



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.25152 of 2011

And

M.P.No.2 of 2011

A.Mohamed Nahib (Deceased)  
2.Sabeeka Begaum  
3.Mohamed Nainar  
4.A.Nazer

(P2 to P4 are substituted as L.Rs.  
of the deceased P1 vide order  
dated 29.01.2019 made in WMP.30315/18  
in WP.25152/11 by DKKJ)

... Petitioners

Vs.

1.The Special Commissioner and Commissioner  
for Land Administration,  
Chepauk, Chennai.

2.The District Revenue Officer,  
Dindigul District,  
Dindigul.

3.The Revenue Divisional Officer,  
Kodaikanal.

4.The Tahsildar,  
Taluk Office,  
Kodaikanal.

5.M.Kamal Dheen

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the first respondent vide proceedings in F3/38739/2004, dated 27.07.2011 and the second respondent's order C.Ma 14/99/91 dated



23.10.2000 relating to the cancellation of patta made in favour of the petitioner in respect of the land measuring 0.25 Hectares comprised in S.No.78/7 Kodaikanal Village, Kodaikanal Taluk, Dindigul District and to quash the order of the first respondent dated 27.07.2011 and second respondents order dated 23.10.2000.

For Petitioners : Mr.A.Jenasenan

For Respondents : Mr.A.Anandan for R1 to R4

Government Advocate

Mr.B.Vishnu Chelliya for R5

for M/s.M.Ajmal Khan

#### O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari to call for the records of the first respondent vide proceedings in F3/38739/2004, dated 27.07.2011 and the second respondent's order C.Ma 14/99/91 dated 23.10.2000 relating to the cancellation of patta made in favour of the petitioner in respect of the

land measuring 0.25 Hectares comprised in S.No.78/7 Kodaikanal Village, Kodaikanal Taluk, Dindigul District and to quash the order of the first respondent dated 27.07.2011 and second respondent's order dated 23.10.2000.

2.The case of the petitioner is that the subject land was assigned by the Government on 11.04.1973 in DKT 146/83 in patta bearing no.453 of 1973 to the petitioner. Thereafter new patta bearing No.369, dated 11.10.1973 was issued to the petitioner and the revenue records also stand in the name of the petitioner. Whiles, without any notice to the petitioner, patta was transferred to the name of the fifth respondent during the year 1996. Hence, the petitioner approached the third respondent along with relevant materials. The third respondent vide order dated 05.08.1998 cancelled the patta in favour of the fifth respondent and restored the original possession.

3.The further case of the petitioner is that thereafter the fifth respondent filed appeal before the second respondent. The second respondent vide order dated 23.10.2000 nullified the assignment made in favour of the petitioner in the year 1973. Hence, the petitioner filed appeal before the first respondent, however, the first respondent without considering the petitioner's case in proper prospective, passed the order dated 27.07.2011. Hence, this writ petition.



4. Since the sole petitioner who filed this writ petition died during the pendency of this writ petition, his legal heirs are substituted as petitioners 2 to 4 in this writ petition.

5. The learned counsel appearing for the petitioners submitted that the subject land was assigned by the Government on 11.04.1973 in DKT 146/83 in patta bearing no.453 of 1973 to the petitioner. Thereafter new patta bearing No.369, dated 11.10.1973 was issued to the petitioner and the revenue records also stand in the name of the petitioner. While so, without any notice to the petitioner, patta was transferred to the name of the fifth respondent during the year 1996. Hence, the petitioner approached the third respondent along with relevant materials. The third respondent vide order dated 05.08.1998 cancelled the patta in favour of the fifth respondent and restored the original possession.

6. The learned counsel appearing for the petitioners further submitted that the fifth respondent filed appeal before the second respondent and the second respondent vide order dated 23.10.2000 nullified the assignment made in favour of the petitioner in the year 1973 on the ground that when the assignment was made, the petitioner was a minor and therefore, it cannot be believed that the minor was in possession of the land and cultivating the same for a period of five years prior to the assignment.

7. The learned counsel appearing for the petitioners further submitted that aggrieved by the said order, the petitioner filed appeal before the first respondent with delay petition, however, the first respondent without considering the petitioner's case in proper prospective, rejected the delay petition on 18.12.2004. Challenging the order of the first respondent dated 18.12.2004, the petitioner filed W.P.No.8104 of 2005 before this Court and this Court vide order dated 01.11.2010 set aside the order of the first respondent and remitted the matter back to the first respondent. Thereafter, the first respondent passed the impugned order dated 27.07.2011, which is not sustainable one.

8. The learned counsel appearing for the petitioners further submitted that the fifth respondent executed sale deeds in respect of the property to third parties and the purchasers filed suits in O.S.Nos.51 of 1998 and 33 of 2010 as against the petitioners on the file of the District Munsif Court, Kodaikanal and both the suits ended in dismissal.



9.The learned Government Advocate appearing for the respondents 1 to 4 submitted that though patta granted in favour of the fifth respondent is the issue before the revenue officials, the revenue Authorities have the power to cancel the assignment if any violation is found in the assignment. In the present case, the subject land was assigned by the Government on 11.04.1973 in DKT 146/83 in patta bearing no.453 of 1973 to the petitioner. However, on that date the petitioner was a minor and therefore, it cannot be believed that the minor was in possession of the land and cultivating the same for a period of five years prior to the assignment. Hence, the assignment was rightly nullified by the second respondent.

10.The learned Government Advocate appearing for the respondents 1 to 4 further submitted that the petitioner claim that he is cultivating the land, however, he has not produced any record to establish that he is cultivating the land. Hence, the impugned orders need no interference.

11.Heard the arguments advanced on either side and perused the materials available on record.

12.Admittedly, the land measuring 0.25 Hectares comprised in S.No.78/7 Kodaikanal Village, Kodaikanal Taluk, Dindigul District was assigned in favour of the petitioner by the Government on 11.04.1973 in DKT 146/83 in patta bearing no.453 of 1973. Thereafter new regular revenue patta bearing No.369, dated 11.10.1973 was issued to the petitioner and the revenue records also stand in the name of the petitioner. Whiles, without any notice to the petitioner, patta was transferred to the name of the fifth respondent during the year 1996. Hence, the petitioner approached the third respondent along with relevant materials. The third respondent vide order dated 05.08.1998 cancelled the patta in favour of the fifth respondent and restored the original possession.

13.Aggrieved by the same, the fifth respondent filed appeal before the second respondent. The second respondent vide order dated 23.10.2000 nullified the assignment made in favour of the petitioner in the year 1973. Hence, the petitioner filed appeal before the first respondent with delay petition, however, the first respondent without considering the petitioner's case in proper prospective, rejected the delay petition on 18.12.2004. Challenging the order of the first respondent dated 18.12.2004, the petitioner filed W.P.No.8104 of 2005 before this Court and this Court vide order dated 01.11.2010 set aside the order of the first respondent and remitted the matter back to the first



respondent. Thereafter, the first respondent passed the impugned order dated 27.07.2011.

14.The moot question that arise for consideration is as to whether the revenue Officials have the power to cancel the assignment granted in favour of the petitioner when the dispute regarding transfer of patta is pending before them.

15.Admittedly, the second respondent while dealing with the dispute inbetween the petitioner and the fifth respondent with regard to transfer of patta, without issuing any notice to the petitioner with regard to the validity of the assignment in favour of him during the year 1973 cancelled the assignment, which is not sustainable one. Further the second respondent is not competent to decide the validity of the assignment granted in favour of the petitioner. If at all there is any violation, the competent Authority has to issue notice to the petitioner before cancelling the assignment. The said procedure was not followed. Hence, the impugned orders passed by the respondents 1 and 2 are liable to be interfered with.

16.At this juncture, the learned counsel appearing for the fifth respondent submitted that though the suits in O.S.Nos.51 of 1998 and 33 of 2010 ended in dismissal, as against the judgment and decree made in O.S.No.33 of 2010, appeal has been preferred in A.S.No.1 of 2020 on the file of the Sub Court, Dindigul. Hence, in the event of the fifth respondent succeeding in the appeal suit, he may be granted liberty to file appropriate claim petition before the revenue Officials. Such liberty is granted.

17.With the above observations, the writ petition stands allowed. The impugned orders of the respondents 1 and 2 dated 27.07.2011 and 23.10.2000 are hereby set aside. However, liberty is granted to the respondents to proceed further if the petitioner violates assignment condition after complying the principles of natural justice. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

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To

1.The Special Commissioner and Commissioner  
for Land Administration,  
Chepauk, Chennai.

2.The District Revenue Officer,  
Dindigul District,  
Dindigul.

3.The Revenue Divisional Officer,  
Kodaikanal.

4.The Tahsildar,  
Taluk Office,  
Kodaikanal.

+2cc to Mr.A.Jenasenan, Advocate SR.No.18397  
+1cc to the Government Pleader, SR.No.18560

W.P.No.25152 of 2011  
And  
M.P.No.2 of 2011

GSM(CO)  
CB(07/04/2022)