



W.P. No.7812/2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
23.06.2022	11.07.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.7812 OF 2014

AND

M.P. NOS.2 TO 4 OF 2014

1. Aaran (Decd.)
 2. A.Subramani
(P-2 substituted as LR of deceased
P-1 vide order of Court dated
21.10.19 made in WMP 29773/19)
- .. Petitioner

- Vs -

1. The Secretary to Government
Revenue Department
Secretariat, Chennai 600 009.
2. The Commissioner
Land Reforms, Chepauk
Chennai 600 005.
3. The District Collector
Erode 638 011.
4. The Joint Commissioner
Land Reforms, Jawan's Complex



W.P. No.7812/2014

WEB COPY

Gandhiji Road, Erode 638 001.

5. The Assistant Commissioner
Land Reforms, Jawan's Complex
Gandhiji Road, Erode 638 001.

6. The Tahsildar
Perundurai Taluk
Erode District 638 052.

7. Rasathi

8. Samiappan

9. Subbathal

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a (i) writ of certiorarified mandamus calling for the entire records pertaining to issuance of irregular and illegal impugned show cause notice dated 15.10.2004 in Na.Ka.3779/2004/E4 on extraneous consideration and consequent issuance of illegal common proceedings Na.Ka.3774/2004/E4 dated 10.7.2002 that was unserved on the petitioner herein and quash both the above along with the illegal and impugned assignement order dated 12.7.02 by the 5th respondent violating statutory conditions for assignment of surplus lands under TNLRs Act, 1961 as well Supreme Court Guidelines and reassign the said land to an extent of 0.84 acre in SF No.312 (Old No.98/2A) and 1.96 acre in SF No.314/B



W.P. No.7812/2014

WEB COPY

(Resurvey No.4/2-11 and 4/16) totaling to 2.80 acres at Pasuvapatti Village in Perundurai Taluk of Erode District to the original assignee petitioner herein and (ii) set aside the order dated 31.12.12 obtained by the respondents 7 and 8 by making fraud on the court in O.S. No.273 of 2010 on the file of District Munsif-cum-Judicial Magistrate, Perundurai of Erode District with imposing case cost.

For Petitioners : Mr. A.S.Palanisamy

For Respondents : Mr. P.Sathish, AGP for RR-1 to 6
Mr. Kaithamalai Kumaran for RR-7 & 8
Mr. T.M.Karthikeyan for R-9

ORDER

Assailing the order of cancellation of the assignment granted in favour of the petitioner and the reassignment made in favour of respondents 7 to 9 and seeking reassignment of the land to an extent of 2.80 acres in his favour and also assailing the decree granted in O.S. No.273/10 in and by which fraud has been perpetrated on this Court by respondents 7 to 9, the present petition has been filed.

2. Initially, a learned single Judge of this Court, vide order dated 24.06.2015, had dismissed the writ petition against which the petitioner herein



W.P. No.7812/2014

WEB COPY

had gone on appeal in which the Division Bench of this Court had remanded the matter and, accordingly, the writ petition was once again listed before this Court for hearing.

3. However, pending the writ petition, M.P. No.3 of 2014 has been filed to amend the prayer and satisfied with the reasons shown therein, the miscellaneous petition to amend the prayer is ordered as prayed for.

4. The case of the petitioners as it transpires from the affidavit filed in support of this petition is that the 1st petitioner, since deceased belongs to Scheduled Caste and is a landless poor and, therefore, by virtue of Rule 8 (6) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, r/w Section 9 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, the subject lands, of an extent of 3 acres, being surplus lands at the hands of the government, after take over of 20 cents by the Tamil Nadu Electricity Board, an extent of 2.80 acres was allotted to the petitioner along with Patta No.87 vide order dated 26.12.1978. The condition precedent for the said assignment was that the assignee should be a member of Scheduled Caste or Scheduled Tribe and as per the condition non SC/ST persons are ineligible for assignment. Other



W.P. No.7812/2014

WEB COPY

conditions have also been prescribed in the assignment, one of which pertains to non-alienation for a period of 20 years and the other pertains to agricultural operations to be carried out in the said lands by the assignee. Further conditions have also been given in the conditions of assignment. Based on the same, the aforesaid lands were assigned in favour of the 1st petitioner and since 26.12.1978, the petitioner has been in possession and enjoyment of the lands.

5. It is the further averment of the petitioners that though the petitioners had paid all the dues properly to the Government since the date of allotment till 2004. It is further averred by the petitioner that to his shock and surprise, all of a sudden, vide letter dated 31.5.2007, the 5th respondent had conveyed that the land measuring 0.84 acre in S. No.312, which has been assigned to him has been reassigned to TNEB vide G.O. Ms. No.1611, Revenue Department, dated 16.7.1980 and the remaining 1.9 acres in S. No.314/B was cancelled vide order dated 6.5.02 and reassigned to respondents 7 to 9 on the ground that the petitioner has not cultivated the land for which purpose it was assigned to the petitioner.



W.P. No.7812/2014

WEB COPY

6. It is the further averment of the petitioner that as there was drought during the year 2000 to 2004, cultivation was not possible and the same was conveyed to the 5th respondent and 3rd respondent. It is the further averment of the petitioner that inspite of repeated requests, the petitioner has not been provided with a copy of the cancellation order and the reassignment of his land to respondents 7 to 9. It is the further averment of the petitioner that respondents 7 to 9 belong to belong to upper class and they are not entitled for being assigned with the lands. It is the further averment of the petitioner that to avoid service of notice on him, the 5th respondent had addressed the communication not to his actual residential address but to his son's address, viz., the 2nd petitioner, which shows the devious mind of the 5th respondent to have his assignment cancelled for reasons best known to him. The petitioner was also served with a similar letter by the 4th respondent, vide letter dated 15.7.08.

7. It is the further averment of the petitioner that since his explanation did not evoke any response with reference to non-cultivation during the period 2000–2004, the petitioner approached the 2nd respondent and submitted his representation with prayer for reassignment and also explaining the reasons as to

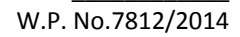


W.P. No.7812/2014

WEB COPY

why he could not cultivate the lands during the period 2000-2004. It is further averred that accepting the explanation offered by the 1st petitioner, the 2nd respondent allowed the request of the petitioner for reassignment of land, while directing cancellation of the assignment made in favour of respondents 7 to 9 and the 3rd respondent followed suit with an order to the 6th respondent to reassign the lands in favour of the 1st petitioner. It is further averred by the 1st petitioner that the assignment of 0.84 cents in S. No.312 in favour of TNEB has been specifically denied by the 2nd respondent. In spite of the repeated requests of the petitioner to reassign the lands to him pursuant to the orders of the 2nd respondent dated 7.5.12, no orders having been passed on the same, for implementation of the said order, the present petition has been filed before this Court for reassignment of land to the extent of 2.80 acres as aforesaid.

8. Learned counsel appearing for the petitioner submits that unilateral cancellation of assignment is impermissible, more so when the lands which were under the cultivation of the petitioner has been assigned to TNEB without the consent of the petitioner, which is in gross violation of the scheme of assignment.



10. It is the further submission of the learned counsel for the petitioner that only to assign the lands in favour of respondents 7 to 9, the official respondents have acted in collusion with respondents 7 to 9 to hold that the petitioner was not cultivating in the said lands, when the documents placed by the petitioner prove otherwise.



W.P. No.7812/2014

WEB COPY

11. It is the further submission of the learned counsel that respondents 7 and 8 have committed fraud on the Court and obtained the declaration with regard to title in the suit filed by them in O.S. No.273/10, which deserves to be set aside. It is the further submission of the learned counsel that the finding in the impugned order that the petitioner is not carrying out agricultural operations and is not of the same village where the lands are situated is wholly unsustainable, as the petitioner has been paying the kist to the Government regularly till 2000 and only due to the persistent drought between 2000 and 2004, the petitioner could not cultivate the property. It is the further submission of the learned counsel that the petitioner is also residing in the same village, but a few kilometers away and merely because the petitioner is residing a bit away from the lands, which have been assigned to him would not be a reason to claim that no cultivation has been made and that the petitioner belongs to a different village.

12. Learned counsel for the petitioner also submits that the act of the respondents 1 to 6 as also respondents 7 to 9 in acting collusively to usurp the vast extent of Government lands requires to be looked into on the criminal side



W.P. No.7812/2014

WEB COPY

for which this Court has to issue appropriate directions to initiate the criminal machinery in motion, as not only the petitioner has been defrauded by the act of the respondents, but the Government has also been defrauded and the lands belonging to the Government is sought to be clandestinely siphoned off away by respondents 7 to 9.

13. It is therefore the submission of the learned counsel that only to deprive the petitioner of the lands and to assign the lands in favour of respondents 7 to 9, respondents, due to the present exorbitant market value, the respondents have acted in fraud and detriment and against the interest of the depressed class community by passing the impugned order, which requires to be interfered with as it is arbitrary, perverse, illegal and unsustainable. Accordingly, he prays for allowing the present petition.

14. Per contra, learned Addl. Government Pleader appearing for respondents 1 to 6 submits that the initial impugned order, which was placed by the petitioner alleging that the 2nd respondent had directed restoration of assignment is a forged document and only to prevent the forgery from coming



W.P. No.7812/2014

WEB COPY

out, the petitioner had sought for dispensing with the original copy of the said order.

15. It is the further submission of the learned Addl. Government Pleader that though the extent of 0.84 acres in S.F. No.312 and 1.96 acres in S.F. No.314/B were assigned to the petitioner initially on 31.12.1976, however, in the statement recorded by the Special Tahsildar (Land Reforms), Erode, on 20.8.1979, the petitioner himself has stated that the land assigned is 12 miles away from his residence and, therefore, he could not cultivate the land and requested to cancel the assignment and to reassign some other land nearby his residence, which resulted in the cancellation of assignment in respect of 0.84 acres, as no cultivation was carried out in the said lands. However, possession with regard to 1.96 acres was handed over to the petitioner on 24.7.92.

16. It is the further submission of the learned Addl. Government Pleader that on the representation filed by the petitioner seeking issuance of patta on 29.8.94, the 3rd respondent had directed field inspection, which revealed that no cultivation was being carried out and that the petitioner is not in possession of



W.P. No.7812/2014

WEB COPY

the said lands, which resulted in show cause notice on different dates being issued on the petitioner calling upon as to why the assignment should not be cancelled. In view of the violations of the petitioner with regard to the conditions of assignment, the assignment in favour of the petitioner was cancelled and following the procedure laid down under the Rules, the lands were assigned in favour of respondents 7 to 9.

17. It is the further submission of the learned Addl. Government Pleader that neither the cancellation of 0.84 acres nor the cancellation of 1.96 acres have been challenged at the appropriate time by the petitioner and after affording opportunity to the petitioner, the assignment was cancelled. Only with a view to play fraud on the Government as also the Court, the petitioner has created forged documents to unsettle the settled position as it stood as early as in 1979 and 2002 and after third party interests have come in, the petitioner has come before this Court in the year 2014 to challenge the cancellation of assignment.

18. Learned counsel appearing on behalf of respondents 7 to 9, while adopted the submissions of the learned Addl. Government Pleader, further



W.P. No.7812/2014

WEB COPY

submitted that the order cancelling the assignment was passed as early as on 6.5.2002 and the petitioner had not taken any steps to challenge the same. Only in the year 2014, on the basis of a forged document, the original of which has also not been placed before this Court, the petitioner has sought for a mandamus to enforce the order of the 2nd respondent dated 7.5.12. Thereafter, the petitioner has come before this Court with the miscellaneous petition seeking amendment of the prayer by challenging the order of cancellation of assignment issued as early as on 6.5.2002. It is therefore the submission of the learned counsel for the petitioner that not only the petitioner has come before this Court with unclean hands, but has tried to play fraud on this Court by submitting forged documents to substantiate his claim, which cannot be allowed.

19. It is the further submission of the learned counsel for respondents 7 to 9 that the respondents having obtained decree in their favour in O.S. No.273/10 in which the 2nd petitioner has been shown as the defendant, wherein the Court below had granted the decree declaring the plaintiffs therein, viz., respondents 7 and 8 herein as the absolute owners of the suit property and granted permanent and consequential injunction against the defendant, unless the same is



W.P. No.7812/2014

WEB COPY

challenged and set aside in a manner known to law, the petitioners are estopped from ventilating his grievance in the writ proceedings, which cannot be gone into by this Court as the same pertains to disputed questions of fact. Once the decree dated 31.01.2012, passed in the suit, has not been challenged in a manner known to law and allowed to attain finality, it is not open to the petitioners to question the title of the respondents 7 to 9 to the assigned lands. Accordingly, it is prayed that this Court may dismiss this writ petition.

20. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

21. The fact that the subject lands were initially assigned in favour of the 1st petitioner to an extent of 0.84 acres and 1.96 acres in two different survey fields. The said assignment was granted in the year 1976. The above fact is not disputed by the respondents 1 to 6. However, it is the categorical stand of respondents 1 to 6 that even as early as on 20.8.1979, based on the statement of the petitioner himself before the Special Tahsildar (Land Reforms), Erode, citing



W.P. No.7812/2014

WEB COPY

that the lands assigned are 12 miles away from his residence and, therefore, he could not cultivate the said lands and requested cancellation of assignment and to assign some other lands nearer to his place, the assignment in respect of 0.84 acre was cancelled on 21.8.1979. Therefore, according to respondents 1 to 6, 0.84 acres of land, which were assigned to the petitioner were cancelled as early as in the year 1979.

22. Even according to respondents 1 to 6, insofar as the balance portion of 1.96 acres is concerned, the petitioner was handed over possession of the same on 24.7.92. However, when the petitioner sought for patta before the 3rd respondent, inspection was directed to be caused, which revealed that no cultivation had been taken up in the land, leading to recommendation being made on 29.11.1995 for cancellation. According to the respondents 1 to 6, show cause notices were issued on 27.1.96, 8.1.97, 19.3.01 and 17.7.01 to the petitioner, which were received by the petitioner on 5.12.96 and 11.1.97 and that the petitioner also attended the enquiry conducted by the 3rd respondent. Since it was found that the petitioner violated the conditions of assignment, the



W.P. No.7812/2014

WEB COPY

assignment granted in favour of the petitioner was cancelled as early as on 6.5.02.

23. All the aforesaid particulars have been placed before this Court in the counter filed by the respondents 1 to 6. Yet the amendment petition filed on behalf of the petitioner seeking quashment is silent on all the aforesaid aspects. Except for the petitioner repeating a parrot-like version that he is a Dalit and has been victimized and that the lands assigned to him are being taken away illegally, there is no other material to substantiate his contention. Even according to the petitioner, the 5th respondent, as early as on 15.10.04 is alleged to have addressed the petitioner that the extent of 2.80 acres, which were assigned to the petitioner was cancelled for violating the conditions of assignment. However, the petitioner has not denied the same nor whispered anything contrary to the same except stating that during the years 2000-2004, he could not cultivate the lands due to acute drought. There is no material placed on record to show that the petitioner had been cultivating the said lands since the time of assignment.



W.P. No.7812/2014

WEB COPY

24. Further, on the contention that the alleged order dated 7.5.2012 of the 2nd respondent is fabricated and rank forgery, the petitioner has not placed any material to contradict the stand of the respondents 1 to 6. The writ petition is on the premise that the 2nd respondent had allowed the appeal in favour of the petitioner and such being the case, it is incumbent upon the petitioner to produce the original of the communication, in and by which the appeal was allowed. However, merely submitting that the original of the said document be dispensed with, no other material is placed before this Court to show its existence. This would only reveal that all is not well with the petitioner and that the petitioner approaching this Court with unclean hands cannot be ruled out. Even the rejoinder is silent on this aspect, which only strengthens the case of respondents 1 to 6 not only on the aspect of forgery, but also on the question of cancellation of assignment.

25. Further, it is even the admitted case of the petitioner that his residence is farther away from the lands, which have been assigned to him. It is for the petitioner to show that he has been cultivating the lands and has been paying the necessary dues to the Government. However, a perusal of the



W.P. No.7812/2014

WEB COPY

materials placed before this Court by the petitioner does not reveal that agricultural activities had been carried on in the said lands.

26. Further, it is the stand of the respondents 1 to 6 that the assignment was cancelled way back in the year 1979 insofar as 0.84 acres of land is concerned and in respect of 1.96 acres of land, the assignment was cancelled on 6.5.02. It is also the stand of the respondents 1 to 6 that prior to cancellation of the assignment show cause notices were issued to the petitioner and the petitioner also partook in the enquiry and after hearing him, the assignment was cancelled. However, even on this aspect, the affidavit as also the rejoinder of the petitioner is silent.

27. The petitioner has laid stress on the fact that the assignment in his favour was cancelled only for the purpose of giving the land to respondents 7 to 9. It is the further stand of the petitioner that respondents 7 to 9 belong to undepressed class and, therefore, not entitled for assignment of subject lands, by placing reliance on the decision of the Hon'ble Supreme Court ***Lingappa Pochanna – Vs – State of Maharashtra (AIR 1985 SC 389)***, wherein the Hon'ble



W.P. No.7812/2014

WEB COPY

Apex Court has held that the surplus lands assigned could be alienated, in accordance with the conditions of assignment, only to persons belonging to Adi-Dravida class and any alienation to persons not belonging to Adi-Dravida class is in violation of the conditions of assignment and the said assignment is liable for cancellation, as the same is constitutionally not valid. However, in the case on hand, it is to be pointed out that not only the said contention is countered by the respondents 1 to 6 stating that alienation has not been made to underprivileged class persons, but equally no material whatsoever has been placed before this Court to show that respondents 7 to 9 belong to underprivileged class. That being the case, this Court cannot venture into the said aspect as the same is a disputed question of fact.

28. One other contention that has been raised before this Court at the time of argument by the learned counsel for the petitioners is that the lands are Panjami lands and the said lands cannot be allotted to any other person other than persons belonging to underprivileged class and, therefore, the assignment granted in favour of respondents 7 to 9 cannot be sustained. Though such a contention is advanced, the contention gets itself defeated by the petitioners



W.P. No.7812/2014

WEB COPY

admission in the affidavit in which it has been categorically admitted that the lands allotted to the petitioners were under the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, r/w Section 9 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961. When even according to the petitioners the lands allotted to them were surplus lands at the hands of the Government, this Court is at a loss to understand as to how the said lands could be said to be Panjami lands which could not be assigned to any other class of persons. Therefore, the aforesaid contention does not merit acceptance as there is no other material available on record to substantiate such a contention.

29. Further, it is to be pointed out that pursuant to the assignment in the year 2002, the private respondents have been in possession and enjoyment of the lands. It is evident from the materials available on record that all is not well between the petitioners and the private respondents, which has led to complaint and counter complaint before the law enforcing agency, with which this Court is not concerned. However, the fact remains that respondents 7 and 8 have filed O.S. No.273/10 before the Court of District Munsif-cum-Judicial Magistrate, Perundurai, seeking the relief of declaration of title and injunction as against the



W.P. No.7812/2014

WEB COPY

petitioner herein with respect to the subject lands and inspite of notice, the petitioner herein, who is the defendant in the said suit, having not partaken in the proceedings, led to the suit being decreed exparte and the Court below had granted decree that the settlement decree executed by the 1st petitioner in favour of the 2nd petitioner is not binding on the plaintiffs and that the plaintiffs are the absolute owners of the suit property and injuncted the defendant from in any manner interfering with the peaceful possession and enjoyment of the suit property.

30. It is to be pointed out that as against the said decree in favour of the private respondents, no steps have been taken by the petitioners herein to set aside the said decree nor any steps have been taken to file any appeal against the said decree and obtain restraining orders. The decree had been granted as early as on 31.12.2012 and in the absence of any appeal, the decree has been allowed to attain finality. That being the resultant position, this Court sitting under Article 226 of the Constitution would not be justified in interfering with the said decree, in exercise of its extraordinary jurisdiction, when the said decree has been passed after complying with all the procedural formalities. Merely because the



W.P. No.7812/2014

WEB COPY

petitioner claims foul play on the part of the respondents cannot be a ground to invoke the extraordinary jurisdiction of this Court in the absence of any materials to substantiate the said contention. Therefore, the said contention of the petitioner deserves to be negative.

31. It is further borne out by record that the assignment was cancelled in the year 2002 of which communication was made regarding cancellation in the year 2004, however, no steps have been taken by the petitioner till 2014 and only in the year 2014, the present petition has been filed, that too against a fabricated order, alleged to have been passed by the 2nd respondent herein in the year 2012. Effectively, for about a decade the 1st petitioner has kept silent and has come knocking on the doors of this Court, merely conjuring a plea that none of the show cause notices were served on him. However, it is the admitted case of the petitioner that the show cause notices were allegedly served by the respondents on his son, viz., the 2nd petitioner herein, wantonly so as to cancel the assignment granted in favour of the 1st petitioner. Except for this plea, there is no other material to substantiate the delay in filing the present petition. The unexplained



W.P. No.7812/2014

WEB COPY

delay coupled with the laches on the part of the petitioners, as aforesaid, leaves no room for this Court, but to sustain the order impugned herein.

32. Further, it is to be pointed out that the copy of the kist receipt available on record pertains to the year 2000 and prior to the said period, there is no receipt placed to show cultivation of lands. That being the position, the official respondents, after following the due formalities, have passed the impugned order which does not suffer the vice of any illegality or irregularity. Further there is also no perversity or arbitrariness in the said order and, therefore, the said order cannot be said to be unsustainable.

33. For the reasons aforesaid, this Court is of the considered view that no case has been made out by the petitioner to interfere with the order impugned herein. Accordingly, the writ petition fails and the same is dismissed. Consequently, M.P. Nos.2 and 4 of 2014 are also dismissed. There shall be no order as to costs.

11.07.2022



W.P. No.7812/2014

WEB COPY

Index : Yes / No

Internet : Yes / No

GLN



WEB COPY



W.P. No.7812/2014

To

1. The Secretary to Government
Revenue Department
Secretariat, Chennai 600 009.
2. The Commissioner
Land Reforms, Chepauk
Chennai 600 005.
3. The District Collector
Erode 638 011.
4. The Joint Commissioner
Land Reforms, Jawan's Complex
Gandhiji Road, Erode 638 001.
5. The Assistant Commissioner
Land Reforms, Jawan's Complex
Gandhiji Road, Erode 638 001.
6. The Tahsildar
Perundurai Taluk
Erode District 638 052.



WEB COPY



W.P. No.7812/2014

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO. 7812 OF 2014**

**Pronounced on
11.07.2022**