD) Nos.11195 and 11196 of 2018

K.Pandiyaraj

... Petitioner

Vs.

1. The District Collector,
Virudhunagar District,
Virudhunagar.

2. The Assistant Collector,
Sivakasi,
Virudhunagar District.

3. The Tahsildar,
Sivakasi,
Virudhunagar District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the 2nd respondent in W.P. No. 12/4795/2015 dated 15.10.2015 relating to the petitioner's property in re-survey No.30/23 of Alamarathupatti Village, Naranapuram, Sivakasi Taluk, Virudhunagar District alone and to quash the same and consequently direct the respondents not to interfere with the peaceful possession and enjoyment of the petitioner's property in re-survey No.30/23 of Alamarathupatti Village, Naranapuram, Sivakasi Taluk, Virudhunagar District.

For Petitioner : Mr.M.R.Sreenivasan

For Respondents : Mr.N.Shanmuga Selvam

Additional Government Pleader

ORDER

The petitioner has come forward with this writ petition for issuance of Writ of Certiorarified Mandamus, to quash impugned order passed by the 2nd respondent in W.P. No. 12/4795/2015, dated 15.10.2015, relating to the petitioner's property in re-survey No.30/23 of Alamarathupatti Village, Naranapuram, Sivakasi Taluk, Virudhunagar District alone and consequently direct the respondents not to interfere with the peaceful possession and enjoyment of the petitioner's property in re-survey No.30/23 at Alamarathupatti Village, Naranapuram, Sivakasi Taluk, Virudhunagar District.



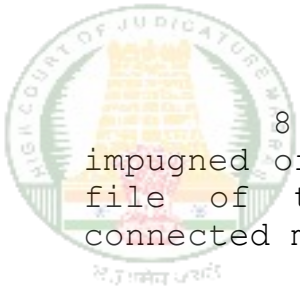
3.The petitioner is the owner of the lands comprised in S.No.30/23 (Punjai S.No.894) measuring an extent of 0.04 ares from one Umar through a registered sale deed, dated 02.07.2014. The subject land was originally assigned in favour of the petitioner's vendor under a scheme for allotment of lands to the persons, who had undergone the Family Planning Operation. The present impugned order is cancellation of the assignment in favour of the petitioner's vendor on the ground that the petitioner's vendor along with others have not utilized the said lands. Challenging the same, the present writ petition has been filed.

4.The learned counsel for the petitioner submitted that there is no clause in the assignment patta directing the assignee to utilize the assigned land and as such the impugned order is not proper.

5.The learned Additional Government Pleader on the other hand opposed the above submissions stating that though the lands were assigned in the year 1992, the same has been kept without any utilization and hence justified the reasoning given in the order.

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

7.As rightly pointed out by the learned counsel for the petitioner, the assignment patta granted in favour of the petitioner's vendor has not imposed any condition to the effect that the assignee shall utilize the said lands within a particular period or reconvey the lands. In the absence of any such condition, the second respondent is not justified in cancelling the patta on the ground that the assignee has not utilized the said land. Therefore, the sale of the assigned lands by the original assignee in favour of the petitioner herein on 02.07.2014 can only be deemed to have been validly transferred. It is also seen that though there was a registered document evidencing that the assignee has sold the property in favour of the petitioner herein in the year 2014 itself through a registered document, the second respondent without any notice to the petitioner herein, had cancelled the assigned lands. It is needless to point out that had the second respondent verified the encumbrance certificates, he would have realized that the lands have already been sold in favour of the petitioner herein and as such he ought to have given notice to the petitioner herein also, before passing the impugned order of cancellation. Cancelling the patta in favour of the original assignee, without notice to the petitioner would amount to a non application of mind on the part of second respondent herein. For all the foregoing reasons stated above, I do not find any justification on the part of the second respondent in passing the impugned order W.P.92/4795/2015, dated 13.10.2015.



8. In the result, this writ petition stands allowed and the impugned order passed in W.P.(MD) No.12331 of 2018 and W.M.P.(MD) Nos.11195 and 11196 of 2018, dated 15.10.2015, on the file of the second respondent stands quashed. Consequently, connected miscellaneous petitions are closed. No costs.

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/True Copy/

Sd/-

Assistant Registrar (RTI)

Sub Assistant Registrar (CS-I)

To

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Assistant Collector,
Sivakasi,
Virudhunagar District.
3. The Tahsildar,
Sivakasi,
Virudhunagar District.

+1CC to Mr.M.R.Sreenivasan, Advocate, SR.No.73352

W.P.(MD) No.12331 of 2018 and
W.M.P.(MD) Nos.11195 and 11196 of 2018
17.07.2018

TM

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