



W.P(MD)No.20060 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.08.2022
DELIVERED ON : 06.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.20060 of 2013

1.G.Lakshmanan
2.G.Muralidharan
3.G.Balaji

... Petitioners

Vs.

1.The Special Tahsildar,
Sivagangai.
2.The Revenue Divisional Officer,
Sivagangai.
3.The District Revenue Officer,
Sivagangai.
4.The District Collector,
Sivagangai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records and quash the order, dated 01.11.2013 bearing Ref.No. Pa.Mu.C2-3019-2012 passed by the third respondent, the District Revenue Officer, Sivagangai and consequently to direct the first respondent to restore



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of 10(1) patta in the name of the petitioners.

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For Petitioners : Mr.G.Prabhurajadurai

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

The present Writ Petition has been filed challenging an order passed by the third respondent herein, under which, he has confirmed the order passed by the second respondent, wherein the patta granted to the writ petitioners' father was cancelled.

2. According to the petitioners, their father was granted an order of assignment on 12.08.1970 for an extent of 2.65 acres in Melavaniyangudi Village in Survey No.62/5. The revenue patta was granted to their father in patta No.321. In view of family circumstances, the petitioners' father had left for Chennai in the year 1985. Thereafter, he had executed a registered settlement deed in favour of his three sons (who are the petitioners herein) by way of a registered document, dated 20.01.2011. Thereafter, patta under 10(1) was granted in the name of the petitioners' father. After the settlement deed was executed, the petitioners had approached the Tahsildar for transfer

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of patta in the name of the petitioners. The Tahsildar had reported the same to the Revenue Divisional Officer. The Revenue Divisional Officer by his *suo motu* proceedings had cancelled the patta granted by the Tahsildar.

3. The petitioners have further contended that the Revenue Divisional Officer has cancelled the revenue patta, on the ground that the order of assignment in favour of the petitioners' father was already cancelled by the Revenue Divisional Officer, Sivagangai on 27.08.1983. Thereafter, on the basis of a judgment in O.S.No.38 of 2006, dated 12.06.2007, on the file of the District Munsif Court, Sivagangai, a patta has been granted in favour of the writ petitioners' father. Since assignment order has already been cancelled, the grant of patta by the Tahsildar is not legally valid and on the said basis, the Revenue Divisional Officer had cancelled the patta.

4. The petitioners have further contended that they had challenged the said order before the District Revenue Officer, Sivagangai. The said authority by his impugned order, dated 01.11.2013, had confirmed the order passed by the Revenue Divisional Officer on the ground that the petitioners' father was permanently residing in Chennai and he is not eligible to grant of



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assignment. He had further held that the lands were not put to cultivation and hence, the assignment order has been cancelled on 27.08.1983. The third respondent has further held that the lands may be required for the Government future use. The said order is impugned in the present writ petition.

5. The learned Counsel appearing for the petitioner has contended that the order of assignment was granted in the year 1970. The alleged order of cancellation of the said assignment order has been passed on 27.08.1983 after a period of thirteen years. The cancellation order was not preceded by any show cause notice. The order was also not communicated to the writ petitioners' father. He further contended that before issuance of G.O.Ms.No. 2555, dated 14.05.1973, the time limit for cancellation of assignment patta was just three years. Only after issuance of the said Government order, the time limit was lifted and the appropriate authorities were granted power to cancel the order of assignment for violation of terms of assignment or if the assignment had been obtained by any fraud or mis-representation. However, in the present case, the order of assignment is dated 12.08.1970 and hence, the order of assignment cannot be cancelled in the year 1983.



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6. The learned Counsel for the petitioner had further contended that they came to know about the cancellation of the order of assignment only when they approached the Tahsildar for grant of patta and they were referred to the Revenue Divisional Officer. He further contended that the petitioners' father's brother have forged certain documents, as if the petitioners' father has executed a sale deed in their favour for 1.69 acres. Even assuming that the said sale deed is true, the balance extent is retained by the petitioners' father. The learned Counsel for the petitioner has further contended that the petitioners' have already initiated proceedings challenging the said sale.

7. The learned Counsel for the petitioner has further contended that where an order has been passed and the same is not communicated to the aggrieved party, the said order has to be construed to be a void order. Hence, he prayed for allowing the writ petition.

8. Per contra, the learned Additional Government Pleader appearing for the respondents had contended that the petitioners' father had not cultivated the land for so many years. Further, the petitioners' father is not



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living in the said village, even as per the statement made by the petitioners' father before the Revenue Divisional Officer. Hence, the cancellation of the assignment order and the revenue patta are perfectly legal. Hence, he prayed for dismissal of the writ petition.

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

10. There is no dispute that an order of assignment was granted in favour of the writ petitioners' father for an extent of 2.65 acres on 12.08.1970. The said order of assignment is said to have been cancelled by an order, dated 27.08.1983. No records have been produced on the side of the respondents either to show that any show cause notice was issued prior to passing of the order or relating to the communication of the cancellation order to the writ petitioners' father. That apart, despite directions from this Court, the respondents have not produced the order, dated 27.08.1983, under which, the assignment order is said to have been cancelled. Hence, it is clear that the assignment order has been cancelled in violation of the principles of natural justice and hence, the same is not legally sustainable.



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11. As rightly pointed out by the learned Counsel for the petitioner, the assignment of the order 1970 cannot be cancelled in the year 1983. The learned Counsel for the petitioner had relied upon a judgment of this Court reported in **(2021) 2 LW page 548** paragraph Nos.16 and 17 is extracted as follows:

"16. As it has been repeatedly held by this Court in several precedents above referred to above, assignment of land made prior to 1973 cannot be cancelled beyond a period of three years from the date of assignment. Even on the ground of misrepresentation or on the ground of want of authority for assignment, it is not open for the respondent to cancel assignment after a lapse of a few decades.

17. In the present case, having regard to the contention of petitioner that no notice was issued prior to cancellation of assignment and that the order of cancellation of assignment was not communicated to petitioner's husband or his legal representatives, this Court has no hesitation to hold that the cancellation of assignment is non est in law....."



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12. After reviewing all the judgments passed by this Court in relation to the power of cancellation of assignment order, this Court has arrived at a finding that assignment of land made prior to 1973 cannot be cancelled beyond a period of three years from the date of assignment. In view of the above said judgment, the order impugned in the writ petition is not legally sustainable and the same deserves to be set aside.

13. In view of the above said discussion, the writ petition stands allowed. The order impugned in the writ petition is set aside and the respondents are directed to restore the patta in the name of the petitioners. There shall be no order as to costs.

06.09.2022

Index : Yes / No
Internet : Yes / No
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To

- 1.The Special Tahsildar,
Sivagangai.
- 2.The Revenue Divisional Officer,
Sivagangai.
- 3.The District Revenue Officer,
Sivagangai.
- 4.The District Collector,
Sivagangai.



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R.VIJAYAKUMAR, J.

btr

Order made in
W.P(MD)No.20060 of 2013

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