



W.P.(MD).No.4972 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 27.10.2022

ORDER PRONOUNCED ON : 08.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.4972 of 2013
and MP(MD).Nos.1 & 2 of 2013**

L.N.Valliammal

.....Petitioner

Vs

1.The Principal Secretary and Commissioner
Land Administration
Chepauk
Chennai 5

2.The District Revenue Officer
Sivagangai
Sivagangai District

3.The Sub Collector
Devakottai
Sivagangai District

4.The Tahsildar
Karaikudi
Sivagangai District

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the first respondent herein in his proceedings in Rc.G2/3383/12 dated 22.01.2013 confirming the cancellation of assignment



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and quash the same and further direction directing the respondents herein not to interfere with the petitioner's peaceful possession over the lands in Survey Nos.244/5, 244/8, 244/9 and 244/14 totally to an extent of 1.85.5 hectare (4 acres 57 cents), Tiruvelangudi Village, Karaikudi Taluk, Sivagangai District.

For Petitioner : Mr.V.Meenakshi Sundaram
For Mr.D.Nallathambi

For Respondents : Mr.M.Lingadurai
Special Government Pleader

ORDER

The present writ petition has been filed challenging an order passed by the first respondent herein under which he has confirmed the order of the third respondent wherein the order of assignment granted in favour of the of ancestor in title of the writ petitioner has been cancelled.

2.According to the learned counsel for the petitioner, an order of assignment was granted in favour of one K.Noorjahan, M.Chellakannu, K.R.Alagappan and G.Periyanayagi on 05.12.1994 and 31.05.1994. As per the said order of assignment, the assignees cannot alienate the property within a period of 10 years. Ever after expiry of 10 years period, alienation can be effected only after obtaining prior permission from the Government. After expiry of the 10 years period, the original assignees have alienated the property through four separate sale deeds in favour of one C.T.Paramasivam



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on 27.09.2004 and 08.10.2004. At the request of the purchaser, patta was also mutated in the name of said C.T.Paramasivam on 23.06.2006. Thereafter, the petitioner has purchased the property from the said C.T.Paramasivam under Document No.3442/2006 dated 27.07.2006. Patta was also transferred in the name of the writ petitioner on 15.09.2006. The petitioner is in possession and enjoyment of the property from the said date onwards.

3.The learned counsel for the petitioner has contended that some anonymous complaints were sent to the fourth respondent alleging that the assignment orders have been granted in favour of the affluent persons and the assigned lands are located very near to Karaikudi Municipality. The assigned property has been plotted out and sold to third party. Based upon the said allegation, the fourth respondent had conducted an enquiry and sent a proposal to the third respondent for cancellation of the order of assignment.

4.The third respondent herein issued notice to 51 assignees including the four assignees from whom the petitioner has purchased the property. Only two of the assignees had appeared. The Sub Collector had conducted an inspection on 08.12.2007 and he found that in Survey Nos.414/5 and 414/6 Eucalyptus plants are there and some bushes have grown. The lands have not been brought into cultivation from the date of assignment. The lands are located within 8 km from the Karaikudi Municipality. Hence, the lands are valuable. During field inspection, nobody was in the site and the lands were



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lying fallow.

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5.The learned counsel had further contended that the third respondent proceeded to cancel the order of assignment on the ground that the condition imposed in the order of assignment that the lands should be brought under cultivation within a period of three years has been violated and the assignees are residing out side and the lands have been assigned in favour of affluent persons. On the above said reason, the order of assignment was cancelled.

6.The learned counsel for the petitioner had further contended that challenging the said order, he filed a revision before the first respondent. The first respondent after conducting an enquiry, dismissed the revision on the following grounds:

(i).The original assignees have not contested their case before the third respondent herein and they have not submitted their reply to the show cause notice. Hence, the petitioner will not have any locustandi to challenge the cancellation of assignment order.

(ii)The lands have been sold by the original assignees without obtaining any prior permission from the Government.

(iii). The assignees have not brought the lands into cultivation within a period of three years from the date of an assignment.



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7.The learned counsel for the petitioner had further contended that based upon the above said three reasons, the first respondent had confirmed the order passed by the third respondent.

8.The learned counsel had further contended that as per the order of assignment, there is an absolute ban for alienating the property within a period of 10 years. In the present case, the order of assignment was granted in the year 1994 and the first alienation was made by the original assignee only after a period of 10 years. After alienation was made, the purchasers have approached the Tahsildhar for mutation of revenue records. The Tahsildhar has accepted the request and effected mutation of revenue records in favour of the purchasers. He further pointed out that the Tahsildhar is the authority who had granted assignment in favour of the original assignee. Hence, mutation of the revenue records effected by the said Tahsildhar in favour of the purchaser would amount to permission granted by the authority for alienation. The learned counsel had further contended that since the assignees have sold the properties, they are residing outside and the same cannot be found fault with.

9.The learned counsel for the petitioner had further contended that the order of assignment were granted in the year 1994 and the inspection was conducted by the third respondent in the year 2007 nearly after a period of 13 years. After 13 years, the respondent authorities could not arrive at a finding



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whether the lands were brought into cultivation within a period of three years from the date of assignment. Due to failure of monsoon or due to loss incurred in the previous agricultural season, the assignees would not have continued their agriculture activities. The non-cultivation on the part of the assignee cannot be said to be violation of the order of assignment. The learned counsel had further contended that after a period of 10 years, the assignees are entitled to alienate the properties. Hence, the purchasers got valid title. In such an event, the finding of the first respondent that the only assignees have to challenge the cancellation of the assignment order is not legally sustainable. Hence, he prayed for allowing the writ petition.

10.Per contra, the learned Special Government Pleader appearing for the official respondents had contended that during inspection it has been found that the lands have not been brought into cultivation within a period of three years from the date of assignment. The lands have been sold to third party without obtaining any permission from the Government. As per the Revenue Standing Order, even the purchaser should be a person who is eligible to get an order of assignment from the Government. In the present case, the first purchaser or the second purchaser can never be considered to be a person eligible for assignment. The fact that all the four properties have been purchased by one person clearly indicate that he is not eligible for an order of assignment. He had further contended that no revenue records have



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been produced on the side of the assignees or by the purchaser to prove that the lands have been brought under cultivation within a period of three years from the date of assignment. He had further contended that the order of free assignment are granted in favour of the poor persons in order to uplift them with a condition that they should bring the lands under cultivation. This cannot be utilised by the assignees for selling lands to the third party. Hence, he prayed for dismissal of the writ petition.

11.I have considered the submissions made on either side and perused the materials available on record.

12.It is not in dispute that an order of assignment has been granted by the Government in favour of four persons in the year 1994. Those four assignees have chosen to alienate the property in favour of one C.T.Paramasivam. The said C.T.Paramasivam had approached the Tahsildhar and he had mutated the revenue records in favour of the purchaser. Thereafter, the said C.T.Paramasivam has sold the property in favour of the writ petition and based upon the sale deeds, revenue records have been mutated in favour of the writ petitioner.

13.The main ground on which the order of assignments are cancelled is that the permission have not been obtained by the assignee before alienating the property even after a period of 10 years. According to the learned counsel for the petitioner, Tahsildhar has granted the order of assignment and he is the



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authority to grant permission for alienation of the property. In the present case, the Tahsildhar has accepted the alienation and has mutated the revenue records in favour of the first purchaser namely C.T.Paramasivam. In case, if the Government had objected to the alienation, they should have done at the earliest point of time and not when the second alienation is effected by the purchaser. It is not clear from the order of the third respondent or by the first respondent whether the permission of the Government is required even for the second alienation also, when the first alienation has not been objected to by the Government authorities.

14.The order of assignment has been cancelled also on the ground that the lands have not been brought under cultivation within a period of three years from the date of assignment. The order of assignment was granted in the year 1994. The said finding has been arrived at based upon the inspection conducted in the year 2007. By conducting an inspection after a period of 13 years, the revenue authorities cannot arrive at a finding whether the lands were brought into cultivation between 1994 to 1997. It is also not brought on record whether there was any failure of monsoon from 1994 to 1997. It is also an admitted that the lands that were assigned were dry lands. Unless a finding is rendered that the period between 1994 to 1997, there is no failure of monsoon, the authorities cannot be found fault with the the assignees for not



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carrying out cultivation within a period of three years from the date of assignment.

15.The learned counsel appearing for the authorities had contended that the purchaser should also be a person who is eligible to get assignment from the Government. In the present case, the very fact that the first purchaser and the second purchaser have purchased four plots together will indicate that they are not eligible for an order of assignment. Though this argument is attractive, no such allegation was put forth before the writ petitioner herein, so that he could answer the same. It is also doubtful whether the issue of eligibility for getting patta would apply to the second purchaser also.

16.No doubt, there is a complete ban for alienating the property within a period of 10 years from the date of assignment. As per the order of assignment, the alienation can be made only after getting permission from the competent authority even after 10 years. In the present case, the first alienation has been accepted by the said competent authority and mutation of revenue records have taken place. The writ petitioner is the subsequent purchaser. Patta has also been mutated in the name of the subsequent purchaser. The authorities have to consider the fact that whether the condition in the Revenue Standing Order that the alienation can be done only with a



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prior permission of the Government would apply only for the first alienation or for the subsequent alienation also.

17.As far as the eligibility of the petitioner to get an order of assignment is concerned, the petitioner is not put on notice with regard to the said allegation as against her so as to submit her explanation. Hence, the order passed by the first respondent herein confirming the order of the third respondent is without any legal basis and hence, the same is set aside.

18.In view of the above said facts, the order impugned in the writ petition is set aside and the writ petition is allowed. The matter is remitted back to the file of the first respondent for fresh consideration. The first respondent is directed to conduct a fresh enquiry in the light of the above said facts and pass order on merits and in accordance with law after giving due opportunity to the writ petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

08.11.2022

Internet : Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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