



W.P(MD)No.16290 of 2013

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.16290 of 2013

and

M.P(MD)Nos.1 to 3 of 2013

1.M.Eswara Pillai (Died)

2.Kosalai

3.Mathava Das

4.Sudhakaran

5.Iyyappan

6.Mahesh

7.Radhika

8.Kujha

... Petitioners

(P2 to P8 are substituted vide Court order, dated
15.11.2022 in W.M.P(M.D)No.19726 of 2022)

Vs.

1.The District Collector,
Kanyakumari District.

2.The District Revenue Officer,
Kanyakumari District,
Kanyakumari.



W.P(MD)No.16290 of 2013

3.The Revenue Divisional Officer,
Padmanabhapuram,
Kanyakumari District.

4.The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.

5.S.Thavasimuthu

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned proceedings of the 2nd respondent bearing Na.Ka.No.M2/22216/2011 dated 17.07.2013 and quash the same.

For Petitioner : Mr.M.Gnanagurunathan

For R1 - R4 : Mr.M.Lingadurai
Special Government Pleader

For R5 : Mr.S.C.Herold Singh

ORDER

The present writ petition has been filed challenging an order passed by the 2nd respondent herein, under which an order of assignment granted in favour of the writ petitioner was cancelled.



W.P(MD)No.16290 of 2013

2. According to the petitioner, he was granted an order of assignment for an extent of 2 acres in Survey No.224/14 by an order, dated 29.12.2007. A complaint was lodged by the 5th respondent herein that a community temple is located in the said survey number and the petitioner is not eligible for free assignment of land. Based upon the said allegations, the 4th respondent herein has conducted an enquiry and a report was submitted to the 2nd respondent herein. Based upon the report submitted by the 4th respondent, the 2nd respondent has passed the impugned order, under which he has cancelled the order of assignment.

3. According to the learned counsel for the petitioner, the report of the 4th respondent was not furnished to him and in ground number 'f' of the writ petition, the petitioner has contended that even assuming that the temple is located in the said survey number, the said area could be exempted from the order of assignment and the entire order of assignment should not have been cancelled.

4. Per contra, the learned Special Government Pleader appearing for the official respondents contended that the temple is located in the said survey number for more than 100 years and the same is being



W.P(MD)No.16290 of 2013

utilized as community temple by a general public. The revenue records indicate that it is Toppu Poramboke and the petitioner has suppressed that he is having some other properties and he is ineligible for getting an assignment order. Only based upon the report submitted by the 4th respondent herein, the present impugned order has been passed and he prayed for sustaining the order impugned in the writ petition.

5. I have carefully considered the submissions made on either side.

6. It could be seen from the impugned order and the affidavit filed in support of the writ petition that a 100 years old temple, which is being worshipped by the general public is situated in Survey No.224/14. Hence, the order of assignment granted to the writ petitioner with regard to the area, in which the temple is located is not sustainable and the cancellation of the order of assignment with regard to the area, in which the temple is located has to be confirmed. However, there are allegations as against the writ petitioner that he is having some other properties in the same locality and he is not eligible to get an order of assignment.



W.P(MD)No.16290 of 2013

WEB COPY

7. In view of the above said facts, this Court passes the following order:

(i) The order impugned in the writ petition is set aside and the the matter is remitted back to the file of the 2nd respondent herein.

(ii) The 2nd respondent is directed to consider the eligibility of the writ petitioner to get an order of assignment after verifying the revenue records and the report of the 4th respondent herein.

(iii) In case, if the 2nd respondent arrives at a finding that the petitioner is eligible for grant of assignment order, the land in which the temple is located and the land, which is required for the general public to have access to the said temple shall be exempted and an order of assignment can be granted to the rest of the extent in favour of the writ petitioner.



W.P(MD)No.16290 of 2013

8. With the above said observations, this Writ Petition stands allowed to the extent as stated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

29.11.2022

Index : Yes / No
Internet : Yes / No

gbg

To

- 1.The District Collector,
Kanyakumari District.
- 2.The District Revenue Officer,
Kanyakumari District,
Kanyakumari.
- 3.The Revenue Divisional Officer,
Padmanabhapuram,
Kanyakumari District.
- 4.The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.



WEB COPY



W.P(MD)No.16290 of 2013

R.VIJAYAKUMAR ,J.

gbg

Order made in
W.P(MD)No.16290 of 2013

Dated:
29.11.2022