



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.07.2019**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

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W.P.(MD)No.9264 of 2019
and
W.M.P.(MD)No.7280 of 2019

M.Seeni

... Petitioner

-Vs-

The Assistant Commissioner (Land Reforms),
Madurai

... Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings of the respondent in M.R.4.96/Thiruma/A3 dated 05.10.2006 and quash the same as illegal and consequently forbear the respondents form in anyway disturbing the petitioner's peaceful possession and enjoyment of the petitioner's land in Survey No.2/1B-3, 2/2B3 Keela Urapanur Vilage, Tirumangalam Taluk, Madurai District.

For Petitioner : Mr.Mahaboob Athiff
For Respondent : Mrs.Vaishnavi
Government Advocate

ORDER

The prayer in this writ petition is for a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings of the respondent in M.R.4.96/Thiruma/A3, dated 05.10.2006 and quash the same, as illegal and consequently, forbear the respondents form in anyway disturbing the petitioner's peaceful possession and enjoyment of the petitioner's land in Survey No.2/1B-3, 2/2B3 Keela Urapanur Village, Tirumangalam Taluk, Madurai District.

2.Heard Mr.Mahaboob Athiff, learned counsel for the petitioner and Mrs.Vaishnavi, learned Government Advocate appearing for the respondent.

3.By assignment order dated 29.06.2000, the land at S.No.2/1B-3, 2/2B-3, Keela Urapanur Village, Tirumangalam Taluk, Madurai District, had been assigned to the petitioner on payment of sale consideration with some conditions. One of such condition imposed by the assigning authority was Condition No.9, which reads thus :-

"The assignee shall engage himself in direct cultivation of the land assigned:

<https://hcservices.ecourts.gov.in/hcservices/>

provided that this conditions shall not be applicable to persons referred to in rules 5(1)(V) and person who are



physically or mentally disabled, women including widows, and old persons, who have no dependents or family members to do cultivation on their behalf. "

4. While so, all of a sudden on 05.10.2006, the respondent herein has passed the order, which is impugned in this writ petition, where they have stated that, along with the petitioner and three other persons, totally four persons, notice had been sent to verify whether they have been cultivating the land under the condition No.9 of the assignment order and the said notices have not been served on them as they have not been residing in that address and therefore, on that ground, the respondent has passed the impugned order, cancelling the assignment. Since the said order has come to the notice of the petitioner very belatedly, challenging the same, this writ petition has been filed.

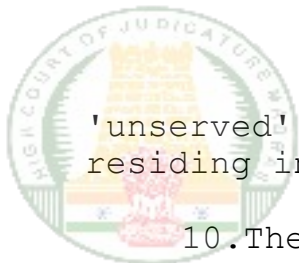
5. It is to be noted that, though in the impugned order the assignment to the petitioner and three others issued separately have been cancelled, the petitioner only challenged the order dated 05.10.2006 by filing of this writ petition and other three assignees have not assailed the impugned orders.

6. The learned counsel appearing for the petitioner would submit that, the petitioner, due to continuous drought, could not cultivate the land for some time and for his livelihood, he had to be outstation ie., Chennai and doing some business. Therefore, the notice claimed to have been sent by the respondent to the local address has not been served on the petitioner, since the petitioner was not residing in that address at Thirumangalam, an ex-parte order has been passed, without even giving an opportunity of being heard to the petitioner. Therefore, on that ground itself, the impugned order can be assailed as unsustainable.

7. I have heard Mrs. Vaishnavi, learned Government Advocate appearing for the respondent, who would submit that, in this regard, when as per the condition No.9 they are supposed to cultivate the land continuously, if at all, they are not able to cultivate the land for reason of drought, the same could have been informed to the respondent and when notice is issued for the said purpose on the petitioner, was admittedly not residing in the local address given to the respondent office, the said notice could not be served. Therefore, having no other option, to the respondent and passed the impugned order of cancelling the assignment.

8. I have considered the submission made by the learned counsel appearing for both sides and perused the materials placed before this Court.

9. It is admitted fact that, the notice has not been served to the petitioner, even though the reason has been given by the respondent in the impugned order stating that, the notice has been sent to the petitioner to the local address, has been returned as



'unserved'. It is further to be noted that the petitioner is not residing in that address.

10. The alleged violation of condition No.9 is only to the effect that, the petitioner shall continue to cultivate the land directly. But such condition seems to have been imposed by the authorities while making an assignment, as the petitioner was residing in that locality.

11. Since the petitioner have moved away from the locality and residing at Chennai for his livelihood, the communication or notice sent by the respondent, were not reached the petitioner.

12. If at all, the petitioner wants to move away from the address given to the respondent authority, that address also could have been given to the respondent office. However, the situation could not have been expected by the petitioner and for all these reasons, notice have not been served on the petitioner. Therefore, the impugned order passed by the respondent on 05.10.2006, insofar as the petitioner is concerned, as an ex-parte order without giving an opportunity of being heard, is unsustainable as only after giving an reasonable opportunity of being heard to the person from whom any such right sought to be taken away, such order could be passed. In absence of such opportunity, it can very well be considered as the violation of principles of nature justice. Therefore, on the sole ground, this Court is of the view that, the impugned order, insofar as the petitioner is concerned, cannot be sustained.

13. In the result, the Writ Petition is allowed to the extent that the impugned order, dated 05.10.2006 passed against the petitioner is set aside and the matter is remitted back to the respondent for reconsideration. While making such re-consideration, the respondent shall give notice to the petitioner to the present address mentioned in the writ petition and on receipt of the such notice, the petitioner shall appear before the respondent office and give explanation as to why he has not been cultivating the land for some years in alleged violation of condition No.9 of the assignment order. Based on such enquiry, necessary order shall be passed on merits by the respondent, within a reasonable time.

14. It is made clear that, this impugned order is set aside and remanded only in respect of the petitioner and insofar as the other three persons are concerned, who are also covered under the impugned order, this Court has not dealt with the same. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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To

The Assistant Commissioner (Land Reforms),
Madurai

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+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-72979[F] dated
03/07/2019)

Order made in
W.P. (MD) No. 9264 of 2019
02.07.2019

RMK

MK (30.08.2019) 4P 3C