



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.02.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

AND

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.A.(MD)No.1483 of 2018

and

C.M.P.(MD).Nos.10582 and 12185 of 2018

1. The District Collector,
Dindigul.
2. The Town and Country Planning,
represented by Assistant Director,
No.4, Hakeem Ajmal Khan Road,
Chinnachokkikulam,
Madurai 625 002.
3. The Tahsildar,
Taluk Office,
Kodaikanal,
Kodaikanal Post,
Dindigul District.
4. The Commissioner of Town and Country Planning,
No.807, Anna Salai,
Chennai 600 002.
5. The State of Tamil Nadu,
represented by its Additional Principal Secretary /
Commissioner of Land Reforms,
Chepauk,
Chennai 600 005.

... Appellants

Vs.

Elango,
Rep by his Power of Attorney,
R.Raja Mahesh,

... Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order passed by this Court in W.P.(MD).No.515 of 2018, dated 18.07.2018.

Prayer in WP(MD). 515/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order made in Na.Ka.No.2206/2016-MM3 dated 19/12/2017 passed by the 1st Respondent quash the same and direct the 1st respondent to issue no objection Certificate and process the application by the 2nd respondent to send the layout plan along with



connected records to the 4th respondent so as to enable him to pass necessary orders in respect of the property comprised in S.NO.285/2, vilpatti village, Kodaikanal Taluk, Dindigul District in terms of the certificate issued on 27/02/2015 and 18.04.2017 in Mu.Mu.No.1136 of 2015 and Na.Ka.No.2206 of 2016 Ma.Ma 3 respectively issued by the third Respondent.

For Appellants

: Mr.A.Thiyagarajan
Government Advocate

For Respondent

: Mr.N.S.Karthikeyan
for Mr.B.Ramanathan

J U D G M E N T

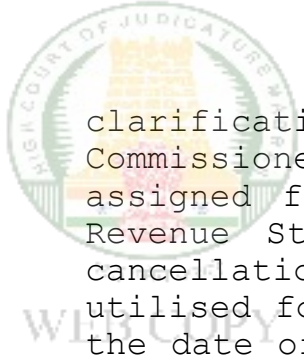
[Judgment of the Court was delivered by **S.S.SUNDAR, J.**]

This writ appeal has been preferred by the appellants as against the order allowing the Writ Petition in W.P.(MD).No.515 of 2018, dated 18.07.2018.

2. The brief facts which are necessary for the disposal of this writ appeal are as follows:

2.1.The respondent in this appeal purchased the property to an extent of 3.01 acres equivalent to 1.22.00 hectares in R.S.No.285/2 situated at Vilpatti Village, Kodaikanal Taluk, Dindigul District, by a registered sale deed, dated 05.08.2013. It is stated that Patta was also transferred in the name of the respondent immediately after the purchase. When the respondent submitted an application to form a layout along with all documents for approval and to get a No Objection Certificate from the Hill Area Conservation Authority viz., the first appellant, the first appellant issued a letter calling upon the respondent to submit a detailed report about the land in which the layout has to be formed by the respondent. The third appellant conducted an enquiry and submitted a report dated 25.04.2017. The first appellant also inspected the land on 11.04.2017 along with the officials and satisfied that the request of the respondent can be favourably considered. However, No Objection Certificate was not issued by the Hill Area Conservation Authority. Hence, the respondent submitted a petition on 06.10.2016 to the authorities.

2.2.The second appellant thereafter issued a communication dated 28.04.2017 to the third respondent referring to the representation of the respondent dated 06.10.2016. Based on the circular, dated 27.03.2008 and the Revenue Standing Orders, further queries were raised to consider the application submitted by the respondent. Thereafter, the first appellant passed an order on 19.12.2017, which is impugned in the writ petition. By the impugned order, the application submitted by the respondent for granting permission to form a layout in the land purchased by the respondent was rejected on the ground that the land was originally assigned in favour of one Venkatasamy Naidu in the year 1973 and that as per the



clarification issued by the Additional Chief Secretary / Land Commissioner, permission cannot be granted to utilise the land assigned for agricultural purposes to other purposes, in view of Revenue Standing Order 15 and proceedings can be initiated for cancellation of assignment in case the land assigned is found to be utilised for lay out purpose even after completion of 10 years from the date of assignment. Following the judgment of a Division Bench of this Court in W.A.No.33 of 2000, dated 30.01.2002 and the fact that in similar cases, the first appellant, namely, the District Collector being the Chairperson of Hill Area Conservation Authority has granted no objection certificate for conversion of lands into layout, allowed the Writ Petition. The stand taken by the appellants in the counter affidavit relying upon the clarification issued by the Commissioner of Land Administration is not approved by the learned Single Judge and it was held that the rejection of respondent's request is an act of discrimination.

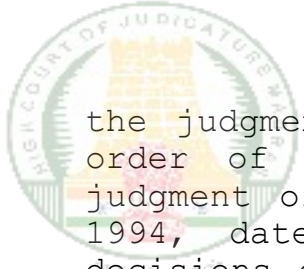
3.The learned Government Advocate relied upon the terms and conditions of the assignment vide proceedings, dated 08.03.1973. The special conditions stated in the order of assignment are as follows:

அடமானம் செய்யப்படும் நிலத்தை அடமானதாரர் அடமான தேதியிலிருந்து 10 வருடங்களுக்குள் வேறு யாதொரு நபருக்கும் பராதீனம் செய்தால் பிரச்சிதாப நிலத்தில் செய்யப்பட்டுள்ள அபிவிருத்திகளுக்கு எந்த பிரதி பலனும் இன்றி அடமானம் ரத்து செய்யப்படும்.

4.Stating that the assignee shall take the land within two years from the date of the order of assignment and that the same cannot be alienated within ten years for anyone for any purpose, it is contended by the Government Advocate that the assignment which was made in favour of the respondent's vendor, the original assignee is liable to be resumed.

5.The learned Government Advocate mainly relied upon the copy of circular issued by the Commissioner of Land Administration, dated 27.03.2008, wherein it is stated that even after 10 years of assignment, the assignee can alienate the assigned lands only after getting permission from the Tahsildar or Revenue Divisional Officer. In the grounds of appeal, the appellants relied upon a Government letter dated 15.07.1997 wherein it is stated that the assignment is liable to be cancelled for violation of conditions even after 10 years from the date of assignment. Further, it is stated that by G.O.(Ms)No.49, Housing and Urban Development Department, dated 24.03.2003, the hill villages have been notified and that Vilpatti Village is also one of the Villages notified as a hill village. It is submitted by the Government Advocate that the Division Bench judgment relied upon by learned Single Judge has no application to the present case where the land comes under the purview of Hill Area Conservation Authority. It is submitted that approval for conveyance of assigned land cannot be granted by appellants as no specific power is delegated to the appellants under the Revenue Standing Order or by any statute applicable to Hill area.

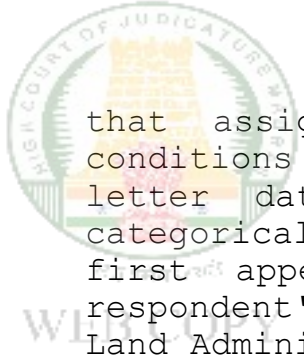
6.The learned Counsel appearing for the respondent relied upon



the judgment of Division Bench which was also referred to in the order of learned Single Judge, impugned in this appeal and a judgment of learned Single Judge of this Court in W.P.No.10277 of 1994, dated 24.08.2005. In the second judgment, few earlier decisions of this Court were considered. It has been consistently held by this Court that any order of assignment which is prior to the issuance of G.O.Ms.No.2555, dated 14.05.1973 could be cancelled only within a period of three years from the date of assignment even though by a later Government Order dated 14.05.1973, powers were conferred on the appropriate official to cancel the assignment without reference to any time limit. The view expressed by this Court is uniform to the effect that the said Government Order can operate only prospectively. In several judgments of this Court, it has been categorically held that in respect of assignment made prior to 1973, proceedings initiated by revenue department for cancellation of assignment after three years cannot be sustained. This Court has no reason to differ and approve the consistent view taken by this Court in the matter of cancellation of assignment.

7.The Government letter dated 15.07.1997 is not produced before this Court. When this Court has stated the legal position in unmistakable and unambiguous terms, the Government and the Revenue Department while interpreting the provisions of Revenue Standing Order cannot ignore the judgments of this Court and issue clarificatory orders quiet contrary to the interpretation given by this Court in binding precedents where the Government and revenue officials are parties. The fact that in several similar cases, the authorities have granted no objection for forming layout in respect of lands which were assigned but subsequently transferred is not disputed. Granting no objection in several similar cases and seeking clarification in the case of respondent would indicate not only discrimination but also exhibit indiscipline in administrative hierarchies. It is to be noted that the Government itself had clarified the position and by letter dated 04.01.1987, the Commissioner had issued instructions to all revenue officials of State to follow the judgment of this Court stating that the Government Order conferring the powers to cancel the assignment without reference to any time limit will have only prospective effect. This instruction is extracted in the judgment of learned Single Judge in W.P.No.10277 of 1994, dated 24.08.2005 (In N.Padmanathan v. District Revenue Officer).

8.In the present case, the District Collector has refused to grant No Objection Certificate not on any other ground or for violation of regulation or rules applicable to Hill areas but on the basis of opinion of Commissioner of Land Administration to the effect as per Government letter dated 15.07.1997, even after completion of 10 years from the date of assignment, the assigned lands, if the assigned lands are found to be utilised for layout purpose, necessary action should be initiated for cancellation of assignment. In the grounds of appeal, the Government letter dated 15.07.1997, has been referred to as a communication to the effect



that assignment is liable to be cancelled for violation of conditions even after 10 years from the date of assignment. The letter dated 15.07.1997 cannot be sustained in view of the categorical pronouncements of this Court in several precedents. The first appellant has not acted on his own but treated the respondent's case as special by seeking opinion from Commissioner of Land Administration while granting approval/No Objection Certificate in respect of other cases which are similar. In this case, the assignment was in 1973 and the alienation was in 2011, after 38 years. Even as per special condition attached to assignment, there is no violation. The village was declared as a village fall under Hill area only in 2003. It is only by virtue of this order, the approval from Hill Area Conservation Authority is required. The issue of No Objection Certificate or approval can be considered in the light of other statutory requirements but cannot be rejected for alienation after 10 years. This Court find no reason to interfere with the decision of the learned Single Judge.

9.As a result, this Writ Appeal is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

TO

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5. The State of Tamil Nadu,
represented by its Additional Principal Secretary /
Commissioner of Land Reforms, Chepauk, Chennai 600 005.

+1cc to Mr.B.Ramanathan, Advocate, SR.No.44344