

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2019

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.37979 of 2005

and

W.P.M.P.No.40635 of 2005

Chinnasami Gounder,
S/o. Komarasamy Gounder

... Petitioner

Vs.

1. The Special commissioner & Commissioner
of Land Administration, Chepauk,
Chennai - 5.

2. The District Collector, Collectorate,
Erode.

3. The District Revenue Officer,
Collectorate, Erode

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the first respondent in ROC NO.F2/14076/99 dated 21.10.2005 and quash the same.

For Petitioner : Mr. P.R. Balasubramanian
For respondents : Mr. R. Govindasamy,
Spl. G.P., for R1 to R3

O R D E R

This writ petition has been filed challenging the order cancelling the assignment of land granted in favour of the petitioner .

2. According to the petitioner, an extent of 0.29.5 Hec. in S.No.92/1 Odathurai Village, Bhavani Taluk, has been assigned in favour of the petitioner by the Additional District Collector in and by its proceedings in No.Mu.No.41885/85 dated 29.05.1985, on payment of the entire land cost. Subsequently, the petitioner has also paid the land cost on 25.06.1985. Thereafter, the assignment was confirmed in his favour by an order dated 26.06.1985. Even prior to the order of assignment, he has been in possession and enjoyment of the land from the year 1974, and he has also made improvements in the land.

Thereafter, one Muthusami, who belongs to the same village, due to political enmity grounds, raised objection for the assignment made in his favour. Based on his objection, the assignment granted in favour of the petitioner was cancelled by the first respondent by an order dated 23.02.1991. Challenging the above order, the petitioner filed a writ petition before this Court in W.P.No.4052 of 1991, and this Court by an order dated 28.01.1999, allowed the writ petition and set aside the order passed by the first respondent on the ground that the assignment was cancelled without proper enquiry. However, this Court also given liberty to the first respondent to initiate proceedings for the cancellation of the assignment, if he so desires, in accordance with law. Thereafter, a show cause notice was issued to the petitioner on 31.01.2005, after a lapse of 6 years, wherein, the petitioner appeared for the enquiry and raised his objections, without considering his objections, the first respondent has passed the impugned order cancelling the assignment on the ground that at the time of assigning the land, the Additional Collector/District Revenue Officer has no pecuniary jurisdiction. That apart, the petitioner had also suppressed some material facts regarding the extent of his possession of agricultural lands before getting assignment. Now, challenging the above order, the present writ petition has been filed.

3. The respondents filed a counter affidavit stating that, an extent of 0.29.5 Hectare of land was assigned to the petitioner on collection of Rs.7,177/- towards single market value of the land by the Additional Collector, Erode and that was cancelled by the first respondent based on the objection raised by one, T.Muthusamy, who is a resident of the same village and that order has been set aside by this Court in W.P.No.4052 of 1991 on 28.01.1999. Thereafter, the case was taken up for hearing by the first respondent on 27.05.2005 and 10.06.2005 and the petitioner has also appeared for enquiry and raised his objections. Based on the materials available, the first respondent examined the case with connected records and found that it is a poromboke land, and the District Revenue Officer has no right to grant assignment to the petitioner, as he has no pecuniary jurisdiction. That apart, at the time of applying for assignment, the petitioner has stated that he is having only an extent of 1.46 Acres of land, suppressing the fact that he was having 0.75 acre of wet land and another extent of 0.12.5 Hecters. There is no necessity for assignee to spend a huge amount for improvement of the land. It is further stated that as per Clause 15 (18) of Revenue Standing Order, if the first respondent satisfied that any material irregularity is assigning the land and the decision was grossly inequitable, the first respondent can set-aside or modify the order. The monetary power of the Additional Collector/District Revenue Officer, to

assign cultivable land is only upto Rs.10,000/- at that time, and it has been enhanced to Rs.20,000/- only in the year 1990. Hence, the Additional Collector has no jurisdiction for assignment. In the above circumstances, invoking the suo-motu power available under Clause 15(18) of Revenue Standing Order, the first respondent has cancelled the assignment to resume the land.

4. The learned counsel for the petitioner would submit that, it is an assignment made on payment of entire cost of the land. In the above circumstances, the possession of any agricultural land is immaterial. That apart, the alleged suppression of land is the petitioner's father-in-law property and during his life time he has executed a Will in favour of his wife, and at the time of applying for assignment, his father-in-law was alive, the property was not under the holding of the petitioner's family. Hence, there is no suppression. He further submitted that under Revenue Standing Order, the Commissioner can exercise his suomotu power within a period of 3 years only. Even though, this Court has set aside the earlier order passed by the first respondent on 28.01.1999, a proceeding has been initiated by the first respondent only in the year 2005 and hence, the same is barred by limitation. The learned counsel further submitted that so far as pecuniary jurisdiction of the Additional Collector, at the time of assignment, he has jurisdiction to assign the land and there is no irregularity in it.

5. The learned Special Government Pleader appearing for the respondents would submit that, even though the land is assigned on payment of cost, at the time of applying for assignment, the petitioner has suppressed the material fact regarding the extent of land in his holding. That apart on the date of assignment, the Additional Collector have pecunialry jurisdiction only upto Rs.10,000/-, where as the cost of the land was fixed at Rs.17177/-. Hence, he has no power to assign the land. That apart, invoking the power under clause 15(18) of the Revenue Standing Order, the Commissioner has initiated proceedings in the year 1987 itself and cancelled the assignment within two years. That order was set aside by this Court and the matter was remanded to the authority and a fresh order came to be passed by the first respondent. Hence, the proceeding has been initiated within a period of limitation and it cannot be said that the first respondent do not have any power to cancel the same.

6. I have considered the rival submissions and perused the materials available on records carefully.

7. The assignment was made on 26.06.1985 on payment of cost. According to the petitioner, even before the assignment, the land was leased out to him by the local panchayat and he was in possession for more than 15 years. While granting assignment, the Additional Collector/District Revenue Officer has taken into consideration of the possession of the petitioner for more than 15 years, prior to the assignment of the land. The Additional Collector/3rd respondent fixed the land cost at Rs.14,457/- and along with interest, the final cost was fixed at Rs.17,177/-. Taking into consideration of the improvement made by the petitioner to an extent of Rs.10,000/- and after deducting that amount, the petitioner was directed to pay a sum of Rs.7,177/-, and on payment of the same, the assignment was confirmed in favour of the petitioner. Earlier, the above said assignment was cancelled by the first respondent by an order dated 23.02.1991 and that order was set aside by this Court by an order dated 28.01.1999 on the ground that the order has been passed without any enquiry. However, liberty has been given to the first respondent to initiate proceedings, if so desired and in accordance with law. The relevant portion of the order reads as follows, :-

" It is , however open to the first respondent to initiate proceedings for the proposed cancellation of the assignment, if he so desire and in accordance with the law. Needless to state that it is open to the petitioner to raise all his objections against the proposed cancellation. This writ petition is allowed. The Rule Nisi is made absolute. NO costs. Consequently, no order is necessary in W.M.P.No.6242 of 1991".

8. Thereafter, the impugned order has been passed on 21.10.2005, after 6 years invoking the power conferred on the first respondent, under Clause 15(18) of the Revenue Standing Order, which reads as follows:-

(18) Revision :- the order of the authority making the assignment if no appeal is presented or of the appellate authority if an appeal is presented, is final, and no second appeal shall be admitted. But if at any time within three years of the original or appellate decision in cases of assignment made after 14.05.1973 if the Revenue Divisional Officer/District Revenue Officer/Collector is satisfied that there has been a material irregularity in the procedure

or that the decision was grossly inequitable or that it exceeded the powers of the officer, who passed it or that it was passed under a mistake of fact or owing to fraud or misrepresentation, he may in the case of an order passed by an officer subordinate to him, set aside, cancel or in any way modify the decision. The Commissioner of Land Administration or the Government may set aside, cancel or in any way modify the decision of any authority subordinate to them, if they are satisfied that the decision was grossly inequitable, etc. They may exercise these powers without any limit of time (i.e.) even in case prior to 14.05.1973, where there has been a material irregularity in the procedure or where the decision exceeded the powers of the officer, who passed it or where it was passed under a mistake of fact or owing to fraud or misrepresentation. The authorities competent to pass orders in revision under this paragraph may also grant stay pending their orders in revision. "

9. A cursory reading of the above provision, it is seen that the first respondent has suo-motu power to cancel the assignment within a period of 3 years from the date of order of assignment. In the instant case, the assignment was made in the year 1985 and it was cancelled by the first respondent only in the year 1991, nearly after 6 years of the granting of assignment. That apart when the above order was set-aside by this Court on 28.01.1999, giving liberty to the petitioner to initiate fresh proceedings, if so desired, the impugned order has been passed on 21.10.2005, i.e., 6 years after the order passed by this Court. In the above circumstances, even the original order of cancellation itself is beyond the period of limitation and the first respondent has no power to invoke his suo-motu power after the expiry of 3 years, even thereafter, the impugned order has been passed after expiry of 6 years of the order passed by this Court. In the above circumstances, this Court is of the considered view that the first respondent has no power to pass the order exercising his suo-motu power after three years of assignment.

10. So far as the pecuniary jurisdiction of the third respondent to grant of assignment is concerned, even though it is stated that the Collector has pecuniary jurisdiction upto Rs.10000/- only, no Government order has been produced before this Court to substantiate the same. The next ground for

cancelling the assignment is suppression of holdings of the petitioner. It is the assignment on payment of the cost of the land. Hence, there is no necessity to disclose the holdings of the petitioner seeking for assignment. Now , it is also stated that the petitioner has been in possession of the land from the year 1974 and also made improvement in the land and he has been cultivating the land for more than 45 years. In the above circumstances, at this stage, it is totally inequitable to cancel the assignment granted in favour of the petitioner.

11. However, while fixing the land cost, the Deputy Collector, fixing the value of the land at Rs.17,177/- and deducted Rs.10,000/- towards the alleged improvement made by the petitioner in the land, without any material whatsoever. As there is no material available on record to show that the petitioner has made improvement, the petitioner is directed to pay the sum of Rs.10,000/- before the 2nd respondent within a period of 6 weeks from the date of receipt of a copy of this order.

12. Considering the above circumstances, I am of the view that the impugned order passed by the first respondent is not valid in the eye of law, and, it is liable to be set-aside. Accordingly, the order passed by the first respondent is set aside and the writ petition is allowed with the above directions. No cost. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mrp
To

1. The Special commissioner & Commissioner
of Land Administration, Chepauk, Chennai - 5.
2. The District Collector, Collectorate, Erode.
3. The District Revenue Officer,
Collectorate, Erode

+1cc to Mr.P.R.Bala subramanian , Advocate SR.No. 98513
+1 cc to Government Pleader Sr.No. 99442

W.P.No.37979 of 2005

A.SK(21/02/2020)