

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

W.P. 20156 of 2004
and
W.P.M.P.24251 of 2004

The Sacred Heart College,
Shenbaganur,
Kodaikanal-4
by its Procurator
Father M.Arulanandam

...Petitioner

Versus

1. The Government of Tamil Nadu,
by its Secretary,
Revenue Department,
Fort St. George,
Chennai-9.
2. The Special Commissioner for
Land Administration,
Chennai-5.
3. The District Collector,
Dindigul District,
Dindigul.
4. The Tahsildar,
Kodaikanal Taluk,
Kodaikanal,
Dindigul District.
5. The District Forest Officer,
Kodaikanal Forest Division,
Kodaikanal.

R5 impleaded as per order
dated 07.09.2017 in W.M.P.No.37942/2016

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the proceedings

of the 1st respondent in its impugned G.O. Ms.No.210 (Rev.) dated 26.04.2004 (received by the petitioner on 06.07.2004) and quash the same.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.I.Sathish,
Addl. Govt. Pleader

O R D E R

This Writ Petition has been filed challenging the order passed by the 1st respondent cancelling the assignment of lands granted to the petitioner.

2. The brief facts leading to the filing of Writ Petition is as follows :-

On 26.06.1931, the Government has assigned an extent of 256.56 acres in Adukkam Village, Kodaikanal Taluk to the petitioner for opening a dairy farm for the use of one Sacred Heart College, Shenbaganur, Kodaikanal. The above assignment was made with certain conditions viz., the petitioner need not pay assessment fees for the lands assigned for the period of five years, the lands should not be alienated to any of the outsiders other than a British without sanction of the Government, and during the period of five years from the date of assignment, the petitioner shall maintain not less than 50 cows for grazing. Thereafter, it is for the government to pass orders increasing the number of cattles. If for any reason, the dairy farm was not maintained, and the land ceases to be used for dairy farming, the lands will be reverted back to the Government.

3. According to the petitioner, from the date of assignment, they have spent huge amount for clearing the jungle and for developing the lands, after developing, they are using the entire lands for grazing purpose, they have not violated any of the assignment conditions, and they are also maintaining more than 50 cows in the dairy farm. That being the position, in the year 1976, the District Collector has issued a notice to the petitioner alleging that the petitioner is not maintaining the lands for grazing purpose. A detailed representation has been given by the petitioner stating that they are maintaining more than hundred cows, and absolutely using the lands for grazing purpose after spending huge amount for developing the lands. Without considering that representation, in the year 1982, the Government had passed an order in G.O. Ms. No.883, dated 26.05.1982 resuming the lands from the petitioner, consequently, another order has been passed by the Tahsildar for taking possession of lands. Challenging the above said order, the

petitioner has filed two Writ Petitions in W.P.Nos. 6240 of 1985 and 18177 of 1991, and both the Writ Petitions were allowed by this Court in an order dated 07.11.1995, on the ground that, without issuing any notice to the petitioner and without conducting any enquiry, the lands were resumed in violation of principles of natural justice.

4. Challenging the above said order, the respondents have filed two Writ Appeals in W.A. Nos. 980 and 981 of 1997 and the Division Bench of this Court disposed the Writ Appeals with a direction to the Government to hold proper enquiry after issuing notice to the petitioner, and consider the objections received from the petitioner as well as from the authority, and give an opportunity to the petitioner to lead evidence, thereafter pass orders on merits. Pursuant to the above order, the petitioner has filed detailed objections stating that they have not violated any of the assignment conditions, and the entire extent of land has been utilised by them for the purpose, for which the assignment was granted, leaving the lands acquired by the Government for constructing a Harijan colony, the remaining lands are being used by the petitioner.

5. According to the petitioner, without considering none of the objections raised by the petitioner, based on the report filed by the District Collector stating that the said lands are not used for the purpose, for which the assignment is granted, passed the impugned order of resuming the land to an extent of 87.430 hectares (215.96 acres) and permitting the petitioner to use only 12.715 hectares. Challenging the above order, the present Writ Petition has been filed by the petitioner.

6. The 1st respondent has filed a counter affidavit admitting the assignment made in favour of the petitioner to an extent of 254.51 acres, and stated that, in the year 1976, in violation of assignment conditions, the petitioner has raised commercial crops, and vast extent of lands are kept unutilisation. Hence, a show cause notice was issued to the petitioner and called for explanation. On considering the explanation given by the petitioner, the Government had passed an order in G.O.Ms. No.883, Revenue Department, dated 26.05.1982, resuming an extent of 204.51 acres of land, leaving 50 acres to the petitioner for running a dairy farm, and transferred the land so resumed to forest department. Challenging the same, they have filed a Writ Petition and this Court has directed the 3rd respondent to consider the petitioner's objections. Pursuant to the order passed by this Court, the Government has directed the District Collector to conduct an enquiry, accordingly, an enquiry was conducted by the District Revenue Officer, Dindigul on 12.04.2001 and 27.04.2001. During the enquiry, the petitioner has filed his written

statement requesting to drop the resumption proceedings. The representation of petitioner was examined by the Collector, and a report was sent to the 1st respondent through the 2nd respondent to reject the petitioner's objections, and to resume the lands. The Government has examined the report submitted by the District Collector and the explanation submitted by the petitioner, ultimately passed the impugned order for resuming 87.430 hectares of lands.

7. I have considered the rival submissions and perused the records carefully.

8. In the earlier round of litigations, challenging the order of resuming the lands from the petitioner, two Writ Petitions came to be filed, and this Court by an order dated 07.11.1995 allowed the Writ Petitions on the ground that no notice was served on to the petitioner before passing the order of resumption. Challenging that order, the Government has filed Appeals in W.A.Nos.563/1996, 980 and 981 of 1997, and the Division Bench of this Court, while disposing the Writ Appeals has directed the Government to hold proper enquiry on the basis of show cause notice dated 10.05.1995, after giving opportunity to all the persons interested including the petitioner herein, and pass appropriate orders after giving an opportunity to let in evidence, if any. The relevant portion of the order reads as follows :-

"Therefore, it is directed that the Government shall hold a proper enquiry on the basis of the notice dated 10.05.1985 in N.K. No.1569/85-H issued by the Tahsildar, Kodaikanal. The said enquiry shall be completed as far as possible within six months from today. Needless to mention that all such persons, who are interested including the respondent college shall be allowed to take part in that enquiry and a proper order shall be passed only after the concerned parties are heard and given the opportunity to lead the evidence, if any. These are the only directions, we feel necessary to dispose of all the three appeals. Accordingly, they are disposed of. In the circumstances, there shall be no orders as to the costs."

9. The Division Bench has specifically directed the 1st respondent Government to conduct enquiry by giving opportunity to the petitioner and to let in evidence, if any. But, from the counter affidavit filed by the 1st respondent, it could be seen that, no enquiry was conducted by the 1st respondent, whereas the enquiry was conducted by a District Revenue Officer, and based on the report submitted by the Enquiry officer, the impugned order has been passed. The relevant portion of the counter affidavit reads as follows :-

"In accordance with this Hon'ble High Court's direction, the Government directed the District Collector, Dindigul to hold enquiry. Accordingly, an enquiry was conducted by the District Revenue Officer, Dindigul on 12.04.2001 and 27.04.2001. During the enquiry, the R.C.Mission filed written statements requesting to drop the resumption proceedings. The representation of the R.C.mission was examined by the collector and a report was sent to Government through Special Commissioner and Commissioner of Land Administration to reject the claim of the petitioner and to resume the lands."

The 1st respondent without following the order passed by the Division Bench, delegated the District Collector to conduct enquiry, and based on his report, the impugned order has been passed, which is against the letter and spirit of the order passed by the Division Bench, on that score alone, the impugned order passed by the 1st respondent is liable to be set aside.

10. In the above circumstances, without going to the merits of the case, the impugned order passed by the 1st respondent is set aside and the matter is remanded back to the 1st respondent. the 1st respondent is directed to conduct AN enquiry as directed by the Division Bench of this Court in W.A. Nos. 463/1996, 980 and 981/1997, after giving opportunity to the petitioner, and pass suitable orders on merits in accordance with law. Till the final order is passed, the 1st respondent is directed not to interfere with the possession of the petitioner.

11. In the result, the Writ Petition stands allowed. No costs. Consequently, the connected Writ Petition Miscellaneous Petition in W.P.M.P. 24251 of 2004 is closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

rpp

To

1. The Secretary,
Government of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai-9.

WEB COPY

2. The Special Commissioner for
Land Administration,
Chennai-5.

3. The District Collector,
Dindigul District,
Dindigul.

4. The Tahsildar,
Kodaikanal Taluk,
Kodaikanal, Dindigul District.

5. The District Forest Officer,
Kodaikanal Forest Division,
Kodaikanal.

+1 CC to Mr.V.Vijay Shankar, Advocate sr 88638.

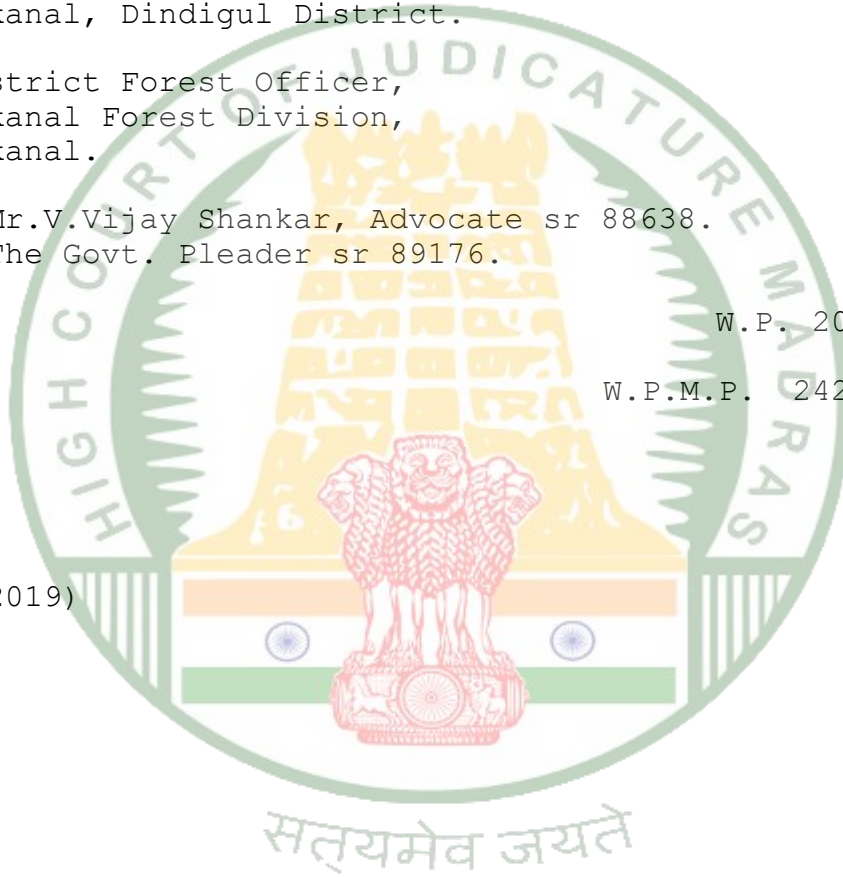
+1 CC to The Govt. Pleader sr 89176.

W.P. 20156 of 2004

and

W.P.M.P. 24251 of 2004

SJ(CO)
SP(17/12/2019)



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