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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :20.06.2019
CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI
W.P.No. 34178 of 2004

and
W.P.M.P.Nos. 41297 & 41298 of 2004

- 1.K.Thulasi
2. K.Krishnan
3. K.Murugan
4. Mrs.K.Rajammal

..Petitioners

vs

1. H.Kishor Singh
2. Mrs.K.Prem Devi
3. The Assistant Commissioner,
(Land Reforms)
Villupuram.
4. The Land Commissioner,
Chepauk,
Chennai - 600 005.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Fourth Respondent herein pertaining to her order dated 3.4.2000 and made in D1/R.P.No.75/98 and quash the same and further direct the Third Respondent herein to issue the order of assignment and Patta infavour of the petitioners in so far as the land in Survey No.259/2A of Kadapakkam Village.

For Petitioner : M/s.B.Sivakumar
For Respondents : M/s.K.Bhuvaneshwari, AGP,
for R3 & R4.

O R D E R

The issue involved in this writ petition is already decided by this Court in the connected W.P.No. 8145 of 2004, dated 07.06.2011.

2. This Court held that the proceedings under Section 83 of the Tamil Nadu Land Reforms (FCL) Act, 1961 was initiated and notification under Section 18(1) was published in the Tamil Nadu Government Gazette on 24.03.1982 declaring that the land measuring to the extent of 1.24 acres in S.No.259/2A was surplus. In view of the



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declaration, the land so declared as surplus stood vested with the Government and it has to be allotted to landless poor in terms of Surplus Land Rules. Even among those landless poor, a person holding land either as tenant or otherwise, coming within the purview of landless poor can have a preferential claim over other persons.

3. After notification under Section 18(1) dated 24.03.1982, the Assistant Commissioner, the second respondent initiated action to assign surplus land by issuing notice in Form 'B'. The Authorised Officer by an order dated 03.02.1983, assigned the land in S.No.259/2A, in favour of Murugesan (60 cents) and Muthu (64 cents) without confirming the provisions of the Act. The request for the issue of certified copies of the order was turned down by the Authorised Officer. Hence, the petitioners filed W.P.No.8635/1983 before this Court. By an order dated 04.10.1993, this Court directed the Authorised Officer to issue a certified copy of assignment proceedings.

4. After receipt of the order dated 03.02.1983, the petitioners preferred an appeal before the Land Tribunal, Thanjavur. The appellate authority declined to entertain the appeal holding that the petitioners were not aggrieved parties. Once again, the petitioners filed a writ petition in W.P.No. 7900 of 1985. In view of the formation of the Tribunal, the matter was transferred to the Tribunal and re-numbered as TRP.181/1991. The Appellate Tribunal directed the appellate authority to take up the appeal and dispose of the same on merits.

5. The Appellate Authority took up the appeal filed by the petitioners and issued notice to the respondents and also directed the Special Tahsildar to conduct a special enquiry. After enquiry and verification, the appellate authority found that the proceedings were not properly followed in case of assignment and consequently cancelled the assignment dated 03.02.1983 in favour of Murugesan and Muthu. After the said order, it was found that the land in question was under the enjoyment of Kuppusamy Naicker and his father Thiagaraja Naicker and after the death of Kuppusamy Naicker, the legal heirs of Kuppusamy Naicker.

6. Subsequently, the Authorised Officer again initiated proceedings for assignment of the land in favour of the petitioners. At the time of issuance of patta in favour of the petitioners by the Authorised Officer, the first respondent therein preferred a revision before the Land Commissioner stating that she had purchased the land measuring 12 cents by a sale deed dated 09.03.1992 and also



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obtained an interim stay for grant of patta. Finally, the Land Commissioner on 26.10.1999 held that the declaration of surplus land has become final and the petitioners are holding the land as cultivating tenant and they have preferential right.

7. Thereafter, the respondent passed an order dated 03.04.2000 and the same was challenged before this Court in W.P.No 8145 of 2004. This Court quashed the order and allowed the writ petition. The relevant paragraphs are extracted here under:

10. These findings rendered by the Commissioner is contrary to the provisions of the Disposal of Surplus Land Rules. By such method, the very purpose of the distribution of surplus land to landless become frustrated and persons who purchase illegally will enjoy the benefit of the land and that is not the purpose for which the Rules have been made.

11. In this context, the learned senior counsel referred to the judgement of the Madhya Pradesh High Court in Kamta Prasad and Others v. Smt. Vidyawati and Others AIR 1994 MP 181, wherein if the subsequent purchaser of the land which is subject to litigation are subject to pendente lite, the Court can pass preliminary order and thereafter issue notice to the land owner and cancel the allotment.

12. The learned senior counsel also referred to the judgment of the Supreme Court in Quilon Distt. Wholesale Coop. C. Stores Ltd. v. State of Kerala and Others(2005) 10 SCC 282, wherein it was held that the claim of assignment cannot be a matter of right and it is circumscribed by the procedure for allotment.

13. In the light of the above, the impugned order is liable to set aside. Accordingly, it is set aside. The matter is remanded to the third respondent for



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fresh disposal in accordance with law. The writ petition stands allowed to the extent indicated above. If necessary. The authority is entitled to issue notice to the subsequent purchasers and decide the issue. However, there will be no order as to costs.

8. Following the order passed by this Court in W.P.No. 8145 of 2004, this writ petition is allowed and the impugned order dated 3.4.2000 in D1/R.P.No.75/98 is quashed and remanded back to the authority for fresh disposal as indicated in the above order. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kmm
To

1. The Assistant Commissioner,
(Land Reforms)
Villupuram.
2. The Land Commissioner,
Chepauk,
Chennai - 600 005.

+1cc to Mr.B.Siva kumar , Advocate SR.No. 51070
+1 cc to Government Pleader Sr.No. 51743

A.SK(07/08/2019)

W.P.No. 34178 of 2004