



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.02.2021

Pronounced on: 24.03.2021

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.(MD) No.14319 of 2018

and

W.M.P. (MD) Nos.12970, 12971, 22646 and 13550 of 2018

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- 1.P.Meenakshi
- 2.O.Selvi
- 3.S.Selvi
- 4.M.Karupayee
- 5.P.Peiyyammal
- 6.Ammapulla

... Petitioners

-vs-

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of Industries,
Fort St. George,
Chennai - 09.
2. The District Collector,
Madurai District,
Madurai.
3. The Director (Geology and Mining),
O/o. The Assistant Director,
Geology and Mining,
Madurai,
Madurai District.
4. The Assistant Director (Geology and Mining),
O/o. The Assistant Director,
Geology and Mining,
Madurai,
Madurai District.
5. The Revenue Divisional Officer,
O/o. The Revenue Divisional officer,
Usilampatti,
Madurai District.
6. The Tahsildar,
O/o. The Tahsildar,
Usilampatti Taluk,
Madurai District.



7. The Superintendent of Police,
Office of the Superintendent of Police,
Madurai District.

8. The Inspector of Police,
Vickramangalam Police Station,
Usilampatti Taluk,
Madurai District.

9. B.Shakthi

10. B.Thiravium

... Respondents

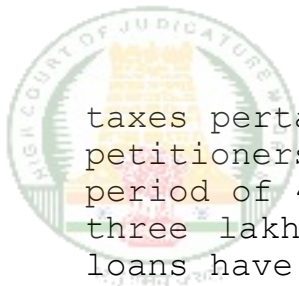
Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Na.Ka.No.6895/2017/J1, dated 08.06.2018 on the file of the respondent No.2 and quash the same as illegal and consequently forbearing the respondent Nos.2 to 10 from disturbing the peaceful possession of the petitioner in Survey No.132/4, 132/5, 132/6, 132/7, 132/8, 132/9 in Pannamuppanpatti Village, Usilampatti Taluk, Madurai District without following the due process of law within the time frame stipulated by this Court.

For Petitioners	: Mr.T.Lajapathi Roy
For Respondents	: Mr.C.Ramesh
1 to 8	Special Government Pleader
For Respondents	: Mr.Veera Kathiravan
9 and 10	Senior Counsel
	for M/s.P.Senthur Pandian

ORDER

The case of the petitioners is that the lands in Survey Nos.132/4, 132/5, 132/6, 132/7, 132/8, 132/9 in Pannamuppanpatti Village, Usilampatti Taluk, Madurai District have been in possession of the petitioners and their ancestors since 1942. The lands have been used for agricultural purpose and have been cultivated by the petitioners for many decades. The Government has brought about a scheme for distribution of lands for the landless agricultural labourers and the lands have been assigned to several landless poor to an extent of half an acre minimum and two acres maximum to each of the poor landless agricultural family.

2.In furtherance of the scheme of assigning lands to the landless poor agricultural labourers, the petitioners herein were given patta by proceedings dated 09.10.2006 by the competent authority and since then the petitioners have been paying all the



taxes pertaining to the lands in their possession. According to the petitioners, the lands have been used for Jasmine cultivation for a period of 40 years and they have also obtained loan to the extent of three lakhs rupees for sustaining their Jasmine cultivation. The loans have been obtained from the Indian Bank, Usilampatti, Madurai.

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3.While matter stood thus, it appears that the respondents 9 and 10 attempted to trespass into the property of the petitioners and sought to disturb their possession and enjoyment of the property sometime in the year 2015.

4.In the above circumstances, the petitioners had approached the first respondent in 2015 complaining that illegally the respondents 9 and 10 had been carrying out quarrying operations in portions of the land assigned to them. Having received no reply in response to the complaint, one of the petitioners approached this Court in W.P.(MD)No.12746 of 2016 seeking a direction to forbear the respondents 9 and 10 from quarrying in the lands which were assigned to the petitioners. According to the petitioners, the Writ Petition was disposed of. When the Writ Petition was pending, the second respondent appeared to have issued an order on 12.01.2017 directing the subordinate official to cancel the patta granted to the petitioners. The second respondent's order directing cancellation being passed behind the back of the petitioners in order to favour and accommodate the interest of the quarry operators, namely, 9 and 10 respondents, this Court was approached.

5.The cancellation of assignment dated 12.01.2017 was challenged in W.P.(MD)No.15171 of 2017. When the said Writ Petition was pending, the second respondent has passed the present order impugned in this Writ Petition dated 08.06.2018 cancelling the assignment without putting the petitioners a notice at all. Challenging the same, the present Writ Petition has been filed.

6.Mr.T.Lajapathi Roy, learned Counsel for the petitioners would submit that the patta was issued as early as in 2006 and without hearing the petitioners it was suddenly cancelled in 2018 on the ground that the land was actually given for quarry lease to the respondents 9 and 10 for a period of 20 years from 1997 to 2017. The learned Counsel would submit that the land could not have been given for lease, as there was no quarry operation at all till recently, as the lands in fact had been in occupation of the Writ Petitioners and used for cultivation through the year.

7.The learned Counsel for the petitioners would submit that even otherwise patta was granted as early as in 2006 to these petitioners as a consequence of valid assignment which cannot be cancelled or re-called after several years, that too, without hearing the petitioners. When an adverse order of this nature was to be passed, the most rudimentary principle of natural justice, ~~https://hcservices.courts.gov.in/hcservices/~~ right of hearing ought to have been afforded to the



petitioners. In the absence of any notice to the petitioners, the impugned order is liable to be set aside as being patently illegal, arbitrary and unreasonable.

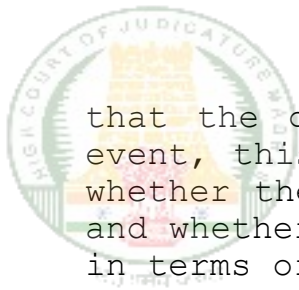
8.Mr.Veera Kathiravan, learned Senior Counsel appearing for the private respondents, namely, the quarry operators would submit that the licence for quarry operations had been already given in 1997 for a period of 20 years. While so, it is not open to the authority to assign the land used for mining purpose, as no land can be assigned where mines and minerals are found as per the Revenue Standing Order. Therefore, the claim of these petitioners herein cannot be countenanced both in law and on facts.

9.According to the learned Senior Counsel, the second respondent has correctly concluded that there was a ban on granting patta of mining lands in terms of Government Orders and without consideration of the 20 years lease granted in favour of the respondents 9 and 10, the patta had been wrongly given and therefore, it was cancelled.

10.At this, Mr.T.Lajapathi Roy, learned Counsel for the petitioners would submit that 20 years period has already come to an end in 2017 but in any case, the fact of the matter was that despite the licence being granted to the respondents 9 and 10 in 1997, the lands have been continuously in possession of the petitioners and have been subjected to cultivation continuously. In fact, the learned Counsel referred to the impugned order wherein the second respondent referred to the fact of the lands being cultivated by these petitioners in terms of the entries in the records. The impugned order also referred to the cultivation of Jasmine by the petitioners. In the said circumstances, the cancellation of assignment is illegal and is motivated and the same is intended to favour the quarry operators at the cost of the right of the landless, marginalised labourers. He would submit that in any event, when an order of cancellation of assignment is passed, the second respondent is under legal obligation to call the petitioners and seek their explanation/objection. Therefore, he would implore this Court that the matter may be remanded back to the second respondent for fresh consideration by providing an opportunity to these petitioners to put forth their point of view and also the factum of the lands being under their occupation for cultivation continuously, since 2006.

11.Mr.Veera Kathiravan, learned Senior Counsel would submit that in terms of the newly amended Act, namely, Mines and Minerals Development Regulation (MMDR) Amendment Act, 2015, the policy of the Government is to grant 50 years lease unlike the earlier period of 20 years lease under the pre-amendment Act. Therefore, the respondents 9 and 10 are entitled to use the licenced lands for quarry operations for 50 years. This submission was made in

<https://hccs.courts.madras.gov.in/hccs/judges>



that the quarry operations had come to an end in 2017. In any event, this Court is not inclined to get into the controversy as to whether the respondents 9 and 10 are quarrying the lands as on date and whether they are entitled to have licence extended upto 50 years in terms of the new Amended Act or not?

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12.Mr.C.Ramesh, learned Special Government Pleader appearing for the respondents 1 to 8 would submit that the lands had been wrongly and incorrectly assigned to these petitioners. The second respondent after coming to know of the wrong assignment of the lands had taken steps to rectify the mistakes. Admittedly, as early as in 1997, the licence was granted for quarrying of the land in question and the licence continued till 2017 for a period of 20 years. In which case, the land could not have been subjected to assignment at all in 2006.

13.According to the Special Government Pleader, when the above fact was brought to the knowledge of the second respondent, steps had been immediately taken to cancel the assignment and in the process, the second respondent has cancelled the same under the impugned order dated 08.06.2019. According to him, patta cannot be granted in respect of the lands where mines and minerals are found in terms of the Revenue Standing Order. Therefore, the lands which were wrongly assigned to the petitioners have to be re-called and no purpose would be served to put the petitioners on notice as that would be an empty and useless formality, as the very assignment was legally impermissible.

14.At this, the learned Counsel for the petitioners would submit that an opportunity may be afforded to these petitioners as no prejudice would be caused to any one and let the quarry operators may also be heard in the enquiry to be conducted by the second respondent, at the same time, whatever be the outcome of such enquiry, it cannot be gainsaid that opportunity need not be given to the persons in whose favour assignments had been conferred and now sought to be cancelled after a period of 12 years.

15.This Court has considered the submissions of Mr.T.Lajapathi Roy, learned Counsel for the petitioners, Mr.C.Ramesh, learned Special Government Pleader for the respondents 1 to 8 and Mr.Veera Kathiravan, learned Senior Counsel for the respondents 9 and 10.

16.In this case, there are two competing claimants. One is the landless poor who had been granted assignment of a small portion of a land in 2006 and according to them, they have been cultivating the same (Jasmine) all these years. On the other hand, a valid licence had been given to the quarry operators then for a period of 20 years commencing from 1997 till 2017 and in such event, the same lands could not have been subjected to assignment, in the first place.



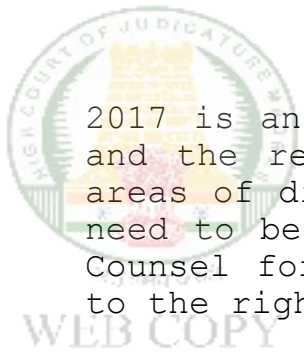
17.This Court finds that whatever be the circumstances of the case, as far as from the point of view of the petitioners is concerned, they had been given assignment in 2006 itself which is an admitted fact. In the impugned order passed by the second respondent, it is very clearly mentioned that the lands have been put to cultivation by the petitioners which fact has also been recorded in the relevant records of the department. Therefore, the most important and the rudimentary principles of natural justice in administrative law is to provide an opportunity to the person against whom an adverse order was sought to be passed. In this case, unfortunately, the second respondent failed to conform to the said cardinal principle and in that circumstance, it is legally imperative that he revisits the impugned order.

18.In this case, the assignment of the land itself is now sought to be re-called on the ground that the lands were originally given on lease to the quarry operators and now to respondents 9 and 10 for the said purpose. Therefore, it is all the more reason that the petitioners ought to have been called for an enquiry and then a decision could have been taken in the matter one way or the other. It is certainly not open to the authorities to re-call the order originally passed in favour of the petitioners, behind their back subsequently.

19.This Court also finds that there appears to be a dispute as to whose control or possession the lands are with, which dispute cannot be resolved in a writ jurisdiction. It is also a fact that the licence period had expired in 2017 and whether the lands retained the same character placing a bar on issuing patta for the landless poor as on date is to be considered afresh by the authority.

20.At the same time, these petitioners cannot be deprived of their right to property when the assignment had been given by the authority with their eyes wide open. After allowing the petitioners to enjoy the lands for many years when suddenly an adverse decision is taken against their constitutional right, the petitioners need to be imperatively and mandatorily heard. Even if the authority wrongly granted assignment, it cannot be rectified behind the back of the beneficiaries of the assignment. The recalling of the assignment without putting the petitioners on notice would say the least is a display of high handedness on the part of the authority concerned and in that circumstances, the impugned order has to go lock, stock and barrel.

21.Be that as it may, the impugned order did not disclose whether the petitioners point of view was considered at all as they were not heard in the first place. Moreover, the second respondent himself has recorded the factum of cultivation of the lands by the petitioners at the time when the order was passed in 2018. What is



2017 is an another dimension to the *lis* as between the petitioners and the respondents 9 and 10. However, without going into those areas of dispute, the minimum requirement is that these petitioners need to be given an opportunity as rightly implored by the learned Counsel for the petitioners before any decision is taken in regard to the right of the petitioners to the assigned lands.

22.For the above said reasons, the Writ Petition is allowed and the order passed by the second respondent in Na.Ka.No.6895/2017/J1, dated 08.06.2018 is hereby set aside. The matter is remanded back to the second respondent to provide an opportunity of personal hearing to the petitioners and the respondents 9 and 10.

23.The second respondent is also directed to conduct enquiry in order to appreciate the competing claims of the petitioners as well as the respondents 9 and 10. After conclusion of the enquiry, the second respondent is directed to pass orders within a period of eight weeks from the date of receipt of a copy of this order and communicate the copy of the order to the petitioners forthwith. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

SRM

To

1. The Secretary,
Department of Industries,
Fort St. George,
Chennai - 09.
2. The District Collector,
Madurai District,
Madurai.
3. The Director (Geology and Mining),
O/o. The Assistant Director,
Geology and Mining,
Madurai, Madurai District.
4. The Assistant Director (Geology and Mining),
O/o. The Assistant Director,
Geology and Mining,
Madurai, Madurai District.



5. The Revenue Divisional Officer,
O/o. The Revenue Divisional officer,
Usilampatti, Madurai District.
6. The Tahsildar,
O/o. The Tahsildar,
Usilampatti Taluk,
Madurai District.
7. The Superintendent of Police,
Office of the Superintendent of Police,
Madurai District.
8. The Inspector of Police,
Vickramangalam Police Station,
Usilampatti Taluk,
Madurai District.

+2 CC to Mr.P.SENTHUR PANDIAN, Advocate (SR-13358,13483[F] dated 24/03/2021)

+1 CC to SPL GP (SR-13622[F] dated 25/03/2021)

Order made in
W.P. (MD) No.14319 of 2018
24.03.2021

VB (01.04.2021) 8P 12C