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W.P.Nos.13399 & 18430 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.Nos.13399 & 18430 of 2013

and

M.P.No.1 of 2013 in W.P.No.13399 of 2013

&

M.P.Nos.1 & 2 of 2013 in W.P.No.18430 of 2013

1. C.Karthikeyan (*Deceased*)

2. Manimegalai

3. Nithish Sabari

4. Samithra

5. Kannammal

...Petitioners in W.P.No.13399 of 2013

(Petitioners 2 to 5 substituted as LR's of Deceased Sole Petitioner vide order dated 22.04.2022 in W.M.P.No.9472 of 2022 in W.P.No.13399 of 2013)

1. R.Ganesan @ Palanivel (*Deceased*)

2. G.Yuvaraj Elavarasan

3. G.Kamalam

4. G.Mageshwaran

...Petitioners in W.P.No.18430 of 2013

(Petitioners 2 to 4 substituted as LR's of Deceased Sole Petitioner vide order dated 22.04.2022 in W.M.P.No.8535 of 2022 in W.P.No.18430 of 2013)

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Vs.

1. The District Collector,
Collectorate,
Namakkal.
2. The Tahsildar,
Namakkal Taluk,
Namakkal District.

...Respondents in both W.Ps

Prayer in W.P.No.13399 of 2013: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records from the file of the 1st respondent made in Na.Ka.No.39313/11/D2 dated 02.03.2013 and quash the same and further direct the 1st respondent to pay the compensation to the petitioner to the extent of land wherein the hostel is constructed in S.F.No.185/6 in Kalkurichi Village, Namakkal Taluk and District.

Prayer in W.P.No.18430 of 2013: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records from the file of the 1st respondent made in Na.Ka.No.39313/11/D2 dated 02.03.2013 and quash the same and further direct the 1st respondent to pay the compensation to the petitioner's share to the extent of land, wherein the hostel is constructed in S.F.No.185/6 in Kalkurichi Village, Namakkal Taluk and District.

For Petitioners : Mr.V.Ashok Kumar
(in both W.Ps)

For Respondents : Mr.A.Anandan, GA.
(in both W.Ps)

COMMON ORDER



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Since the issue involved in both the Writ petitions are one and the same, they are disposed of by way of this common order.

2. The case of the petitioners is that the petitioners' ancestor one Ramasamy Gounder purchased the land comprised in S.F.No.185/6 measuring an extent of 0.19.5 hectares situated at Kallakurichi Village, Namakkal Taluk & District, vide registered Sale deed dated 03.07.1969 in Doc.No.656 of 1969. Subsequent to the demise of the said Ramasamy Gounder, the subject property devolved on the legal heirs of said Ramasamy Gounder and thereafter, they were in continuous possession and patta in respect of the said property was also issued in their favour on 12.05.1986 in Patta No.329. Thereafter, vide, registered Partition Deed dated 10.09.1972 in Doc.No.848 of 1972, the subject property was jointly owned by the sole petitioners viz., Late.Karthikeyan and Late.Ganesan and the revenue records in respect of the subject property was also mutated in their favour. Whiles, in the year 1980, some of the officials from District Colletorate requested the said Karthikeyan and Ganesan to provide part of their land for construction of Adi Dravidar Girl's Hostel and assured them that due lease agreement would be executed for using the land and assured the rental amount. Believing the words of the officials, the said Karthikeyan and



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Ganesan have orally agreed for the same and no objection was made by them, however, without paying the rent or without executing the lease deed, the officials proceeded with the construction of the hostel.

3. It is the further case of the petitioners that even after a lapse of 30 years, neither the sale deed was executed nor the rent amount was paid to the petitioners for utilising their land for construction of hostel, despite the several representations made by the said Karthikeyan and Ganesan. Further, they made a representation dated 02.09.2011 before the 1st respondent / District Collector requesting to pay the compensation for using their land, however, no orders have been passed on the same. Aggrieved by the inaction of the respondents, the petitioners filed a Writ petition in W.P.No.23419 of 2011 and this Court, vide, order dated 14.10.2011 directed the 1st respondent to consider the representation dated 02.09.2011 and pass orders within a period of three months, however, the order of this Court was not complied with by the 1st respondent. Therefore, in order to punish the 1st respondent for his wilful disobedience of the order passed by this Court, a Contempt Petition No.32 of 2012 was filed, pursuant to which, the present impugned order dated 02.03.2013 is passed, stating that originally the subject land was assigned to one Ramasamy, who belongs to



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depressed class, vide D Namuna 401/D/68 dated 06.01.1959, however, the said Ramasamy alienated the subject property to the said Ramasamy Gounder, the petitioners' ancestor, who does not belong to Depressed Class and on the sole ground the D Namuna issued in favour of said Ramasamy was cancelled and consequently, the Sale deed dated 03.07.1969 was declared as invalid and the representation dated 02.09.2011 was cancelled. Hence, challenging the same, these Writ petitions are filed.

4. Learned counsel for the petitioners submitted that the said Karthikeyan and Ganesan passed away and subsequently, their legal heirs were impleaded. He further submitted that, though the 1st respondent claims that the present impugned order is passed and the D Namuna 401/D/68 dated 06.01.1959 issued in favour of said Ramasamy was cancelled on the ground that the conditions imposed in Conditional Assignment were not complied with by the assignee, however, it is the duty of the 1st respondent to issue notice either to the assignee or to the subsequent purchaser of the subject property before cancelling the assignment and the same has to be proceeded after following due process of law. In the present case, it is pertinent to note that no such notice was served either on the petitioners or



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on their ancestors or on the original assignee, and the 1st respondent straight away cancelled the D Namuna 401/D/68 dated 06.01.1959 issued in favour of the said Ramasamy, which is arbitrary in violation of principles of natural justice.

5. Though the petitioners have filed these Writ petitions challenging the order dated 02.03.2013 passed by the 1st respondent in Na.Ka.3912/11/D2 in the year 2013, however, even after a lapsed 9 years the respondents have not filed their counter affidavit. Hence, the order is passed based on the materials available on record.

6. A perusal of the impugned order makes it clear that, the said Karthikeyan and Ganesan have made a representation dated 02.09.2011 before the District Collector, seeking for payment of compensation and rental arrears for their lands which has been utilised by the Government for the construction of Adi Dravidar Girl's Hostel, however, the same was rejected on the ground that the conditions imposed while assigning the lands in favour of one Ramasamy was not followed and alienation was made contradictory to the conditions of assignment. However, the only issue that



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falls before this Court is whether notice has been issued to the assignee or the subsequent purchaser before the order of rejection was made.

7. A careful perusal of the records does not show any notice having been issued to the assignee or the subsequent purchaser. It has been the consistent view of the Courts that issuance of notice to the aggrieved party is mandatory before passing of any order and absence of such notice is a violation of principles of natural justice. In such view of the matter, this Court has no hesitation to hold that the impugned order deserves to be interfered with on this short ground.

8. In view of the above, this Court sets aside the impugned order dated 02.03.2013 passed by the 1st respondent in Na.Ka.3912/11/D2 and remands the matter to the 1st respondent only in respect of the cancellation of D Namuna 401/D/68 dated 06.01.1959 issued in favour of the said Ramasamy and payment of compensation to the petitioners. Further it is evident that based on the oral acceptance of the said Karthikeyan and Ganesan, already the Adi Dravidar Girl's Hostel has been constructed in the petitioners' land and it is practically not possible to re-convey the subject



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land in favour of the petitioners. Further, the petitioners have fairly conceded that, their only grievance is with regard to the cancellation of D Namuna and payment of compensation, which aspect shall be considered by the 1st respondent while taking up the matter.

9. Accordingly, this Writ petition is disposed of by setting aside the impugned order dated 02.03.2013 passed by the 1st respondent in Na.Ka.No.39313/11/D2 and the 1st respondent is directed to consider the representation dated 02.09.2011 in respect of payment of compensation to the petitioners and cancellation of D Namuna 401/D/68 dated 06.01.1959 and pass orders in accordance with law, after issuing notice to the concerned parties and after conducting enquiry and providing opportunity of personal hearing to the petitioners as well as the said Ramasamy and other aggrieved parties if any. The said exercise shall be completed by the 1st respondent within a period of three months from the date of receipt of a copy of this order.

10. With the aforesaid directions, these Writ petitions are disposed of.



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No costs. Consequently, connected Miscellaneous petitions are closed.

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Speaking Order : Yes/ No

Index : Yes/ No

M.DHANDAPANI, J.

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To

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2. The Tahsildar,
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