

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 17-03-2021

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.11836 of 2010

Seriya Pushpam,
rep.by her Power of Attorney
M.Jayakumar

...Petitioner

-vs-

1. The Special Commissioner and
Commissioner for Land Administration,
Chepauk, Chennai.
2. The District Collector,
Kanchipuram District.
3. The Revenue Divisional Officer,
Saidapet Taluk,
Chengalpet District.
4. The Government of Tamil Nadu,
rep.by the Secretary to the Government,
Revenue Department,
Fort St.George, Chennai-9.
5. The Chairman,
Tamil Nadu Slum Clearance Board,
Rajaji Salai,
Chennai-5.

... Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari, to call for the records on the file of fourth respondent in proceedings GO Ms.51, dated 24.01.2007, and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner : Mr.V.Raghavachari

For Respondents 1 to 4 : Mr.Venkadesh Kumar,
Govt. Advocate.

For Respondent 5 : Mr.R.Sivakumar

ORDER

This Writ Petition is filed by one Serya Pushpam, through her Power of Attorney, by name, M.Jayakumar, for issuance of a writ of Certiorari, to call for the records on the file of fourth respondent in proceedings G.O.Ms.51, dated 24.01.2007, and quash the same.

2. The brief facts, that are set out in the affidavit, filed in support of the Writ Petition, are as follows :

2.1. Petitioner's husband, by name, Sri V.Doss Peck, while he was in service of Navy, submitted an application for assignment of certain land. His request was considered and an order of assignment in favour of Sri V.Doss Peck was issued on 02.09.1966. As per the order of assignment, an extent of 4 acres in Survey No.523 and an extent of 1 acre in Survey No.524 in Perumbakkam Village, Saidapet Taluk, Chengalpet District, was assigned in favour of Sri V.Doss Peck free of land value, but on collection of stone value of Rs.2/- and sub-division fee of Rs.4/-, subject to usual conditions of assignment in relaxation of orders in G.O.Ms.No.1135, Revenue, dated 16.03.1962. In the said order, it was stated that the assignment was by order of Government. Petitioner has produced before this Court the revenue record to show that her husband was the pattadar of the property and Kist from Fasli 1388 to 1392 was also paid by her. Petitioner's husband, during his lifetime, created a mortgage in respect of the property, which was assigned to him, for a loan obtained from Saidapet Co-operative Primary Agricultural and Rural Development Bank Limited and the said mortgage deed, issued by the Bank, indicates that the property was mortgaged and later redeemed by clearance of loan on 15.10.1975. Petitioner's husband Sri V.Doss Peck died on 08.05.1993, leaving behind the petitioner, two sons and three daughters. The Legal Heir certificate produced by the petitioner shows the particulars of the legal representatives. It is stated that the revenue officials refused to collect land revenue under the pretext of patta in favour of petitioner's husband being cancelled. It is further stated that petitioner's husband or petitioner was not given any notice before cancellation of patta. From various representations, it is revealed that petitioner was informed about the cancellation of patta by Revenue Divisional Officer, namely, third respondent herein. But, there is no indication about the communication of the order, cancelling assignment or patta.

2.2. Petitioner has stated in the affidavit that her husband was in physical possession and enjoyment of the property and kist was collected from him lastly on 10.04.1983 for the Fastly 1388 to 1392. Petitioner has produced before this Court the Kist Receipt, that was issued on 10-04.1983. Further, it is

stated, that, to her dismay, she was informed that the assignment in favour of her husband was cancelled even in the year 1981. Petitioner submitted a representation before first respondent on 24.10.1994, requesting first respondent to set aside the cancellation of patta, said to have been made in the year 1981. Some representations were also submitted by petitioner to the Hon'ble Minister for Revenue and the District Collector on various occasions. Though petitioner has also produced a copy of the intimation/instruction given by the District Collector to the Tahsildar, dated 23.08.2003, directing the Tahsildar to conduct an inquiry and submit a report, no report or inquiry details are produced before this Court during the proceedings or served on petitioner before filing of the Writ Petition. Petitioner continued to make representations to the District Collector and the Tahsildar from 2004 to 2006. However, she came to know about the impugned order vide G.O.Ms.No.51, Revenue Department, dated 24.01.2007, by which, Tamil Nadu Slum Clearance Board was given permission to enter upon the land to an extent of 47.46.0 Hectares in Perumbakkam Village, including an extent of 5 acres of land, which was assigned in favour of petitioner's husband. Challenging the said Government Order vide G.O.Ms.No.51, dated 24.01.2007, this Writ Petition is filed by petitioner, through her Power of Attorney.

3. At the time of admitting the Writ Petition, this Court, on 18.10.2010, after recording the statement of petitioner that petitioner and her family members are in possession and enjoyment of the property, granted an order of ad-interim stay of further proceedings pursuant to the impugned order, dated 24.01.2007, in respect of Survey Nos.523, 524/ 1 and 524/2 until further orders. The order of this Court, granting ad-interim stay, is not modified till-date i.e., till the disposal of this Writ Petition.

4. Subsequently, this Court, by an order, dated 05.03.2018, directed the respondents to verify the bonafides of petitioner's claim in the following lines :

'6. In order to ascertain the factual position as regards the bona fides of the petitioner herein, the second respondent, namely, the District Collector, Chengalpet District, is directed to submit a detailed report as to the factual situation as on date in regard to the subject property and the status of the petitioner in relation to the present litigation. The District Collector may obtain the reports from his subordinate officials, gather information both on bona fides of the petitioner herein as well as the present status of the subject property and also whether the legal heirs of the original assignee

were in possession or interested in the property at all ? The District Collector shall submit a comprehensive report in this connection before this Court within a period of 8 weeks from the date of receipt of a copy of this order.

7. Learned Special Government Pleader is directed to forward a copy of this order to the District Collector along with the copies of the affidavit filed in support of the Writ Petition and the typed set of documents and also the counter affidavits filed by the District Collector and the Tamil Nadu Slum Clearance Board.'

5. Though two counter affidavits are filed by second respondent on 20.10.2016 and 18.01.2018, the contents of them are same. In the counter affidavit, second respondent has not denied the specific averment in the affidavit filed in support of the Writ Petition with regard to assignment of land in favour of petitioner's husband in the year 1966 and enjoyment of the same by him. However, it is stated by second respondent in paragraphs 6,7 and 8 of the counter affidavit as follows :

'6. It is further submitted that, it is found that in the Fasli year of 1393 adangal, the said patta issued by Revenue Divisional Officer, Saidapet, was cancelled by the Revenue Divisional Officer, Saidapet, by his proceedings R.C.No.13229/1980/N, dated : 24.11.1981 (copy enclosed). According to the said document, it was signed as DTROPL dated : 12.11.1983. From the next Fasli year onwards, there is no entry in the adangal for the S.No.523 and 524 in Perumbakkam Village, Sholinganallur Taluk.

7. It is submitted that the above said lands are not under the possession of the writ petitioner and there are no recods in the adangal that the petitioner is in possession of the said land and did any agricultural activities there. Therefore, according to the conditions laid down in the assignment patta, it was cancelled by the concerned authorities.

8. It is further submitted that in order to provide the residential facilities to the people in and around Chennai, enter upon permission was given to the Tamil Nadu Slum Clearance Board vide G.O.Ms.No.51, Revenue (LA5) Department, dated : 24.01.2007 and the said land was handed over to them on 09.02.2007. Now, the Tamil Nadu Slum Clearance Board has built more than 3500 apartments in the said land. As the said land was taken for

the larger interest of the public, the pleas of the petitioner cannot be accepted.''

6. Learned Government Advocate, appearing for the respondents, has produced before this Court a Report, dated 20.07.2019, sent by Tahsildar, Tambaram, to District Collector, Kancheepuram. Even in the said Report, there is no reference to the details of assignment or cancellation. However, it is stated in the Report that petitioner has not appeared before District Collector and produced any documents in support of her claim. Even after filing of the Writ Petition, it is unfortunate to notice that the respondents have failed to produce before this Court the particulars relating to the order of assignment in favour of petitioner's husband or details about the order, said to have been issued by Revenue Divisional Officer, cancelling patta, which was granted in favour of petitioner's husband.

7. From the pleadings and the materials produced, this Court has no reason to disbelieve the petitioner with regard to the specific case about assignment and its cancellation without notice to petitioner's husband or his legal heirs. Respondents have not produced before this Court the order cancelling the assignment, except stating that there was no record relating to the order of assignment in favour of petitioner's husband. It is also admitted in the counter affidavit that no records are found relating to the order of assignment vide G.O.Ms.No.2738, dated 02.09.1966. However, it is stated that the patta, issued by Revenue Divisional Officer, Saidapet, was cancelled by the said Revenue Divisional Officer by subsequent proceedings in RC.13229/1980/N, dated 24.11.1981. It is further stated that the said order was signed on 12.11.1983, which was probably to circumvent the situation that kist up to 1392 Fasli was received from petitioner's husband.

8. From the records produced before this Court, this Court is of the view that all is not well with the respondents and this Court has to presume that the assignment is valid and binding on the respondents. Now, the issue before this Court is, whether the cancellation of assignment is valid or not ?

9. First of all, the order of Revenue Divisional Officer, stated to have been passed on 24.11.1981 as per the counter affidavit, is not produced before this Court. It is the specific case of petitioner that no notice was ever served on her husband or her at any time before or after the order cancelling the assignment. It is also the specific case of petitioner that no order of cancellation was communicated to her in spite of her submitting several representations from the year 1994 till the Writ Petition was filed. In the absence of any material, this Court has to draw an adverse inference against

the respondents that the order of assignment was cancelled without notice to petitioner or her husband and that the order was not communicated to petitioner's husband or his legal heirs at any point of time.

10. Learned counsel appearing for the petitioner relied upon a judgement of this Court, dated 24.08.2005, passed in W.P.No.10277 of 1994, in the case of N.Padmanathan v. District Revenue Officer, P.M.District and Others. From the facts of the said case dealt with by this Court, it is seen that the land was assigned in favour of the beneficiaries by proceedings, dated 23.03.1967, and it was sought to be cancelled by the Sub-Collector in the year 1985. The validity of the proceedings cancelling the order of assignment was the subject matter of the Writ Petition and this Court, in Paragraph Nos.22 to 25, held as under :

'22. Per contra, Mr.K.Doraisami, learned senior counsel for the third respondent, would state that the time limit of three years to set aside the orders of assignment was applicable only upto the year 1973. After the issuance of G.O.Ms.No.2555 dated 14.5.1973, there was no time limit for the appropriate authorities to review or to set aside the orders of assignment for any violation of the terms of assignment, or if the assignment had been obtained by any fraud or misrepresentation. In this case, the assignment had been obtained by a Government Servant suppressing the fact of his being a Government Servant and also the extent of the land was in excess of the assignment eligible to be assigned free of cost. Therefore, according to the learned senior counsel, the suo motu proceedings were rightly initiated and the assignment was cancelled.

23. In view of my conclusion that the very initiation of the proceedings for cancellation of the assignment is not maintainable and is beyond the period of limitation, it is not necessary to go into the other disputes raised by both sides.

24. The fact remains that the assignment was made as early as on 23.3.1967. Admittedly, prior to the issuance of G.O.Ms.No.2555, Revenue, dated 14.5.1973, any order of assignment could be cancelled only within a period of three years from the date of assignment. Under the said Government Order, powers were conferred on the appropriate higher authorities to cancel the assignment without reference to any time limit. The applicability of the said Government

order to pass assignment arose for consideration in several writ petitions before this Court and it has been consistently held that the said Government Order can operate only prospectively. In SURYAKANTHI AND V.M.SUBRAMANIAN Vs. BOARD OF REVENUE AND ANOTHER in W.P.Nos.4350 and 4351 of 1976, S. Mohan,J. (as he then was) by order dated 6.2.1979, held that the order can have only prospective application, as otherwise it would enable to reopen the assignments made long before and when the rights of parties had become clearly settled.

25. In a subsequent judgment also Nainar Sundaram,J., (as he then was), in W.P.No.906 of 1980, by order dated 17.6.1986 # S.PADMAVATHI Vs. SECRETARY TO GOVERNMENT AND OTHERS, held the same view following the judgment cited above."

It is relevant to mention that in the judgement above cited, a copy of the letter, dated 04.01.1987, received from Special Commissioner and Commissioner of Land Administration, addressed to Collector and District Revenue Officer, was referred to. The said letter read as follows :

"Sir,

Sub: Assignment - Cancellation of assignment made prior to 14-5-83 - High Court's Judgement in W.P.906/80 - Communicated.

Ref: From the High Court, Madras W.P.No.960/80 dated 17.1.80.

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I enclose a copy of the judgement of the High Court, Madras in W.P.960/80.

2. The High Court, Madras while allowing the writ petition 906/80 filed by one Tmt.Padmavathi, U.Kidakulam Village, Tiruchuli Taluk, Kamarajar District has held that the District Revenue Officers shall not cancel the assignment made prior to the Government order in G.O.Ms.No.2555, Revenue, dated 14-5-73, since the above Government order conferring the powers on District Revenue Officer to cancel the assignment without reference to any time limit has only prospective effect.

3. This decision may be noted for future guidance and also for issuing suitable instructions to subordinate officers."

11. Speaking for a Division Bench of this Court in the case of District Collector and Others v. Elango in W.A.MD.No.1483 of 2018, reported in 2019 SCC Online Mad 28114, I have also considered the powers of Revenue Divisional Officers to cancel assignment, which was prior to 1973, in the following lines :

''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.''

12. Again, another Division Bench of this Court, in the case of M.G.Chakravarthi Naicker v. K.M.Thillaimoorthy, 1970 (1) MLJ 476 = 1969 (82) L.W.688, has considered the scope of Board's Standing Order 15 (18) and held that an order of assignment cannot be cancelled without following the principles of natural justice. The following portion of the said judgement can be usefully referred to :

''23. Though Board's Standing Order 15, paragraph 3 (3) enumerates the class of persons who are eligible for assignment of lands by the issue of D. Form patta, no person can have a legal grievance if a person belonging to one class is preferred to a person belonging to another class. But once the Tahsildar communicates his order in Form D in Appendix V of Board's Standing Order, Volume 1, as required in Board's Standing Order 15, paragraph 18, certain legal rights accrue in

favour of the grantee. As pointed out by Srinivasan, J., in *Lakshmi Ammal v. Board of Revenue, Madras* (1965) 2 M.L.J. 95 : I.L.R. (1965) 1 Mad 526 : (1964) 77 L.W. 293 at 295, referred to by my learned brother, the order of the Tahsildar is a quasi-judicial one subject to cancellation or modification in appeal or revision as provided in the Board's Standing Order. Unlike in the case of Board's Standing Order 15, paragraph 12, which requires a communication by the Tahsildar to the parties concerned in Form D in Appendix V of Board's Standing Order apart from sending an order to the village authorities, there is no such requirement when the Government directly passes orders as contemplated in Board's Standing Order 15, paragraph 3 (5). The Government has made an order of assignment in favour of Manicka Naicker, the father of the first respondent Thillaimoorthy and directed the Collector of Chingleput to give effect to the order by evicting Chakravarthi Naicker from the land. By virtue of the said order, Manicka Naicker has acquired some rights in the land and the principles of natural justice require that his rights should not be affected adversely without his being heard and except on legal grounds such as those contemplated in Board's Standing Order 15, paragraph 18. In the subsequent order of the Government in favour of Chakravarthi Naicker, there is absolutely no discussion as to the merits of his claim to get the assignment of the land in his favour in spite of the prior order in favour of Manicka Naicker. It is no doubt open to the Government to interfere with their earlier order in favour of Manicka Naicker, if Chakravarthi Naicker is able to bring his case within the provisions of Board's Standing Order 15 paragraph 18, which embody only principles of natural justice usually applied in quasi-judicial proceedings.'

13. Further, a single Judge of this Court, in *R. Abdul Jabbar v. State of Tamil Nadu*, 1996 (II) CTC 719, has reiterated the requirement of observance of principles of natural justice before cancellation of assignment. Paragraph 10 of the said judgement is relevant and, hence, extracted as under :

'10. There is no material before me to show that any notice was served on the petitioners before the impugned order was made, although there was some controversy between the parties that such notice was served by affixture. Having regard to

the date of notice and the date of the impugned order, both having been signed on the same date, it is very difficult for this Court to accept that notices as required were served on the petitioners. At any rate, when a serious civil consequences has resulted by the passing of the impugned order, affecting the rights of the petitioners over the immovable properties, it was expected that the authorities ought to have in the first place attempted to serve notice on the petitioners personally. More so, when the records stand in the name of the petitioners and the Headquarters Deputy Tahsildar himself had allowed the applications made by the petitioners to permit them to have separate holdings on the basis of the partition deeds. A reading of the impugned order shows that the lands are to be resumed not on the ground that any one of the conditions was violated but the said order was passed on the ground that the lands are required for N.L.C. and as per Clause 22. If such lands were to be taken over, whether the cancellation of assignment was required at all? Clause 22 authorises the State Government to resume the land if N.L.C. requires them for their purposes. Cancellation of assignment possibly could arise only for violation of any one of the conditions attached to the grant. Since the petitioners are not given notice before passing the impugned order and that they were not provided with any opportunity to put forth their case, I have no hesitation to hold that the impugned order cannot be sustained.'

14. A Division Bench of this Court, in the case of M.R.Samiappan v. Secretary to government, Revenue Department, 1988 (1) L.W.165 = 1988 (1) MLJ 364, had an occasion to set aside an order, cancelling the assignment, in the following lines :

'2. The learned Government Pleader contended that till the actual sale deed is executed after receipt of the consideration, the Government could set aside the order. It is true that the Government being an executive authority could cancel the earlier assignment order. But such cancellation should be for valid reasons and it cannot be done arbitrarily. In this case, as already stated, the land was in the occupation of the appellant for a long period prior to the B Memos were issued to him. Though the Government found that his occupation was objectionable and

that he cannot be considered to be a landless poor, still the Government considered on the earlier occasion that as a special case, he should be assigned. No fresh facts had come to the notice of the Government to hold that the earlier order was made mistakenly or on wrong assumption of facts. Fully aware of all the circumstances mentioned in the show cause notice they have granted the assignment on the earlier occasion as a special case. In such circumstances, we are of the view that the appellant gets a vested right in the property and therefore that order could not be varied to his disadvantage at any time. The writ appeal is accordingly allowed, the order of the learned single Judge and also the impugned order of the Government are set aside. There will be no order as to costs in this appeal.''

15. Cancellation of assignment of land in favour of ex-servicemen was again the subject matter of lis in the case of M.N.C.David v. Commissioner of Land Administration and two Others, reported in 1997-3 L.W.784, and a learned single Judge of this Court has held therein as follows :

'The petitioner has also produced D Form Patta. The said Form D, does not say that the petitioner himself, being in service, should cultivate the land. Under those circumstances, it is hard to believe that the person, who is in service, should cultivate the land personally. The submission of the learned Government Advocate that after his retirement, the person, to whom the land has been assigned should personally cultivate, cannot be accepted. The land has been assigned, when he was serving and there is no clause in the assignment order, that, he should personally cultivate the land, after his retirement. Further, the grounds assigned by the respondents for cancellation of the assignment that the petitioner is not a resident of the village and he has not mentioned the income, are not the grounds for cancellation of the assignment. The authorities below have proceeded on the basis that the land has been assigned to the petitioner, as an Ex-Serviceman and not as a person, who was in service. Under those circumstances, the respondents were not justified in cancelling the assignment, which was granted in the year 1969, after a lapse of more than 20 years.''

16. As it has been repeatedly held by this Court in several precedents above referred to above, assignment of land made prior to 1973 cannot be cancelled beyond a period of three years from the date of assignment. Even on the ground of misrepresentation or on the ground of want of authority for assignment, it is not open for the respondent to cancel assignment after a lapse of a few decades.

17. In the present case, having regard to the contention of petitioner that no notice was issued prior to cancellation of assignment and that the order of cancellation of assignment was not communicated to petitioner's husband or his legal representatives, this Court has no hesitation to hold that the cancellation of assignment is non est in law. The conduct of the respondents in the present case indicates that they have no regard for law. The minimum protection available to the citizens of this country under Article 300A of the Constitution of India cannot be ensured if the respondents are allowed to meddle with the rights of the individual in the manner as seen in this case. Despite the fact that the petitioner, on coming to know that the pata in favour of her husband was cancelled, approached every authority by several representations, none of the respondents has considered the said representations. However, the respondent, after driving the petitioner to search in dark, went further by passing the impugned order, giving permission to Slum Clearance Board to enter upon the land. It is open for the respondents to assign or transfer any property in favour of any other department of Government and, in contemplation of such transfer, can permit the transferee department to enter upon the land. It is permissible only if the Government enjoys absolute right over the land. In the instant case, the assignment in favour of petitioner cannot be cancelled beyond a period of three years. Therefore, the order, cancelling the assignment, assuming to be true, is without jurisdiction, as it has been held by this Court in several judgements.

18. When the order, cancelling the assignment, itself is not communicated to petitioner, it is an irregularity, nothing short of fraud. The authorities cannot act like this by keeping petitioner and her family in dark to their disadvantage.

19. Having regard to the factual scenario and the facts that were pleaded and established, this Court has no hesitation to hold that the impugned order is illegal, arbitrary and unconstitutional. This Court, while setting aside the order impugned, restores the status quo ante. While admitting the writ petition, this Court granted an order of ad-interim stay of further proceedings. Though it is stated in the counter affidavit that the land was handed over to fifth respondent, the fifth respondent has not come forward with a specific stand

about construction activities. At the same time, though it is stated in Paragraph 8 of the counter affidavit that Slum Clearance Board has built about 3500 apartments in the land, the construction activities must be with reference to the remaining extent of land, as assignment, in favour of fifth respondent, was in respect of a vast extent of land, which is more than 100 acres. Further, fifth respondent has not come before this Court with specific details about the projects and utilisation of the land, that was assigned in favour of petitioner's husband in 1966. As it was pointed out by a Division Bench of this Court in one of the judgements above referred to, vested right in favour of an assignee, giving assignee absolute title, cannot be interfered with by the respondents other than by process known to law.

20. For all the above reasons, this Writ Petition is allowed and the impugned order is set aside. The order, if any, cancelling assignment, is declared void. Respondents are directed to grant Pata in respect of the land measuring and extent of 5 acres comprised in Survey Nos.523 and 524 in Perumbakkam Village, Sholinganallur Taluk, in favour of petitioner and other legal representatives of petitioner's husband within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected M.P.No.2 of 2010 is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

dixit

To

1. The Special Commissioner and
Commissioner for Land Administration,
Chepauk, Chennai.
2. The District Collector,
Kanchipuram District.
3. The Revenue Divisional Officer,
Saidapet Taluk,
Chengalpet District.
4. The Secretary to the Government,
Government of Tamil Nadu,
Revenue Department,
Fort St.George, Chennai-9.

5. The Chairman,
Tamil Nadu Slum Clearance Board,
Rajaji Salai,
Chennai-5.

+1cc to Mr.V.Raghavachari, Advocate, SR.No.16956.
+1cc to the Government Pleader, 17586.

W.P.No.11836 of 2010

SMI (CO)
CSR 17.04.2021