



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.16904 OF 2021

AND

W.M.P.NOS.17889 AND 17890 OF 2021

1.Kavitha

2.Gurulakshmi

...Petitioners

vs.

1.The Commissioner,
Commissioner of Land Administration,
2nd Floor, Ezhilagam, Chepauk,
Chennai - 600 005.

2.The District Revenue Officer,
Office of District Collector Office,
Erode.

...Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the entire records pertaining to the proceedings in Na.Ka.No.22820/2017/U4, dated 28.12.2018 passed by the 2nd respondent and further proceedings in Na.Ka.No.22820/2017/U4, dated 08.02.2019 passed by the 2nd respondent and another the Proceedings No.F2/2543/2019, dated 18.08.2021 passed by the 1st respondent and to quash the same as illegal, incompetent, ultra-virus and without jurisdiction.

(Prayer amended as per order dated 25.11.2021 made in WMP No.21727 of 2021)

For Petitioners : Mr. Ma.P.Thangavel

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader



ORDER

*This writ petition has been filed to issue a Writ of Certiorari, to call for the entire records pertaining to the proceedings in Na.Ka.No.22820/2017/U4, dated 28.12.2018 passed by the 2nd respondent and further proceedings in Na.Ka.No.22820/2017/U4, dated 08.02.2019 passed by the 2nd respondent and another the Proceedings No.F2/2543/2019, dated 18.08.2021 passed by the 1st respondent and to quash the same as illegal, incompetent, ultra - virus and without jurisdiction.

2. The first petitioner was originally assigned land comprised in SF.Nos.247/2 and 247/8 totally to an extent of 1.90 acres and the second petitioner was assigned land comprised in SF.No.247/5 to an extent of 0.50 acres situated at Anthiyur Village, Bhavani Taluk, Erode District by the orders dated 14.12.2006 and 17.12.2006 respectively. The said lands bounded on the Odai poramboke. While being so, one K.V.Komarasamy encroached some portion of the Odai poramboke land comprised in SF.No.247/6. Therefore, the first petitioner submitted a detailed representation dated 07.09.2017 to the officers concerned to remove the encroachment made by the said K.V.Komarasamy. The first petitioner was also constrained to file writ petition before this Court in W.P.No.26647 of 2017 and the Hon'ble Division Bench of this Court by an order dated 12.10.2017 directed the Tahsildar, Anthiyur Taluk, to pass orders on merits and in accordance with law on the representation of the first petitioner dated 07.09.2017.

3. Pursuant to the same, the second respondent conducted a detailed enquiry and passed an order dated 22.11.2017 and found that the said K.V.Komarasamy encroached some portion of the land comprised in RS.Nos.247/6 and 248/4 classified as Odai poramboke land and directed the Tahsildar, Anthiyur to take appropriate action to remove the encroachment. The said K.V.Komarasamy vengeance over the said order, submitted an application to cancel the assignment issued in favour of the petitioners on the ground that they are not possessing any land in their name and as if, they are not entitled for any assignment of patta lands. The said application was considered and by an order dated 28.12.2018, the second respondent cancelled the grant of assignment in favour of the petitioners.



4. Aggrieved by the same, the petitioners filed appeal before the first respondent. On receipt of the same, the first respondent issued notice to the petitioners to appear for enquiry to be conducted on 12.01.2021. However, the said notice was received by the petitioners on 13.01.2021. Therefore, the petitioners filed this writ petition for a direction to the first respondent to dispose the appeal pending in Rc.No.F2/2543/2019. However, while pending writ petition, the first respondent passed order on 18.08.2021 thereby rejected the appeal filed by the petitioners. Therefore, the petitioners filed a petition to amend the prayer in W.M.P.No.21727 of 2021 and the same is allowed and accordingly, the prayer is amended.

5. On perusal of the order dated 18.08.2021 impugned in this writ petition, the first respondent stated that the petitioners were duly served notice for enquiry to be conducted on 12.01.2021. On that day, they have appeared and presented their case. However, the officer of the first respondent changed and passed the impugned order on 18.08.2021. The ground raised by the petitioners in this writ petition is that the petitioners were not served notice for enquiry to be conducted on 12.01.2021. Since there was served notice only on 13.01.2021. Therefore, the petitioners did not appear for enquiry on 12.01.2021. Further, the petitioners were not given opportunity of hearing and they were not heard while passing the impugned order.

6. It amounts clearly violation of principles of natural justice. On this ground alone, the impugned order cannot be sustained as against the petitioners. Accordingly, the impugned orders dated 28.12.2018, 08.02.2019 and 18.08.2021 are set aside and the writ petition is allowed. The matter is remitted back to the first respondent for conducting fresh enquiry. It is made clear that the first respondent is directed to issue notice within a period of two weeks from the date of receipt of a copy of this order to the petitioners and counter party viz., K.V.Komarasamy and after giving opportunity of hearing to them, pass orders on merits and in accordance with law within a period of twelve weeks thereafter. Consequently, the connected miscellaneous petitions are closed. No Costs.

7. Learned counsel for the petitioner submitted that the petitioners are still in possession of the subject property. Considering the said submission, till the disposal of the appeal



by the first respondent, their possession and enjoyment of the subject property shall not be disturbed. The Registry is directed to return the original orders dated 28.12.2018 and 08.02.2019 forthwith from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(V)
dated:04.02.2022

***corrected as per order of
this Court dated 27.01.2022
and made in WP.16904 of 2021**

**-s/d-
Assistant Registrar(CS V)**

//True Copy//

Sub Assistant Registrar

dm
To

- 1.The Commissioner,
Commissioner of Land Administration,
2nd Floor, Ezhilagam, Chepauk,
Chennai - 600 005.
- 2.The District Revenue Officer,
Office of District Collector
Office, Erode.

to be substituted the order
already despatched on
20.12.2021

Copy to

The Section Officer,
ER Section,
High Court, Madras.

+1cc to M/s.Ma.Pa.Thangavel, Advocate SR.No.61440

+1cc the Government Pleader **SR.No.4588**

W.P.No.16904 of 2021

AD(CO)
RVM(09/12/2021)
A.SK(07.02.2022)