



W.P.(MD).No.14295 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 11.07.2022

ORDER PRONOUNDED ON : 20 .07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.14295 of 2011
and MP(MD).No.3 of 2011**

1.G.Raghavan

2.G.Soundararajan

....Petitioners

Vs

1.The Land Commissioner
Chepauk
Chennai 600 005

2.The Assistant Commissioner of Land Reforms
Tiruchirappalli

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order dated 20.05.2011 in Proc.No.D1.R.P.No.2/2009 (L.Ref) passed by the first respondent confirming the order dated 22.01.2009 passed by the second respondent in ந.க.ஆ.1/எம்.ஆர்.4/300ஏ/17.70 and quash the same.

For Petitioners

: Mr.T.Antony Arulraj

For Respondents

: Mr.N.Muthuvijayan
Special Government Pleader



W.P(MD).No.14295 of 2011

ORDER

WEB COPY

The present writ petition has been filed challenging an order passed by the first respondent herein wherein the order passed by the second respondent cancelling the assignment order has been upheld.

2.It is contended in the affidavit that under Tamil Nadu Land Reforms (Disposal of Surplus land) Rules, 1965, an extent of 1.10 acres was assigned in favour of one Rengaraja Naidu. He had executed a registered Will in favour of the writ petitioners on 21.02.1999. The said original assignee namely Rengaraja Naidu had passed away in the year 2001. The petitioner had applied for Patta and a Patta Pass Book was also issued in favour of the writ petitioners.

3.According to the petitioners, the said Rengaraja Naidu's son was angry with the writ petitioners and he gave a complaint to the second respondent to cancel the order of assignment on the ground that the original assignee had alienated the properties within a period of 20 years. The second respondent had cancelled the order of assignment on 22.01.2009. The writ petitioner preferred an appeal before the first respondent herein who confirmed the order on 20.05.2011. The said order is under challenge in the present writ petition.



W.P(MD).No.14295 of 2011

WEB COPY

4.The learned counsel for the writ petitioners had contended that the original order of assignment in favour of Rengaraja Naidu was passed on 31.08.1983. As per annexure to the said assignment, the land should not be alienated within a period of 15 years from the date of assignment or before the entire amount is paid whichever is later. Therefore, according to the learned counsel for the petitioners, the sale deed executed on 25.02.1999 by the original assignee is well beyond 15 years period. Hence, the second respondent as well as the first respondent were not right in cancelling the order of assignment on the ground of alienation.

5.The learned counsel for the petitioners had further contended that the land should not be alienated within a particular period of time as incorporated in Rule No.9(1)(iii) of Tamil Nadu Land Reforms (Disposal and Surplus Land) Rules 1965. Originally when the land was assigned in favour of the said Rengaraja Naidu, the said period was fixed as 15 years in Rule 9(1)(ii) of the above said Rules. The said Rules was amended by G.O.(Ms).No.1713, Revenue Department dated 17.11.1987 in which 15 years was substituted with 20 years. According to the learned counsel for the petitioners, the Rule has been amended only in the year 1987 and hence, the same would not affect the condition imposed in the original assignment order of the year 1983. The



W.P(MD).No.14295 of 2011

Rule would have only a prospective effect for the assignments made after 17.11.1987. Hence, he contended that the authorities have erred in invoking the amended Rule and cancelled the order of assignment. Hence, he prayed for allowing the writ petition.

6.Per contra, the learned Special Government Pleader contended that as per Clause 13th of the annexure to the original assignment order, it has been stated that the assignee has to comply with all other conditions as contemplated under Rule 9 of Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965. Therefore, the petitioner has bound by the amended Rule also. He had further contended that the petitioner has to comply with the Rules as and when they are amended by the Government. The Rule has been amended in the year 1987 itself. However, the sale in favour of the writ petitioners has taken place only in the year 1999. Hence, the sale deed has been executed by the original assignee within a period of 20 years as contemplated by the amended Rule. Therefore, the authorities were right in cancelling the assignment order for violation of assignment condition as per Rule 9(1)(i) of the above said Rule. Hence, he prayed for dismissal of the writ petition.

7.I have considered the submissions made on either side.

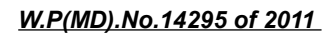


W.P(MD).No.14295 of 2011

WEB COPY

8. There is no dispute that the petitioner's vendor namely Rengaraja Naidu was granted assignment for an extent of 1.10 acres vide proceedings dated 31.08.1983. The said assignment order is not a free assignment, but the assignee has to make payment of a sum of Rs.4207.20. Though the original authority has found that the payments have not been made on the date of alienation, the Appellate Authority has not found fault with the writ petitioner's vendor. The learned counsel for the petitioners has also produced the challans with regard to the payment made by the original assignee and the entire amount as contemplated in the original assignment order has been paid on 28.05.1997. Hence, there is no dispute that on the date when the sale deed was executed, the entire amount as contemplated in the original assignment date has been paid off by the said Rengaraja Naidu.

9. Clause 6 of the annexure to the original assignment order prescribes that any alienation before payment of the entire amount or completion of 15 years whichever is later as per original Disposal of Surplus Rules of the year 1965 would be invalid. Later, Rule 9(1)(iii) was amended with effect from 12.11.1987. As per amendment, the restriction regarding alienation was extended up to 20 years from 15 years. Invoking the said amended provision, the original authority as well as the Appellate Authority have arrived at a



10. The contention of the writ petitioners is that the amendment came into effect only on 12.07.1987. The said amendment cannot take away the vested right of the original assignee to alienate the property after expiring of 15 years based upon the original order of assignment. Hence, the alienation made by the original assignee after a period of 15 years cannot be held to be invalid. In other words, the amended rule will not have a retrospective effect covering the assignment made in the year 1983 also. The issue that arises for consideration is that whether the amendment of Rule 9(1)(iii) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules on 12.11.1987 will have a retrospective effect covering the assignment that were granted prior to the said date.

11.The Hon'ble Supreme Court in a judgment reported in ***AIR 1990 SC 405 (P. Mahendran and others Vs.State of Karnataka)*** in Paragaraph No.5 has held as follows:

“5.It is well settled rule of construction that every statute or statutory Rule is prospective unless it is expressly or by necessary



implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the Rule must be held to be prospective. If a Rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rule of 1987 does not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the Rule with retrospective effect. Since the amending Rule was not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force. The amendment Rule could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter”.

12.In the present case, the Statutory Rule namely Rule 9(1)(iii) has been amended on 12.11.1987 under G.O(Ms).No.1713 Revenue Department. The said G.O. has been placed on record by way of typed set of papers by the respondents counsel. A perusal of the G.O. does not indicate that the amendment will have retrospective effect.



W.P(MD).No.14295 of 2011

WEB COPY

13. A plain reading of the amendment discloses that there is no express provision or necessary intendment clause in the amended Rule for giving it a retrospective effect. Any interpretation to confer retrospective effect would seriously affect the right of the assignees who were granted assignment order prior to the date of amendment. For example, if an assignment has been granted in the year 1971, the said assignment would have been granted only with a condition that alienation should not be effected prior to the completion of 15 years i.e. 1986. In case, if the alienation has been effected in the year 1987 prior to the G.O., still the alienation would get affected. This will have drastic effect over the vested rights of the assignee to alienate the property after completion of 15 years as contemplated in the original order of assignment. Hence, this Court is of the view that the amendment carried out in Rule 9(1)(iii) of Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, will only have a prospective effect and the same would cover the assignments made after 12.11.1987 only.

14. The learned counsel for the respondents had further relied upon Clause 13 of the annexure of the original assignment order and contended that the assignee has to comply with other conditions in Rule 9 of Disposal of Surplus Land Rules. Hence, as and when the Rule gets amended, the assignee



W.P(MD).No.14295 of 2011

is bound by the said amended Rule. I am afraid such an interpretation cannot be given. A perusal of Rule 9 of Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 discloses that apart from the condition of non alienation, several other conditions have been imposed under the said Rule. Clause 13 of the of assignment order could only be interpreted to direct the assignee to comply with the other conditions in Rule 9. It can never be interpreted to mean, amendments which are carried out in Rule 9 from time to time. This Court has also arrived at a finding that the amendment that was carried out on 12.11.1987 is only prospective in nature and hence, this contention is not legally sustainable.

15.In view of the above said discussion, the impugned order passed by the second respondent and confirmed by the first respondent are set aside. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

20 .07.2022

Internet : Yes/No
Index : Yes/No
msa



W.P(MD).No.14295 of 2011

To

WEB COPY

1.The Land Commissioner
Chepauk
Chennai 600 005

2.The Assistant Commissioner of Land Reforms
Tiruchirappalli



WEB COPY



W.P(MD).No.14295 of 2011

R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

W.P.(MD).No.14295 of 2011 and
MP(MD).No.3 of 2011

20.07.2022