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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2021

CORAM

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

W.P. No. 21853 of 2018

M.James

... Petitioner

Vs

1. The Commissioner of Land Administration,
Ezhilagam, Chepauk, Chennai - 5.
2. The District Collector,
Office of the District Collectorate,
Kancheepuram, Kancheepuram District.
3. The District Revenue Officer,
Office of the Revenue Officer,
Kancheepuram, Kancheepuram District.
4. The Revenue Divisional Officer,
Office of the Sub-Collector,
Chengalput, Kancheepuram District.
5. The Tahsildar,
Chengalput Taluk, Chengalput.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari Mandamus Call for records relating to the 1st respondents impugned order dated 21.05.2016 in R.C.No. F2/16273/2012 and quash the same and direct the 2nd respondent to issue assignment patta to the petitioner as per the proceedings of the Revenue Divisional Officer in Na.Ka. 2177/99 dated 4.5.2000 by relaxing the G.O. No.790 (R.D. and L.A) Department dated 29.05.1978 to an extent of 3 acres of land free of cost and 2 acres of land at the rate of Rs.550/- per cent in survey No.194/1of Keelur Village Chengalpattu Taluk (at present Thiruporur Taluk) Kancheepuram District.

For Petitioner : Mr. T.Easwaradhas

For Respondents : Mr. M.Venkadesh Kumar
Government Advocate



O R D E R

This writ petition is filed for issuing a writ of certiorarified mandamus to quash the proceedings of the first respondent dated 21.05.2016, and to direct the second respondent to issue assignment patta to the petitioner by relaxing G.O.Ms.No.790 (R.D. and L.A) dated 29.05.1978, in respect of an extent of 3 acres of land, free of cost and 2 acres of land at the rate of Rs.550/- per cent.

2. Brief facts that are necessary for the disposal of the writ petition are as follows:

The petitioner has approached this Court claiming to be a person in possession of a vacant land measuring about 5 acres in survey No.194/1 in Keelur Village, Chengalpet Taluk, Kancheepuram District. Based on the enjoyment, the petitioner approached the District Collector, Kancheepuram, for assignment of land mainly on the ground that he is an Ex-service man. Though the petitioner has obtained No Objection Certificate and recommendation from the Revenue Divisional Officer, there was no assignment in favour of the petitioner till the year 1988. However, based on the report of the Revenue Divisional Officer earlier, the petitioner approached the District Collector for assignment. It is stated by the petitioner that the recommendation of the Revenue Divisional Officer in the year 2000, was to the effect that the land can be assigned by fixing no value for an extent of 3 acres and by collecting a sum of Rs.550/- per cent for the remaining 2 acres of land.

3. Since the representation of the petitioner for assignment of land was not considered by the respondents, the petitioner earlier filed a writ petition in W.P. No.1090 of 2008 for issuing a writ of mandamus directing the respondents to conduct an enquiry and decide one way or the other, the representation of the petitioner dated 29.01.2007 for assignment of lands in favour of the petitioner. This Court disposed of W.P. No.1090 of 2008 by an order dated 11.01.2008, directing the first respondent namely the District Collector, Kancheepuram, to dispose of the representation of the petitioner dated 29.01.2007, in accordance with law and on merits within a stipulated time. Thereafter, the petitioner filed a contempt petition for wilful disobedience of the order of this Court dated 11.01.2008. Thereafter, when the contempt petition was filed, the District Collector, Kancheepuram, passed an order on 26.12.2008, vide proceedings Na.Ka.AAL/6972/2008 rejecting the representation of the petitioner for grant of patta or assignment. In the order of the District Collector it is stated



that the land in respect of which the petitioner seeks assignment comes under Chennai Suburban area and that therefore, the prohibition order disables the District Collector, Kancheepuram, to pass an order in favour of the petitioner. Since order was passed by the District Collector, the contempt petition filed by the petitioner was closed on 29.01.2009.

4. Aggrieved by the order passed by the District Collector dated 26.12.2008, the petitioner filed another writ petition in W.P. No.6834 of 2009 challenging the order of the District Collector. It is admitted before this Court that the writ petition filed by the petitioner was dismissed by this Court by an order dated 23.09.2011. The contentions of the petitioner and the points raised by the petitioner in the writ petition were elaborately discussed by this Court while dismissing the writ petition. This Court finds it relevant to refer to paragraph 6 of the order which is extracted hereunder:

"...

6. In support of the averments, a copy of the Government order in G.O.Ms. No.1135, Revenue Department, dated 17.03.1962 was filed showing that around Chennai belt area, assignment cannot be issued. One of the village mentioned in the annexure is Keelur Village coming under Serial No.102 (V.No.118). Though the petitioner has filed an additional typed set and referred to G.O.Ms.No.1270, Revenue Department, dated 12.06.1979, wherein provisions for allotment of assignment in favour of the Ex-service man has been mentioned, but in the present case, it is redundant since on any of the counts, the petitioner was not eligible. Further, if there is any prohibition for allotment of area coming under the belt are, this Court is not inclined to consider the case of the petitioner. The assignment is not a matter of course or right. It is left to the discretion of the State Government to grant such assignment. When the State Government has laid policy in not assigning the land in the belt area, this Court cannot give any direction contrary to the policy decision of the State Government."

5. Challenging the order of learned single Judge dismissing the writ petition filed by the petitioner in W.P. No.6834 of 2009 dated 23.09.2011, the petitioner preferred an appeal before this Court in writ appeal in W.A. No.484 of 2012. The writ appeal filed by the petitioner was dismissed by Hon'ble Division Bench of this Court by order dated 04.04.2012. The relevant portions of the said order are extracted hereunder:



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5. We have gone through the entire materials placed on record. It is seen from the perusal of the records that against the order impugned in the writ petition, the remedy of filing an appeal before the Special Commissioner and Commissioner of Land Administration is available and without availing the same, the writ petitioner has straightaway approached this Court by filing the writ petition invoking Article 226 of the Constitution of India, which cannot be entertained.

6. In view of the above, the writ appeal deserves to be dismissed and it is accordingly, dismissed. However, four weeks time is granted to the appellant to approach the Appellate Authority, from the date of receipt of a copy of this order. However, there will be no order as to costs. Consequently, connected miscellaneous petition is closed."

Thereafter, the petitioner preferred an appeal before the Special Commissioner and Commissioner of Land Administration based on the observation of the Hon'ble Division Bench while dismissing the writ appeal filed by the petitioner. The first respondent thereafter passed the impugned order dismissing the appeal stating that he found no reasons to interfere with the order of the District Collector, Kancheepuram, originally rejecting the representation of the petitioner seeking assignment or patta for an extent of 5 acres. Challenging the order of first respondent dated 21.05.2016, the present writ petition is filed by the petitioner.

6. Learned counsel appearing for the petitioner raised several grounds. The main ground on which the impugned order is challenged before this Court is that the first respondent, while dismissing the appeal, has referred to the order of this Court in the writ petition wherein the petitioner's claim was considered on merits and disapproved by this Court. Learned counsel appearing for the petitioner submitted that the writ appeal was dismissed only on the ground that writ petition is not maintainable and hence the first respondent getting support from the order of the learned single Judge dismissing the writ petition cannot be sustained.

7. The petitioner, in the affidavit filed in support the petition, rests his claim to get assignment on the basis of his credentials which are as follows:



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i) the petitioner is an Ex-service man and served for the Country and contributed for the security of the nation.

ii) the petitioner is a landless poor / Ex-service man.

iii) The petitioner is in possession of 5 acres of land for several years. The petitioner is entitled to assignment for a maximum extent of 3 acres as per G.O.Ms.No.1270 dated 12.06.1979.

iv) The Village Panchayat, Village Administrative Officer, Revenue Inspector and Tahsildar have recommended for granting assignment patta in favour of the petitioner.

8. Merely because the petitioner is an Ex-service man, he is not entitled to assignment unless the Government reserves such right specifically in favour of Ex-service man under any scheme or executive order of the Government. The petitioner relied upon a Government Order that was passed in 1979. The applicability was considered by the District Collector and the District Collector has specifically referred to an earlier Government Order prohibiting assignment of lands in villages which comes within the sub-urban areas of Chennai. G.O. Ms. No.790 dated 29.05.1978, specifies the fact that a village in which the land which is in enjoyment of the petitioner was included in the area within the urban area. When there is an order prohibiting assignment of land which comes within the corporation or urban areas, the Government is not expected to show any preference or privilege to the petitioner. Though the learned counsel for the petitioner relies upon certain orders of the Government or Revenue Officials granting assignment orders in favour of persons who are Ex-service men, the petitioner's entitlement cannot be judged in view of the fact that the assignment of land within corporation or urban area is specifically prohibited by orders of Government.

9. The learned single Judge while dismissing the petition filed by the petitioner on an earlier occasion relied upon G.O.Ms.No.1135 (RD) dated 07.03.1962, to the effect that no assignment can be issued in and out of Chennai belt area. The petitioner though was eligible to be considered for assignment under the category of Ex-service men earlier, the order was subject to several conditions. It is not as if every person who served in army or navy is entitled to get assignment of any land of his choice. This Court cannot compel the Government to part with a valuable piece of land belonging to the Government. The Government vide G.O. Ms.No.1270, Revenue Department dated 12.06.1979, has given certain directions. The directions are in the nature of specific guidelines reflecting the policy of



Government. It is stated that the Government has specified certain priorities for assignment of land for cultivation purposes. The Government Order is therefore only a guideline which enables the Government Officials to consider whether a particular piece of land can be given by way of assignment in favour of an individual. When the land is not required for any public purpose and the land is earmarked for the purpose of converting a waste land for cultivation purposes, the machinery of Government may consider the eligibility of individuals as per the Government Order by following the order of priority. That does not confer any right in favour of an individual to seek assignment of a particular land in his favour. It is not the case that the respondents have earmarked the land to be available for assignment. The petitioner has no right to claim assignment of patta with reference to a specific area or land as a beneficiary of any scheme of Government. Unless the land is earmarked and the Government proposes to consider the assignment in favour of certain classes of persons, the Government Order does not come in aid to the petitioner's request.

10. In the overall circumstances, this Court is unable to find any error in the order of the District Collector, rejecting the representation of the petitioner seeking assignment patta free of cost. In the same way, the order of the first respondent cannot be termed as illegal merely because the order refers to the findings of this Court in the earlier writ petition. This Court finds no merit in the writ petition and it is accordingly, dismissed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

bkn

To

1. The Commissioner of Land Administration,
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Kancheepuram, Kancheepuram District.



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Chengleput, Kancheepuram District.

5. The Tahsildar,
Chengalput Taluk, Chengalput.

+1cc to Mr. T.Easwaradhas, Advocate, S.R.No.10648

+1cc to the Government Pleader, S.R.No.10739

W.P. No. 21853 of 2018

LN(CO)
RLP(29/07/2021)