



W.P(MD)No.18635 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.18635 of 2013

and

M.P.(MD)No.1 of 2013

M.Saleem Baig

... Petitioner

Vs.

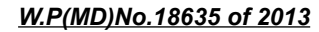
1.The District Collector,
Sivagangai District,
Sivagangai.

2.The District Revenue Officer,
Sivagangai District,
Sivagangai.

3.The Special Tahsildar (Assignment)
Sivagangai District,
Sivagangai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, to declare the uncommunicated order of the second respondent dated 26.03.1979 passed in AZ2 46632/79 as interfere with the petitioner's peaceful possession and enjoyment of the petitioner's land in Survey Nos.20/1 and 225/5 of assessed dry measuring 3.33 and 1.67 acres respectively situated at Mangudi Village, Sivagangai District.



For Respondent : Mr.K.Balasubramani
Special Government Pleader

Heard the learned counsel on either side.

2. The writ petitioner was granted assignment of the petition mentioned land on 31.03.1969. Without notice to him and behind his back, it appears to have been cancelled on 26.03.1979. The petitioner was not aware of the same. When the petitioner asked for being furnished with a copy of the order, vide memorandum bearing O.Mu.No.9031/13 dated 15.03.2003, the District Collector informed the petitioner that due to administrative reasons, the copy of the order dated 26.03.1979 cancelling the assignment could not be furnished. That led to filing of W.P.(MD)No.3401 of 2003 for being furnished with a copy of the cancellation order. The said writ petition was disposed of on 18.09.2013 in the following terms:-

“4. The limited prayer sought in this writ petition is to furnish the certified copy of the order dated 26.03.1979. According to the petitioner, he is still in possession of the property and the said order of cancellation was not at all communicated to him. At any event, as the prayer sought in this writ petition is only for production of the copy of the order and when it is stated by the respondents that all the files



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relating to the subject matter were destroyed due to efflux of time, no such mandamus sought in this writ petition especially when that becomes an impossibility of performance. Therefore, without prejudice to the rights and contentions of the petitioner, who claims to be in possession of the property even after such cancellation of assignment, the writ petition is dismissed, however with liberty to the petitioner to agitate the matter in a separate proceedings to protect his possession, in the manner known to law.”

In view of the liberty granted in the said writ petition, the present writ petition came to be filed.

3. When the matter was taken up for hearing, my attention was drawn to the letter bearing No.L.Dis(E3) 68944/84, dated 04.01.1987 issued by the Special Commissioner and Commissioner of Land Administration, Madras. The said letter reads as follows:-

“2. The High Court, Madras while allowing the writ petition No.906/80 filed by one Tmt.Padmavathi U.Kidakulam Village, Tiruchuli Taluk, Kamarajar District has held that the District Revenue Officer shall not cancel the assignment made prior to the Government Order. In G.O.Ms.No.2555, Revenue, dated 14.05.1973, since the above Government Order conferring the powers on District Revenue Officer to cancel the assignment without reference to any time limit has only prospective effect.

3. This decision may be noted for future guidance and also for issuing suitable instructions to subordinate officers.”



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4. The learned counsel appearing for the petitioner relies on the decision of the Hon'ble Supreme Court reported in **2001 (8) SCC 443 (State Bank of West Bengal Vs.Mondal)**. The Hon'ble Supreme Court in the said decision held as follows:-

“An order passed but retained in file without being communicated to the plaintiff can have no force or authority whatsoever and the same has no valid existence in the eye of law or claim to have come into operation and effect. No reliance can be place on the same to even assert a claim based on its contents.”

5. An order that has not been communicated to the affected party is nullity in law. Therefore, in the light of the letter issued by the Special Commissioner and Commissioner of Land Administration, Madras as well as in view of the aforesaid decision of the Hon'ble Supreme Court, the order of cancellation should be treated as nullity in law. Declaration as sought for is granted. That the petitioner is in possession does not appear to be in dispute. The respondents are also restrained from interfering with the petitioner's peaceful possession and enjoyment of the petition mentioned land.

6. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

01.08.2022

Index : Yes / No
Internet : Yes/ No
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Sivagangai.
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G.R.SWAMINATHAN, J.

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