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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.06.2019

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.7605 of 2019
W.M.P.No.8244 of 2019

S. Arokiadoss ... Petitioner

Vs

1. The District Collector
Revenue Department
Puducherry.

2. The Director
Survey and Land Records
New Saram
Puducherry.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a writ of mandamus to direct the respondents to publish notification calling for applications from the eligible persons for grant of free patta and to select candidates strictly on the basis of their eligibility and rules.

For petitioner ... Mr.V.Ajayakumar

For respondents ... Ms.Usha
Additional Government Pleader
(Puducherry)

O R D E R

(Order of this Court was made by S.MANIKUMAR, J.)

Instant public interest litigation has been filed for a writ of mandamus, to direct the District Collector, Revenue Department, Puducherry and the Director, Survey and Land Records, Puducherry, respondents, to publish a notification, calling for applications from eligible persons, for grant of free patta and to select candidates strictly, on the basis of their eligibility and rules.



2. Petitioner is the Vice President of Pudukkottai Velaivaipakathil Pathinthu Velaiyatror Nala Sangam. Government of Puducherry has adopted a scheme of providing free house sites to the landless poor persons, especially agricultural labourers landless persons who are socially and educationally backward and for Scheduled Castes/Scheduled Tribes who are not having house through Revenue Department.

3. Petitioner has contended that the Director, Survey and Land Records, Puducherry, second respondent has issued a notice of selected candidates which does not bear any date on 25/2/2019, stating that 91 candidates, whose names are given in the said notice, are selected for grant of free patta. Any objections regarding the selection of candidates, should be submitted before 27/2/2019. The said notice was affixed in the notice board of the Office of the Deputy Collector Revenue (South) on 25/2/2019.

4. As per the rules, notice should be accompanied with a copy of the approved plan of house sites and approval must be obtained from the Pondicherry Planning Authority. But the notice does not mention even the area where the house sites are proposed to be granted, except to state as Ossudu Constituency, which clearly shows that the above exercise is carried out by the Director, Survey and Land Records, Puducherry, the second respondent herein, as a measure to face the Parliamentary Elections.

5. Petitioner has further submitted that 30% of the sites should be given to Scheduled Caste persons, whereas, the list does not contain the names of Scheduled Caste persons, who are selected for grant of free house site. Hence the petitioner has come forward with the instant writ petition on the following grounds:-

(i). Notice has been issued on 25/2/2019. Objections are called for before 27/2/2019, which is against law. Minimum fifteen days notice should be given for submitting objections.

(ii). Notice contains 91 candidates. But majority of the candidates selected are not eligible to receive free patta for the reason that they are having houses or they are government employees.

(iii). 30% of the plots must be given to the Scheduled Caste candidates, whereas, perusal of the list clearly shows that a list of Scheduled Caste candidates has not been included in the selected list.

(iv). Free patta should be given to the candidates, who are natives of Union Territory of Puducherry, whereas, the list contains several persons came from outside the Union Territory of Puducherry.



6. The Director of Survey and Land Records, Puducherry, 2nd respondent has filed a counter affidavit, contending inter alia that they followed due procedures as stipulated under the Puducherry Land Grant Rules, 1975, for issuance of free House Site Patta and after scrutinizing the eligibility criteria of the applicants, they have called for objections. They further submitted that a list of candidates has been affixed in VAO Office, Koodapakkam and Taluk Office, Villianur, calling for objections, if any, on or before 27.02.2019. Grant of manai patta should be accompanied with a copy of the layout of the plots. Since, issue of manai patta is under process, no plan will be annexed with the notice calling objection. It is further submitted that there is no such provision in the Land Grant Rules, 1975, for annexing layout.

7. Denying the averments that 30% of building sites to be granted for Scheduled Castes, it is submitted that as per Rule 54, "The Deputy Collector (Revenue) may grant buildings sites after reserving certain percentage of the sites available for the members of the Scheduled Castes" and therefore, no specific percentage is mentioned for grant of Free House Site Patta to Scheduled Castes.

8. It is further submitted that a list of 91 candidates has been affixed in VAO Office, Koodapakkam and Taluk Office, Villianur on 21.02.2019, for calling objections, if any, on or before 27.02.2019 and that 7 days have been given for filing objections and not 2 days. In this regard, acknowledgement has been received from V.A.O, Villianur in the Tapal Register on 21.02.2019. Due to shortage of time, only 7 days has been given for calling objections. According to the 2nd respondent, if required, a fresh list will be published for calling objections by giving 15 days of time, from the date of publishing.

9. The 2nd respondent has further submitted that the notice does not contain the area, where the house sites are going to be issued. It is submitted that the site proposed for issue of Free House site patta is in Koodapakkam Revenue Village. Further, a fresh list mentioning the area, where the house sites are proposed to be granted will be published. Further, denying the averment that approval must be obtained from the Pondicherry Planning Authority for issue of Free House site patta, it is submitted that there is no such rule and as per Rule 56 of the Pondicherry Land Grant Rules, 1975, the plans should be drawn up in consultation with the Senior Town Planner and that the assignment should be made in regular order in accordance with the plan and since, the selection procedure is under process, no assignment order is prepared.



10. The 2nd respondent has further submitted that the site proposed for issue of Free House site patta in Koodapakkam Revenue Village and the applications received by this Directorate is also from the people of Koodapakkam Village of Ossudu Constituency. Hence, the area is not mentioned. Further it is submitted that a fresh list calling for objections will be prepared by mentioning the full address of the petitioner.

11. Denying the averments that persons having landed property and Government staff including wife/husband are selected for grant of free house site patta, it is submitted that objection has been called for from the public and some objections has been received. The said list is only tentative list and not the final list of beneficiaries. The objection will be enquired by the field level Officials of this Directorate and thereafter, the advisory committee, constituted in G.O.Ms.No.7, dated 11.08.2003, will only select the beneficiaries. They have scrutinized the applications, as per the Puducherry Land Grant Rules, 1975 and rejected nearly 123 applications, out of 214 applicants. Hence, the 2nd respondent has prayed for dismissal of the writ petitions.

Heard Mr.V.Ajayakumar, learned counsel for the petitioner and Mrs.Usha, learned Additional Government Pleader (Puducherry) for the respondents.

12. From the above it could be seen that selection of the candidate, has not been done in a proper manner.

13. Government of Pondicherry have framed The Pondicherry Land Grant Rules, 1975. Rule 2(h) of the said rules, reads thus:-

"Landless person" means a person who owns no land or who hold a total extent of less than half hectare of land of dry, or a total extent of quarter hectare of wet, irrigated or garden land.

Explanation - In the case of joint family holdings, the share of each member should be ascertained to decide whether or not the person is a landless person within the meaning of the above definition."

14. Chapter II deals with grant of assessed waste lands not being reserved and the same is extracted hereunder:-

Persons eligible for grant of land for agricultural purpose.

3. (1) Subject to the restrictions and conditions specified in this Chapter, Government assessed waste lands may be granted on assignment for agricultural purposes to a person;-



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(i) who is a citizen of India and a native of the Union territory of Pondicherry and who has attained the age of eighteen;

(ii) who is a landless and poor person; and

(iii) who is either a bona fide agriculturist cultivating the land personally or has bona fide intention to take up personal cultivation; or

(iv) who is a person serving in the Indian Army, Navy, Air Force or Border Security Force; or

(v) who is an Ex-serviceman; or

(vi) who is a Freedom Fighter; or

(vii) who is the widow of a person specified in clauses (iv) and (vi) above

Provided that the extent of land granted shall not, together with the land, if any, already owned by the grantee without the limit specified in rule 4.

2. Notwithstanding anything contained in sub rule (1), any person may be granted the land adjacent or close to the land already held by him on collection of market value, if such land is, in the opinion of the authority assigning the land, required for better enjoyment or better cultivation of the land so held;

Provided that in no case, such grant shall exceed, in the case of wet, irrigated or garden land, 10 ares and in the case of other dry land 20 ares.

Maximum extent that can be granted to a person.

4. Subject to the proviso contained in rule 3 (i), the maximum extent that can be granted to a person under this chapter for agricultural purposes shall be half hectare of dry land or quarter hectare of wet, irrigated or garden land assuming one hectare of wet, irrigated or garden land to be equal to two hectares of dry land.

What lands may be assigned and what may not

5. Only land, the assignment of which is unobjectionable shall be assigned. Such lands may be assigned to individuals whether they are in isolated bits or in compact blocks. Lands acquired for communal purposes shall not be assigned. Grazing ground porambores shall not be assigned unless there is sufficient grazing ground to serve the needs of cattle. Tank bed lands should on no account be assigned without consulting the appropriate technical officer. Lands close to village sites which are likely to be required for communal purposes or necessary for the purpose of extension of house sites should not be assigned. Such lands may be included in the Prohibitory Order Book wherever necessary after obtaining the orders of the Collector. Land once entered in the Prohibitory Order Book shall not be deleted without the specified sanction of Collector.



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Classification of lands to be assigned

6. Only lands which are assessed to land tax can be assigned. If not assessed it shall first be transferred to assessed waste by the orders of the Collector. The land should be surveyed and demarcated and boundaries fixed before possession is given to the grantee. The charges incurred for such survey and demarcation shall be recovered from the grantee unless he is exempted by Government by general or special order.

Special provisions for safeguarding the interest of the Government

7. When a road runs through the land applied for a width of at least 20 metres should be set apart for the road. Similarly, when the bank of an irrigation work runs through or near the land, the extent of land required to allow a margin of 20 metres along the foot of the embankments should be set apart if the irrigation work is an important one such as a main canal, a main distributary or a main drainage channel. In the case of subordinate or minor distributaries or minor drains, a margin of 7 metres will be sufficient. If a stream runs through or near the land, a margin of not less than 10 metres on either bank should, as a general rule, be reserved and registered as poramboke. In all such cases, the opinion of the P.W.D. should always be obtained prior to passing order on assignment.

Authority competent to assign the land

8. The Deputy Collector (Revenue) shall be the authority competent to assign lands in his jurisdiction subject to the maximum specified in rule 4 and cases falling beyond his scope shall be referred to the Collector for orders.

Provided that WHERE specially valuable land is to be granted free or where land in compact blocks exceeding 20 hectares of valuable land or 40 hectares non-valuable land prior sanction of the Government shall be obtained.

Order of Priority

9. (1) Subject to the provisions contained in sub-rule (2) the land available for disposal in any village shall be assigned observing the following order of priority :-

(i) war wounded disabled person having disability 50% and above.

(ii) war widow whose husband died while on active service in war operations.

(iii) widow of an ex-serviceman who has no source of income/pension.

(iv) Unemployed ex-serviceman receiving no



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pension.

- (v) unemployed ex-serviceman receiving pension.
- (vi) ex-serviceman self employed/employed in Government / private sector;
- (vii) serving personnel of the Indian army, Navy, Air Force and Border security Force or their widows.
- (viii) exservicemen released on own request on compassionate grounds.]
- (ix) landless poor Harijans.
- (x) freedom fighters or their widows.]
- (xi) repatriates from Burma and Ceylon.
- (xii) goldsmiths displaced on account of Gold Control Act or Rules.
- (xiii) other landless poor persons.
- [xiv] Persons with disabilities as defined under the Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Central Act 1 of 1996]

Provided that in respect of cases falling under categories (i) to (viii) of this sub-rule, recipients of sena medals and other gallantry awards in military service will be given preference over others in the respective categories.

(2) (i) A person, who is otherwise eligible for assignment under this chapter, who has occupied the land whether with or without permission and has expended a material amount of labor or money in clearing the land of woods, shrubs or prickly pear or otherwise be fitting it for cultivation or improving it or holds trees on the land under the tree tax system or who has been using the water of a well in the land for cultivation has preference over others. Such a person should, if there is no other objection, be given the option of getting it assigned under this chapter. If he fails to apply in spite of the notice, he will forfeit all his claims to preference and action will be taken to evict him; Provided that this concession will not apply in the case of encroachments made after the coming into force of these rules.

(ii) As between the persons having analogous and equitable considerations, the first applicant shall have preference.

(iii) As between a resident and a non resident, other considerations being equal, the resident shall have priority.

(iv) As between non resident applicants inter se, preferential claims will be determined in accordance with the above principles.

(v) When there are two or more applicants for the same land and the Deputy Collector (Revenue) is unable to decide which of them has the best claim, he may



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order the right of occupying the land to be sold by public auction to the highest bidder subject to confirmation by the Collector. He will nominate the Tahsildar or Deputy Tahsildar as selling officer in each case. Any person may bid at such auction. The following condition of sale should be provided in the sale notice along with the usual conditions :-

"that the auction purchaser shall deposit at the time of purchase, a sum equal to 15% of the purchase, and such deposit is liable to forfeiture should the remainder be not paid within 30 days from the date of sale."

Procedure for grant of land

10. (1) Any person who is eligible for grant of lands for agricultural purposes under this chapter shall make an application in writing to the Tahsildar in Form I giving the full particulars required therein and such applications shall bear a Court Fee stamp of 25 paise.

Provided that no court fee shall be levied on applications submitted by persons belonging to Scheduled Caste, Scheduled tribes and persons in active military service.

(2) Immediately on receipt of the application, the Tahsildar shall cause the particulars of the application to be entered in a Register which shall be in Form 2 in his office.

(3) The Tahsildar shall, either direct or through the Revenue Inspector, refer it to the Karnam for report. On receipt of the application, the Karnam shall enter it in the register in Form 3, publish the fact of application in the village by beat of "tom-tom" and post a notice of it in Form 4 in his office and on the land applied for, for 15 days. At the end of the period he should prepare a memorandum in triplicate in Form 5 (and send it to the Tahsildar without delay together with the notice in Form 4 which should be signed by the Karnam and attested by two literate residents for the village. The memorandum in Form 5) should be accompanied by an illustrative sketch in triplicate showing the position and classification of the land applied for and of the lands surrounding it, as also the position of the maintainable survey marks with a certificate of the Karnam appended to the sketch as to the number of Survey marks for which value has to be recovered from the applicant. Such stones should be marked in the sketch in a distinctive way by entering them in red ink or ringing them.

(4) Columns 1 to 17 of the Memorandum in Form 5 should be filled in by the Karnam and it shall be



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signed by both the Karnam and the Revenue Inspector. In Column 5, the land should be described as wet or dry. In column 12, it should be explained why a right of way is required, whether to allow access to cultivable unassigned land or for what other purpose. If an irrigation channel or the embankment of an irrigation work or a stream does not run through the land, but merely adjoins it, its distance from the land should also be reported.

In Column 13 should be included the names of all persons who have applied for the land or have objected to its grant to the applicant or occupier. The Karnam and the Revenue Inspector will be held responsible for the correct filling up the memorandum. When the submission of the memorandum is delayed beyond 20 days from the publication of the notice in Form 4 cause of the delay should be explained in the remarks column by the Revenue Inspector.

(5) On receipt of the memorandum report in Form 5, the Tahsildar shall scrutinise it with the least possible delay and if he is satisfied that the applicant is eligible for the grant of the land applied for, fill up columns 18 and 19 of the memorandum setting out in brief the reasons for overruling the objections if any or giving in preference if there are more than one application and submit the entire records with his specific recommendations for orders of the Deputy Collector (Revenue). The value of trees should be calculated and foil of Form should accompany the report. He should also inspect the land and send a copy of his inspection notes with his report.

(6) Where the land applied for is not available for grant or the Tahsildar is satisfied that the applicant is not eligible for grant of the land applied for, he may submit his report to the Deputy Collector (Revenue), who shall accordingly inform the party.

(7) On receipt of the report of the Tahsildar, the Deputy Collector (Revenue), if he is satisfied that the applicant is eligible for the grant, pass orders in Column 20 of the memorandum and return the entire records to the Tahsildar retaining one of the triplicate copies for his office record. The Tahsildar shall immediately on receipt of such order, forward one copy of the memorandum to the Karnam who will thereupon fill in Column 21 and carry out the orders and note special conditions, if any, in village accounts under the attestation of the revenue Inspector. It should also be communicated at once by the Tahsildar to all the parties concerned and Form 7



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should be issued to the grantee. The orders should be carried out simultaneously in the Taluk set of village accounts and a similar report from the Revenue Inspector should be obtained and placed before the file is finally closed by the Tahsildar.

(8) The Tahsildar should record a certificate, whenever the grant of land is recommended, to the effect that the order of priority specified in rule 9 has been observed.

Eviction of unauthorized occupation

11. Persons in unauthorized occupation of any land to the assignment of which they are not eligible are liable to be evicted at any time and shall be so evicted before proceedings are taken to assign the land to a person eligible for assignment. No proceedings for the disposal of such a land shall be taken till the unauthorized occupant is evicted.

Conditions of grant

12. (1) The assignment of land to individuals shall be subject to the following conditions in addition to such other special conditions as the assigning authority may wish to impose:-

(i) the assignment is liable to cancellation if it be found that it was grossly inequitable or was made under a mistake of fact or owing to misrepresentation or fraud or in excess of the limits of authority delegated to the assigning officer by the rules in this Chapter or there was an irregularity in the procedure;

(ii) in the event of the cancellation of the assignment either an appeal or in revision, the assignee shall not be entitled to compensation for any improvements that he may have made to the land;

(iii) the land shall not be sold or alienated for a period of ten years from the date of assignment; but may be hypothecated to Government for the purposes of securing a loan or to a Cooperative Society, or to a scheduled bank authorized by the Government for affording credit to the agriculturists;

(iv) the land shall be brought under cultivation within a period of three years from the date of assignments;

Provided that the aforesaid period may, for valid reasons, be extended by the Deputy Collector (Revenue);

(v) the assignee and his heirs shall engage themselves in personal cultivation;

(vi) if the land is used for casuarina plantation, no pits or ponds shall be excavated nor such plantations irrigated by pots within 200 metres of any natham (habitation) and all pits and ponds excavated beyond the above limits, shall be filled up



as soon as the plants watered therefrom are three years old;

(vii) the annual assessment on the land shall be liable to periodical revision at resettlement;

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(viii) the land or a portion thereof should not be put to non-agricultural use except with the previous sanction of the Government;

(ix) the land shall be subject to all general taxes and local rates payable by law or custom;

(x) the existing and customary rights of Government and the public roads and paths and rivers, streams and channels running through or bounding the land, and the right of Government to a share in mines and quarries adjacent to the said land are reserved and are in no way affected by the grant. Government also reserve to themselves or to persons authorized by them the powers necessary for the proper working of the minerals such as the full and free liberty and right of ingress, egress and regress, etc.;

(xi) the Government shall be at liberty to resume the land within a period of ten years from the date of grant, if any default is made in the payment of land revenue due on the land;

(xii) for contravention of any of the above conditions the grant shall be liable to be cancelled and resumed to Government free from all encumbrances by the authority granting the land;

Provided that before cancelling the grant, the grantee shall be afforded with an opportunity of being heard.

(2) All Conditions to which the land is assigned or sold would be specified in Form 7 or in the order of assignment by sale in Form B. The notice of sale in Form 9 should be used for notifying such sales.

Registering

13. On receipt of a copy of the memorandum in Form 5 containing the orders of the Deputy Collector, the Karnam should at once register the name of the assignee as entitled to a patta assigning the last Folio Number or any vacant folio number in the "Matrice" (record of rights) and effect consequential changes in corresponding accounts with the Karnam including the Adangal. If the order is set aside on appeal or revision, the Karnam should make necessary corrections in the village set of records on receipt of such orders. All such corrections should be scrutinised and attested with dated initials of the Revenue Inspector quoting the original order Number or appeal or revision order number and date against each. Similarly the Taluk set of records should be corrected



and attested under the dated initials of the Tahsildar or the Deputy Tahsildar.

Value payable for the land

14. (1) No land value shall be collected for the assignment made, under this chapter, of non-valuable or valuable lands, provided that the assignment is within the extent specified in rule 4.

(2) Land value at market rate shall be levied for all other cases;

1[Provided that the land granted in respect of cases falling under categories (i) to (viii) and (X) of sub rule (1) of Rule 9, for bona fide rehabilitation purposes shall be free of land value irrespective of their income or status and irrespective of the land being non-valuable or specially valuable.]

2[Provided further that in the case of persons with disabilities mentioned under category (xiv) of sub-rule (1) of rule 9 as defined under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, only 50% of the market value shall be charged]

(3) In the case of Assessed Waste, market value should be determined with reference to the rate prevailing on the date of receipt of application for assignment, and in the case of porambokes, with reference to the rate prevailing on the date of transfer to Assessed Waste;

Provided that where the applicant is an unauthorized occupier who has spent a considerable amount of money and labor on the land, the market value should be fixed at the value of the land prior to its improvement.

(4) Notwithstanding anything contained in sub-rules (1) and (2), where the land is very valuable, the Collector or the other officer authorized by him in this behalf may sell such land by public auction.

Disposal of tree growth on lands

15. Lands on which there are large groups of Palmyra, date-palms, fruit trees or valuable timber trees, whether growing spontaneously or cultivated should usually not be assigned; but should be retained in the hands of the Government for forest or abkari purpose.

Payment for standing trees, wells and buildings

16 (1) The value of trees standing on the land except those proved to have been planted by him should be recovered from the successful applicant before final orders are passed. The assigning authority is allowed the discretion to collect either the market value or the value specified in the Schedule appended



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to these rules. The scale shall be applied by the Revenue Inspector who, under the general supervision of the Tahsildar, will be responsible for counting and measuring the trees and assigning them to the proper species. If the applicant is unwilling to pay the valuation the trees may be put in auction subject to the condition that the auction purchaser shall cut and remove them within a specified time. Before doing so, the assigning officer should weigh the advantages of the trees standing on the land being cut in the interest of growing more food-vis-a-vis the interest of Vana Mohatsava and pass orders on merits in each case. If for this or for any other reason it is not considered desirable to put the trees to auction or if the applicant's case is a deserving one the assigning authority may collect tree value at rates lower than specified in the Schedule or market rate. In very special cases, tree value may be remitted altogether. In either case the assigning authority should record the reasons therefor in writing. The power to order sale by auction, to reduce the valuation or to remit the payment in very special cases may be exercised by the Deputy Collector (Revenue) when the value is Rs. 100 or less and by the Collector where the value is more than 100, and not more than Rs.200. All other cases must be referred to the Government for order.

(2) The value of any buildings, wells, etc., should also be collected except the case of such as are proved to have been constructed by the applicants or his ancestors. If the wells, building and other structures will not be useful for agricultural purposes and cannot in any way be profitably used without further investment the cost to be paid for such structures shall not exceed 50% of the market value.

(3) The sum calculated under this rule shall be paid by the person concerned before assignment is ordered in his favor.

Fasli from which assessment is payable

17. (1) Subject to the provisions contained in the following sub-rules, assessment is payable for the fasli in which the assignment is made unless otherwise specially ordered by the Collector.

(2) If the whole or any portion of the land assigned had remained unoccupied for a continuous period of 5 faslis immediately preceding the fasli in which the land is assigned, no assessment shall be collected for the whole or such portion of the land as signed, as the case may be, for a period of 3 faslis commencing from the including the fasli in which the assignment is made. Assessment shall be



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collected thereafter as usual.

(3) If however, the land assigned or a portion thereof has been under occupation for a period of 3 faslis or more within the period of 5 faslis aforesaid, assessment shall be collected for the whole or portion of the land assigned, as the case may be, for the fasli in which assignment is ordered. Assessment shall be collected thereafter as usual.

(4) Where the land assigned or a portion thereof has been under occupation for only two faslis during the period of 5 faslis aforesaid, assessment shall not be collected for the land or for such portions, as the case may be, for the fasli in which the land is assigned, but shall be collected thereafter as usual.

(5) Where the land assigned or a portion thereof has been under occupation for only one fasli during the period of 5 faslis aforesaid assessment shall not be collected for the land or for such portion, as the case may be, for the fasli in which the land is assigned and for the next succeeding fasli, but shall be collected thereafter as usual.

(6) Notwithstanding anything contained in sub rules (1) to (5), in cases where the assignee is not the occupier himself, and where the assignment has been made so late in a fasli year that the assignee was not able to raise even a single crop before the commencement of the next kist season, assessment shall be payable only for the faslis commencing from and including the fasli in which the assignment was made.

(7) Where Government water is taken for the irrigation of the land, irrigation cess shall be charged and collected in accordance with the rules in force, irrespective of the concession provided above in the matter of collection of assessment.

Reservation of customary rights, etc.,

18. The existing customary rights of Government and the public in roads and paths and rivers, streams and channels, running through or bounding the land granted under the rules in this Chapter, and the right of Government to a share in mines and quarries subjacent of the said land are reserved and are in no way affected by the grant. The Government also reserve to themselves or the proper working of the minerals such as the full and free liberty and right of ingress, egress and regress etc., subject to the payment of rendering of compensation to these surface owner for all damages that he may sustain by the exercise such rights.

Specially valuable lands which could be disposed of and the conditions for disposal in each case

19 (1) Specially valuable lands of the kind



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referred to in sub-clauses (ii) and (iv) of clause (o) of rule 2 may be reserved for the schedule castes but those referred to in sub-clause (i), (iii) and (vii) thereof should not be so reserved. Lands in the proximity of towns coming under sub clause (vii) should be sold in public auction. Whenever it is proposed to dispose of a specially valuable land falling under sub-clauses (ii) and (iv) to (vi) as have not been reserved for Schedule Castes, the Deputy Collector (Revenue) should first consider the application from landless and poor persons. If there are no nonvaluable lands available for assignment to such landless poor applicants and if in the opinion of Deputy Collector (Revenue) , the landless poor applicants are otherwise deserving some concession, he should take action to assign the land in favor of the landless poor applicants as indicated below with the sanction of the Collector;

(a) Where the land is likely to be cultivated by the assignee and his family with or without any additional hired labor and not transferred to outsiders, the Deputy Collector (Revenue), may, in his discretion, recommend assignment of lands to landless and poor persons and arrange to collect the market value at once without auction or arrange to collect the amount in easy installments in deserving cases. In such cases, title to the land will vest in the assignee only after all the installments have been duly paid to the Government and until the, assignee's position will be that of a licensee. In default of payment of any installment, the Government will be entitled to terminate the licence; the licensee shall thereupon cease to have any manner of right to or interest in the land and the Government shall have absolute right to deal with the land as they think fit and no compensation or refund can be claimed by the assignee or those claiming through or under him. Pattas should be issued only after the entire land value is collected. If the assignee is landless and poor person and is an unauthorized occupier who has spend a considerable amount of money and labor on the land, the market value should as far as possible be fixed at the value of the land prior to its improvement. The conditions specified in sub rule (iii) to (v) of rule 12 shall not apply to case where valuable land is assigned to a landless poor person on collection of market value whether in one lump sum or in instalment. But in such cases the other conditions of assignment shall apply and the assessment for the land shall be payable from the fasli in which it was assigned.



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(b) Only when there are no landless poor applicants deserving of the concession mentioned above, should there land, be sold in public auction or at market rate whichever is advantageous to Government. Notwithstanding the above instructions, in very exceptional cases where very small extent of land may be required for rounding off or ryots holding or for sinking of wells, etc., such cases should be specially reported to Government for orders.

Reservation and assignment of land to scheduled castes

20 (1) The assignment of specially valuable land reserved for Scheduled castes should ordinarily be made on collection of market value. The Government reserves the right to assign such lands free of land value. The form of notice to be given to the public in the case of contemplated private sale is contained in Form 4.

(2) Sales of land coming under sub-clauses (iii) of clause (o) of rule 2, after reserving a sufficient extent for the purposes specified in rule 19 may be held at any time when it becomes apparent that the present or prospective value derived from the project has stimulated a demand for land but the sanction of the Government should be obtained before notifying such sales. The restrictions on the disposal of land of this description by sale in auction or by private sale do not apply to the assignment of land which from its situation can never be irrigated from the project. Such land, if specially valuable by reason of its inclusion in sub-clauses (i), (iv), (vi), (v) and (vi) of clause (o) of rule 2, shall be assigned under the rules applicable to these classes; if not specially valuable, it may be assigned by the competent authority under ordinary rules.

(3) Sales of land falling under sub clauses (v) of clause (o) of rule 2 should be subject to the liability to pay ground rent which will be liable to revision in accordance with the rules in force at the time of the revision) in lieu of assessment if and when the site or a portion of it is used for building purposes.

(4) In respect of all disposals of land under this chapter, whether by auction or private sale or free of market value, notice of proposed disposal in the appropriate form should be published.

Disposal of land in villages likely to be affected by an irrigation project

21. The disposal of land in villages notified by Government as likely to be affected by an irrigation project, the execution of which at the cost of State is under contemplation or of land notified by the



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Government as likely to be required for grant in exchange for land to be acquired for such projects should not be absolute but the assignment should be made under this chapter subject to the condition that Government may resume the land at their pleasure at any time until the original assignment is declared absolute by them and that when the assignment is made absolute, the current market value (less any amount collected as land value at the time of conditional assignment) will be collected from the assignee. If the conditional assignee refuses to pay the market value of the land as fixed by the Government, the land shall be resumed and sold in public auction. In event of resumption of the land, the purchase money or such share of it is proportionate to the area resumed, if the original assignment had been made after collecting land value, will be repaid. The Government will not, however be liable to pay compensation for any improvement which may be effected on the land before resumption. The liability to resumption and the absence of liability to pay compensation should be distinctly stated in the order of assignment and in the sale notification if the lands are sold. The sales may be conducted by the Tahsildar or Deputy Tahsildar and the authority according sanction to sell, shall in each case nominate the selling officer. The sales shall be subject to confirmation by the Deputy Collector (Revenue). A permanent register in Form 10 should be kept in the village and in the Taluk Office of all lands conditionally assigned.

Assignment of lands to persons to whom the lands have been leased temporarily.

22.(1) Where, before the commencement of these rule, agricultural lands have been leased temporarily to any person for purposes of cultivation, and all the conditions of the lease have been complied with, such lands may be granted to the lessee under the provisions of this chapter, subject to the restriction contained in rule 4.

(2) Where after the coming into force of these rules, lands have been leased temporarily for cultivation and the lessee has fulfilled all the terms of the lease, such land may be granted to the lessee on payment of the price fixed or free of land value as the case may be, in accordance with the provision of this chapter.

Provided that where the land leased out is in excess of the extent specified in rule 4, only the extent within that limit shall be assigned and the balance shall be assigned to others under this chapter



Cancellation of grant

23. Any grant of land made under this chapter shall be liable to be cancelled and the land resumed by the authority which granted it where the grant has been obtained by making false or fraudulent representations or is contrary to the rules in this chapter;

Provided that no such cancellation shall be made without giving the grantee an opportunity of being heard.

Appeal and revision

24 (1) From every original decision in assignment cases passed by the Deputy Collector, one appeal shall be allowed, provided that it be made within 30 days of the date on which the original decision was pronounced or communicated, if it be on the order of Deputy Collector to the Collector, and within 45 days if it be from the Collector to the Government. In computing the period of limitation, the day on which the decision appealed against was pronounced or communicated and the time requisite for obtaining a copy of that decision shall be excluded. On all copies issued shall be entered the date of the decision or communication, the date of application for copy, the date on which the copy was ready for delivery and the date on which the appeal time expires. Appeal to the Collector should be stamped with a Court fee label to the value of Rs.1.50 p ., and an appeal o the Government should be stamped with a Court fee label of Rs. 2.50 p. Any appellate authority may admit an appeal even after the expiry of the period of limitation provided he is satisfied that the appellant had good and sufficient causes for not presenting the appeal within such period.

(2) (a) The order of the authority making the assignment, if no appeal is presented, or 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, the Collector, or as the case may be, government is satisfied that,

(i) there has been a material irregularity in the procedure; or

(ii) the decision was grossly inequitable; or

(iii) it exceeded the power of the officer who passed it; or

(iv) it was passed under a mistake of fact, or owing to fraud or misrepresentation; may set aside; cancel or in any way modify the decision. He or it may also grant stay, pending orders in revision.



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(b) No application, for revision will ordinarily be entertained after the expiration of 30 days from the date on which the decision or order sought to be revised was received by the applicant. Revision petitions to the Collector should be stamped with a Court fee liable of Rs.1.50 and those to the Government should be stamped with a Court fee liable of Rs.2.50.

(3). No appeal or revision petition should be admitted unless accompanied by certified copy of order or orders already passed in the case. No order should be reversed or modified adversely to the respondent with out giving the respondent a notice to show cause against the action proposed to be taken adversely to him. The order in appeal should invariably be communicated in writing and free of charge to the parties concerned.

(4) In the event of the cancellation of the assignment on appeal or on revision or on resumption for breach of conditions the assignee shall not be entitle to compensation for any improvement that he may have made to the land.

(5). Any superior authority revising an order of a subordinate officer declining to assign a piece of land may (1) take a original proceedings for assignment or (2) direct that the land shall be assigned under this chapter by the officer whose order is set aside.

Exemption

25. Notwithstanding anything contained in these rules, the Government may, on its own accord, or on the recommendation of the Collector, if it is of the opinion that in the circumstances of an case, or classes of cases it is just and reasonable to relax any of the provisions of these rules, it may by order direct such relaxation, recording the reason for such relaxation, subject to such conditions as may be specified in the order and thereupon lands may be granted in such a case or classes of cases in accordance with such direction.

Maintenance of registers and files.

26. Files of memoranda in For 5 and the register of Conditional assignments in Form 10 shall be maintained by the village Karnam while a register in Form 2 should be kept in the Taluk Office. It will be the duty of the Tahsildar to have the village files and registers examined and compared with Taluk register periodically and submit to the Deputy Collector for scrutiny during annual inspection of his office. It shall be the duty of the Deputy Collector (Revenue) to examine how far these rules have been



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observed and to take necessary action if there is any departure or serious lapses of the rules.

Assignment of lands to others

27. Persons who are not eligible for assignment of lands free of cost under this chapter whether as a land less and poor person or ex-serviceman etc., shall be eligible for assignment of valuable lands which are available for disposal by the in public auctions or by private sale on collection of market value subject to provision contained in this chapter. The disposal of valuable lands to such persons shall be governed by the following special provision besides the ordinary provisions contained in the foregoing rules namely :-

(i) Lands which bare in proximity of town and which in due course of time are likely to become apart of town extension schemes shall be treated as specially valuable land and shall, except as provided above, be sold in public auction. Other valuable lands shall be disposed of either by sale in public auction or by private sale on collection of market value, whichever course is advantageous of Government.

(ii) The extent of valuable land that may be assigned in each case shall be limited to half hectare of dry and quarter hectare of wet or irrigable dry land.

(iii) Where a valuable land is assigned by sale in public auction or by private sale on collection of market value, the above special conditions shall not apply, but the assignment shall be subject to the usual conditions and assessment shall be liable for the fasli in which the land was assigned.

Assignment to foreigners

28. No land belonging to Government shall be assigned or sold under this chapter to any person other than a citizen of India except with the previous sanction of the Government. Every assignment or sale to such foreigner shall be subject to the condition that if the land is alienated without the sanction of government in favour of any person other than a citizen of India , the grant shall thereupon become null and void.

Assignment to company, association or society

29. No application for assignment or lease of Government land under this chapter or under any other chapter in this rules shall be entertained from a company, association or a society is a company within the meaning of that word in section 3(1) of the Companies Act, 1956 (central Act 1 of 1956), or has been registered under the Societies Registration Act, 1860 (central Act 21 of 1860), the Religious Societies



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Act, 1880 (central Act 1 of 1880), the Pondicherry Co operative Societies Act, 1972 (No. 7 of 1972), Multi Unit Co operative Societies Act, 1942 (central Act 6 of 1942), the Insurance Societies Act, 1938 (central Act 4 of 1938), The Indian Trade Unions Act, 1926 (central Act 16 of 1926) or by an Act of Parliament or of the State Legislature in the Union of India.

Assignment for Casuarina Plantations

30. Where the land assigned or sold is used for casuarina plantations no pits or ponds shall be excavated nor shall such plantations be irrigated by pots within 200 metres of any village sites; and all pits and ponds excavated beyond the above limits shall be filled up as soon as the plants watered therefrom are three years old except such as may be required for purposes of re-plantation. A breach of any of these conditions will render the assignment or sale liable to be cancelled without payment of any compensation."

15. On the averments, we called for the records. Files produced reflect a tentative list of 91 selected candidates, which is reproduced:-

"ஊகடு தொகுதியை சேர்ந்த கீழ்க்கண்ட விண்ணப்பதாரர்களுக்கு இலவச மனைப்பட்டா வழங்க நில அளவை மற்றும் பதிவேடுகள் துறை அலுவலகத்தால் தற்காலிகமாக தேர்வு செய்யப்பட்டுள்ளது. கீழ்க்கண்ட விண்ணப்பதாரர்களுக்கு பட்டா வழங்க ஆட்சேபனை இருக்கும் பட்சத்தில் தாங்கள் நேரிலோ அல்லது பதிவு, பெற்ற முகவர்கள் மூலமாகவோ தகுந்த ஆதாரங்களுடன் வரும் 27.02.2019-க்குள் ஆட்சேபனை தெரிவிக்கவேண்டும் என்று அறிவிக்கப்படுகிறது."

16. Though Mr.V.Ajayakumar, learned counsel for the petitioner submitted that 30% of the allotment should be made to suitable candidates, no such reservation is prescribed in the rules. However, from the counter affidavit it could be seen that out of 91 applicants, tentatively selected, 25 belong to scheduled caste.

17. File has a note, named as enquiry report for issue of Free House Site Patta in R.S.No.94/2, in koodapakkam revenue village of Ossudu Constituency, with remarks, as to whether, the applicants own a house or plot, and other details. The said so called enquiry report is not signed. Enquiry report also does not contain, as to when, field inspection was conducted, and who has conducted the field inspection and verified the details mentioned in the so called report. During the course of hearing, learned Additional Government Pleader, candidly admitted that there is no other file, other than the one produced before the Court.



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18. Let us consider few decisions on the power of the Court to mould the relief and issue directions,

(i) In *Pasupuleti Venkateswarlu v. The Motor & General Traders* reported in 1975 (1) SCC 770, at Paragraph 4, the Hon'ble Apex Court held as follows:

"We feel the submissions devoid of substance. First about the jurisdiction and propriety vis a vis circumstances which come into being Subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief for the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice & subject, of course, to the absence of other disentitling (actors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myraid. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

(ii) In *Hindalco Industries Ltd., v. Union of India* reported in 1994 (2) SCC 594, the Hon'ble Supreme Court, at paragraph 7, held as follows:

"7. It is settled law that it is no longer necessary to specifically ask for general or other relief apart from the specific relief asked for. Such a relief may always be given to the same extent as if it has been asked for provided that it is not inconsistent with that specific claim which the case raised by the pleadings. The court must have regard for all the relief and look at the substance of the matter and not its forms. It is equally settled law



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that grant of declaring relief is always one of discretion and the court is not bound to grant the relief merely because it is lawful to do so. Based on the facts and circumstances the court may on sound and reasonable judicial principles grant such declaration as the facts and circumstances may so warrant. Exercise of discretion is not arbitrary. If the relief asked for is as of right, something is included in his cause of action and if he establishes his cause of action, the court perhaps has been left with no discretion to refuse the same, But when it is not as of right, then it is one of the exercise of discretion by the court. In that event the court may in given circumstances grant which includes "may refuse" the relief. It is one of exercising judicious discretion by the court. Same consideration would apply to the causes under the Act and the Tribunal has such discretion. The Tribunal, while keeping justice, equity and good conscience at the back of its mind, may when compelling equities of the case oblige them, shape the relief consistent with the facts and circumstances established in the given cause of action. Any uniform rigid rule, if be laid, it itself turns out to be arbitrary. If the Tribunal thinks just, relevant and germane, after taking all the facts and circumstances into consideration, would mould the relief, in exercising its discretionary power and equally would avoid injustice. Likewise when the right to remedy under the Act itself arises on the presence or absence of certain basic facts, at the time of granting relief, may either grant the relief or refuse to grant the same. It would be one of just and equitable exercise of the discretion in moulding the ancillary relief. It is not as of right. In Associated Provincial Picture Houses Ltd. Case, under Sunday Entertainments Act, 1932, the licensing authority while granting permission to exhibit cinematographs, imposed certain conditions, prohibiting the children under age of 15 years to be admitted in the theatre. It was challenged as being arbitrary. Dealing with the discretionary power of the licensing authority, the Court of Appeal held that the law recognised certain principles on which discretion must be exercised but within the four comers of those principles. The discretion is not absolute one. The exercise of such a discretion must be a real exercise of the discretion. If in any statute conferring the jurisdiction, there are to be found, expressly or by implication, matters to which the authorities exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters.



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Conversely, if the nature of the subject matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters. Expressions have been used in cases where the powers of local authorities came to be considered relating to the sort of thing that may give rise to interference by the court. Bad faith, dishonesty those, of course, stand by themselves, unreasonableness, attention given to extraneous circumstances, disregard of public policy, and things like that have all been referred to as being matters which are relevant for consideration. The discretion must be exercised reasonably. A person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said to be acting unreasonably.?"

19. Though petitioner has sought for a writ of mandamus, to direct the respondents to publish a notification calling for applications from the eligible persons for grant of free patta and to select candidates strictly on the basis of their eligibility and rules, considering the fact that files do not reflect that a proper procedure has been followed for selecting the applicants, for allotment of free pattas, we deem it fit to mould the prayer into that of writ of certiorari and accordingly, set aside the entire selection process and the consequential tentative list of selected applicants.

20. We further direct the 2nd respondent to follow the procedure contemplated in Pondicherry Land Grant Rules, 1975 and assign free pattas. Said exercise shall be completed within two months, from the date of receipt of a copy of this order.

21. With the above direction, writ petition is allowed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mvs



To

1. The District Collector
Revenue Department
Puducherry.

2. The Director
Survey and Land Records
New Saram, Puducherry.

+1cc to Mr.V.Ajaykumar, Advocate, S.R.No.46513

+1cc to the Government Pleader, Puducherry, S.R.No.45479

W.P.No.7605 of 2019

PP (CO)

RRS (14/08/2019)