



W.A.(MD)Nos.1201 and 1588 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2022

CORAM:

**THE HONOURABLE MR.JUSTICE S.S. SUNDAR
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

W.A.(MD).Nos.1201 and 1588 of 2019
and
C.M.P(MD)Nos.10381 of 2019 and 5191 and 6785 of 2020
in
W.A(MD)No.1201 of 2019
and
C.M.P(MD)No.12592 of 2019
in
W.A(MD)No.1588 of 2019

W.A(MD)No.1201 of 2019

- 1.The District Collector,
Pudukkottai District,
Pudukkottai.
- 2.The District Revenue Officer,
Pudukkottai District,
Pudukkottai.
- 3.The Revenue Divisional Officer,
Pudukkottai District,
Pudukkottai.
- 4.The Tahsildar,
Avudaiyarkovil Taluk,
Pudukkottai District.

.. Appellants/Respondents

Vs.



W.A.(MD)Nos.1201 and 1588 of 2019

- 1.Gunasundari(died)
- 2.Sundaram
- 3.Kannan
- 4.Muthamilselvi
- 5.Premavathy

...Respondents/Respondents/
Nil

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court dated 18.09.2019 made in Review Petition (MD) No.76 of 2019 in W.P(MD)No.25557 of 2018.

W.A(MD)No.1588 of 2019

- 1.The District Collector,
Pudukkottai District,
Pudukkottai.
- 2.The District Revenue Officer,
Pudukkottai District,
Pudukkottai.
- 3.The Revenue Divisional Officer,
Pudukkottai District,
Pudukkottai.
- 4.The Tahsildar,
Avudaiyarkovil Taluk,
Pudukkottai District.

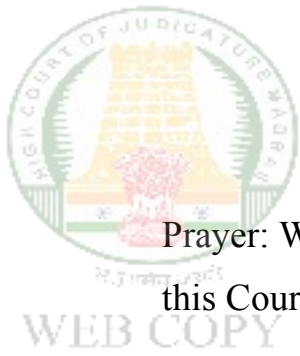
.. Appellants/Respondents

Vs.

- 1.Gunasundari(died)
- 2.Sundaram
- 3.Kannan
- 4.Muthamilselvi
- 5.Premavathy

...Respondents/Petitioners

(R2 to R5 are brought on record as Lrs of the deceased sole respondent vide Court order dated 03.12.2019 made in C.M.P(MD)No.11335)



W.A.(MD)Nos.1201 and 1588 of 2019

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court dated 11.03.2019 made in W.P(MD)No.25557 of 2018.

For Petitioner : Mr.Veera Kathiravan
Additional Advocate General
For R2 to R4 : Mr.G.Prabhu Rajadurai
for Mr.V.Manikandan
For Amicus Curiae : Mr.H.Arumugam

COMMON JUDGMENT

(Judgment of the Court was made by S.S.SUNDAR.J.,)

The first respondent, in both the writ appeals viz., Tmt.Gunasundari, filed a writ petition in W.P(MD)No.25557 of 2018 for the issuance of a writ of Certiorarified Mandamus to quash the impugned order of the second respondent dated 12.12.2018 and further to direct the Tahsildar to restore the patta in the name of the petitioner, in respect of the land in Survey Nos. 101/11 and 101/12 situated at Alathur village, Avudaiyar Kovil, Taluk, Pudukottai District. The said writ petition was allowed by the learned Single Judge of this Court, by order dated 11.03.2019. Against which, the appellants filed a review petition in Rev.Apl(MD)No.76 of 2019. By the time, the writ petitioner died and therefore, the respondents 2 to 5 were impleaded. The review application was also dismissed by the learned Single Judge, by order dated 18.09.2019. Aggrieved by the order in the writ petition, writ appeal in W.A(MD)No.1588 of 2019 is filed and against the order in the review application, writ appeal in



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W.A(MD)No.1201 of 2019 is filed by the appellants, who are the respondents in the writ petition in W.P(MD)No.25557 of 2018.

2.While entertaining the writ appeals, this Court granted interim stay of further proceedings in pursuant to the order in the writ petition as well as the review application in the independent appeals. Earlier, when the matter was heard by the Division Bench, lead by then Hon'ble the Acting Chief Justice, nominated the learned counsel Mr.H.Arumugam, as Amicus Curiae, to assist the Court. The Hon'ble Division Bench also considered, the issue whether the cancellation of assignment has to be informed to the Registrar, so that any purchaser may know as to whether the assignment has been cancelled or not. Since the purchaser from the assignee will be in dark about the cancellation of the assignment in the interest of public, the Hon'ble Division Bench wanted assistance from Amicus Curiae to pass appropriate orders.

3.Heard Mr.Veera Kathiravan, learned Additional Advocate General appearing for the appellants, Mr.G.Prabhu Rajadurai, learned counsel appearing for the respondents 2 to 5 and Mr.H.Arumugam, nominated by this Court to assist the Court as *Amicus Curiae*.



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Facts of this case:

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4.The first respondent viz., Tmt.Gunasundari, has purchased Nanjai land measuring an extent of 44 cents in S.No.101/11 and an extent of 15 cents in S.No.101/12 in Alathur Village, Pudukkottai District by a registered sale deed dated 13.08.1999 from one Villayutham. The writ petitioner, on the basis of the sale deed obtained from him, earlier filed a writ petition in W.P(MD)No. 2948 of 2017 before this Court and this Court, by order dated 21.02.2017 directed the Tahsildar to consider the representation of the petitioner for mutation of revenue records. However, the District Revenue Officer rejected the request of the writ petitioner on the ground that the land in question was originally assigned in favour of one Villayutham and that the said assignment had already been cancelled by the proceedings of the Revenue Divisional Officer dated 12.08.1987. Further, the District Revenue Officer by the impugned order directed the revenue officials to grant fresh assignment based on merits. Challenging the said order, the first respondent Tmt.Gunasundari filed a writ petition in W.P.(MD)No.25557 of 2018.

5.Before the writ Court, a counter affidavit was filed by the appellant stating that the assignment in favour of the vendor of the writ petitioner was cancelled in the year 1987. The learned Single Judge posed a question whether the cancellation of assignment was made after following due process. Though it



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was admitted that the name of the writ petitioner was originally entered in the revenue records, the petitioner's name was subsequently deleted and the lands were classified as Government poramboke in the year 2000. From that, it was inferred that no notice was issued to the writ petitioner before changing the revenue records as well as the classification of the lands. Since the learned Judge was not convinced with the reasons stated in the counter affidavit and the relevant documents were not produced before the learned Single Judge to show that cancellation of assignment in favour of petitioner's vendor and deletion of petitioner's name were after following due process of law, the writ petition was allowed. Thereafter, review petition was filed along with several documents, showing that, there was cancellation of assignment in favour of the vendors of the petitioner, after serving the show cause notice by affixture. The learned Single Judge found that there was no explanation as to why the show cause notice was not sent through registered post with acknowledgment due and that there was no material placed before the Court to show that the cancellation order was despatched or served on Villayutham. When it was submitted that a similar case at the instance of subsequent purchaser after cancellation of assignment by the same order had been rejected earlier, the Hon'ble Judge held the fact that the cancellation of assignment in respect of the others had been upheld by Land Commissioner cannot be put against the writ petitioner or her legal heirs and dismissed the review application as well.



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6.The appellants, before this Court, produced all the relevant records and it would be appropriate to narrate the sequence of events before considering the submission of the learned Additional Advocate General and the learned counsel appearing for the respondents.

(I)The vendor of the writ petitioner by name Villayutham submitted an application for assignment before the Tahsildar, on 19.03.1974. The application itself is in the printed format wherein the undertaking from the applicant has also been taken in the following lines:

“இதற்குமுன் எனக்கோ என் குடும்பத்தைச் சேர்ந்தவருக்கோ நில அடமானம் ஏதும் எந்தக் கிராமத்திலும் ஆகவில்லை. நில அடமானத்திற்குப் பிறகு 10 ஆண்டுகளுக்குள் நிலத்தைப் பராதீனம் செய்யக்கூடாது என்றும் அடமானம் உத்திரவான ஓர் ஆண்டுக்குள் நிலத்தை சீர்திருத்தம் செய்து சாகுபடிக்குக் கொண்டுவர வேண்டும் என்றும் தவறினால் யாதொரு வித நஷ்டஈடும் தராமல் நிலத்தை அரசினர் திரும்ப எடுத்துக் கொண்டு விடுவார்கள் என்பதை நன்றாக அறிவேன். அரசினர் அப்போதைக்கப்போது விதிக்கும் அடமான சட்ட திட்டங்களுக்குக் கட்டுப்பட்டு நடக்கச் சம்மதிக்கிறேன். மேலே சொல்லப்பட்டவை உண்மையான விபரங்கள் இதில் ஏதேனும் தவறுகள் இருந்து கண்டுபிடிக்கப்பட்டால் அதனால் வரும் தண்டனைக்கு நான் ஆளாக நேரிடும் என்பதை அறிவேன். அடமான தலத்தில் ஏக்கருக்கு 5 மரங்கள் வீதம் வைத்துப் பயிர் செய்ய வேண்டும் என்பதையும் தெரிந்து கொண்டேன்.”

(II)By proceedings in R Dis 2201/75, dated 14.04.1975, several parts of land in R.S.Nos.100, 101, 104 and 105 comprised in different sub-divisions



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were assigned in favour of 30 persons, including the vendor of the writ petitioner viz., Villayutham in respect of an extent of 44 cents in Rs.No.101/11 and another extent of 12 cents in R.S.No.101/12. The assignment was free of cost with a direction to the Special Tahsildar Arantangi to issue “D” card to the assignees on collection of S.D fees, stone value and tree value etc. There was a further direction to the Tahsildar to carry out necessary changes in the Village and Taluk accounts. It is further seen from the order of assignment produced before this Court, no conditions were attached. However, by proceedings dated 12.08.1987, the Revenue Divisional officer cancelled the assignments in favour of 133 persons, including the vendor of the writ petitioner viz., Villayutham. It is further seen from the order dated 12.08.1987 that the cancellation of assignments, which were made between 1969 and 1975 was only on the ground that the assignees had not brought the lands under cultivation within 3 years from the date of assignment and thereby, they have violated the condition of the assignment. It is pertinent to mention that the order cancelling the assignments in favour of 133 individuals refers to the fact that show cause notices were issued to all the assignees and there was no reply from any one of them. It is a three paragraphs order. It is to be seen that none of the assignees appeared before the Revenue Divisional officer and it is recorded that the assignment was cancelled as no one had given any reply to the show cause notice.



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(III) In the typed-set filed by the appellant, it is seen that a show cause notice, dated Nil, issued in the month of January 1987 by the Revenue Divisional Officer is produced. The said show cause notice is also in the printed format and it is stated that the assignee viz., Viilayutham, who is the vendor of the writ petitioner, had not brought the land under cultivation within 3 years from the date of assignment. The assignee was directed to submit his reply within 15 days from the date of receipt of the said show cause notice. The said show cause notice was addressed to the assignee. Behind the show cause notice there is an endorsement of the Village Administrative Officer, who had reported that the assignee refused to receive the show cause notice and hence, the show cause notice was served by affixture in the wall of house. A signature of one Govindan, who was a Village Watchman, was obtained, as witness.

7.The Tahsildar has submitted a report on 20.10.1988 to the effect that the cancellation of assignment is duly carried out in Village and Taluk Accounts. Further, the report indicates that the particulars of some of the assignees are not known and that the order of cancellation of assignment dated 12.08.1987 were served by affixture in the doors of the residential house of the assignees by the Village Administrative Officer, as all the assignees refused to receive the order. It is surprised to note that the show cause notice for all 133 assignees as well as the order of assignments were stated to be affixed on the



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door or on the wall of the residential house of the assignees. One of the alienee from one of the assignees had acknowledged the receipt of the order of cancellation dated 08.11.1987. It is also to be noted that for the assignees whose address was not known to the Tahsildar, he reported that the orders were served by planting a stick in the land itself. Though the cancellation of assignments was stated to have been carried out in the Village Account, it cannot be disputed that the revenue records continued to be in the name of the petitioner's vendor by name Villayutham. The original assignee Villayutham executed a sale deed in favour of the writ petitioner in respect of the entire land, which was assigned to him. The said sale document was registered as Document No.246 of 1999 in the Sub-Registrar Office, Memisal.

8.After the transfer of the lands in favor of the writ petitioner, the village account has been corrected by deleting the name of Villayutham and introducing the name of Gunasundari. It is also admitted that the writ petitioner filed a writ petition in W.P(MD)No.2948 of 2017, which was disposed of with a direction to the Tahsildar to consider the representation of the petitioner. By the impugned proceedings dated 12.12.2018 the District Revenue Officer, rejected the representation of the writ petitioner. In the said representation, the writ petitioner questioned the cancellation of patta. The District Revenue Officer, after getting a report from the Tahsildar, observed that the assignments



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in favour of the assignees had been cancelled by the proceedings of the Revenue Divisional Officer dated 12.08.1987 on the ground that the assignees had not brought the land under cultivation within 3 years in violation of Rule 15(3)(11) of the Assignment Rules. Though it is noted in the order that patta was transferred in the name of the writ petitioner by deleting the name of the assignee in the village account, patta was issued in the name of the writ petitioner. The District Revenue Officer has stated that the Village accounts had been changed by deleting the name of the writ petitioner and making an entry that the lands are Government Nanjai Tharisu(Arasu Nanjai Tharisu). It is further stated that the order was issued as per direction of this Court in W.P(MD)No.2948 of 2017 dated 21.02.2017 filed by respondents and that fresh assignment can be granted on merits.

9.Tmt.Gunasundari, who is the purchaser of the land from original assignee, filed the writ petition in W.P(MD)No25557 of 2019, and the same was allowed by the learned Single Judge, mainly on the ground that the cancellation of patta was without show cause notice or following due process. When the review application was filed with records, the learned Single Judge proceeded on the basis that the show cause notice before cancellation of assignment which is stated to have been served by affixture is not valid, as there was no explanation as to why the show cause notice was not sent through



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registered post with acknowledgment due. Further, the learned Single Judge observed that no material was placed to show that the order of cancellation of assignment was despatched or served on the original assignee. Since there was no proof to show that the cancellation of assignment was served to Villayutham, his right was held to be absolute till he executed sale deed in favour of writ petitioner. The contention raised by the learned Additional Advocate General to the effect that all other assignees had not challenged the order of cancellation and that the cancellation was upheld by the Land Commissioner in another case was also rejected by the learned Single Judge.

10.The learned Additional Advocate General raised several grounds on the basis of records, which were not produced before the learned Single Judge at the time of arguing the writ petition and submitted that the learned Single Judge failed to consider the records that was produced before the Writ Court at the time of hearing of the review application. Since the assignment was cancelled by order dated 12.08.1987 by the Revenue Divisional Officer, it is submitted that the transfer of land in favour of the writ petitioner after the cancellation of the assignment will not convey any valid title. It is further submitted that the Writ Court failed to consider the order of the land Commissioner in respect of one another assignee whose assignment was also cancelled by the same order dated 12.08.1987, confirming the cancellation in



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the revision filed by the subsequent purchaser. The learned Additional Advocate General relied upon Section 6 of Tamil Nadu Revenue Summons Act, 1869, which reads as follows:

“Section 6. The officer issuing the summons or a subordinate deputed by such officer under Section 5, shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908, for-

(a) summoning and enforcing the attendance of any person and examining him on oath; and

(b) requiring the production of any document or other article.”

11. Based on the above provision, the learned Additional Advocate General submitted that service of notice by affixture is also one of the valid mode. The learned Additional Advocate General further submitted that the writ petitioner or the original assignee did not challenge the order dated 12.08.1987 till date and that the writ petitioner being a subsequent purchaser cannot claim right over the property as her vendor Villayutham had already lost his title by virtue of cancellation of assignment about 12 years prior to the sale deed.

12. The learned counsel for the respondents 2 to 4 relied upon a few judgments of this Court and submitted that in several cases the cancellation of



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assignment was held to be bad without issuing notice to the assignee and serving the copy of the order. The learned counsel for the respondents further submitted that the condition attached to the order of assignment was not intimated to the assignees and that therefore, undertaking given by the original assignees in the printed format alone should be considered for the purpose of knowing the conditions attached to the assignment, as per the original order of assignment. Since the assignee has only stated that he is well aware that he has to bring the land under cultivation within one year and that he will not alienate the lands within a period of ten years from the date of assignment, a show cause notice is mandatory. Even in the show cause notice produced by the appellants before this Court the endorsement given by the Village Administration Officer is to the effect that the original assignees refused to receive notice and hence, notice was served by affixing the same on the wall. Since it is not even stated that the affixture was in the residential place of the assignee and no address is given, the service of show cause notice as reported by the Village Administrative Officer cannot be accepted as valid. It is further contended by the learned counsel for the respondents 2 to 4 that the assignee is entitled to be heard before the cancellation of assignment. The learned counsel further submitted that the order of cancellation cannot be given effect to in the absence of any evidence to prove that the same was served on the assignee or brought to his notice before the sale deed in favour of the writ petitioner. Referring to the



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proceedings of the Tahsildar dated 20.10.1988 reporting service of order of cancellation and effecting modification in the village account, the learned counsel pointed out that the revenue records continued in the name of assignee till the sale was executed by him in favour of the writ petitioner and the revenue accounts were also continued in the name of the writ petitioner, pursuant to the sale in favour of the writ petitioner. Since it is stated in the report that the order of cancellation was also served by affixing the order on the door, it is contended that the same cannot be considered as valid service. He then relied upon the report of the Village Administrative Officer, who has made an endorsement that except few, others refused to receive the order and hence, the orders were served on the wall or in the Door of the assignees. The learned counsel appearing for the respondents 2 to 4 further pointed out several infirmities and irregularities in the manner of service of show cause notice as well as the order cancelling the assignment and requested this Court to hold that the order of cancellation of the assignment is in valid and unenforceable in the Court of law by treating the same as non est or void.

13.The learned counsel Mr.H.Arumugam,, who has been nominated as Amicus Curiae, to assist this Court, has referred to Tamil Nadu Revenue Manual regarding the assignment of land, particularly, RSO.15 to 21, dealing with the assignment and cancellation of assignment. The learned counsel then



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relied upon Sections 17, 89 and 90 of Tamil Nadu Registration Act, 1908 and the relevant rules framed under the said Act which is applicable to the State of Tamil Nadu. He also relied upon a few judgments of this Court.

14.From the facts narrated and arguments advanced before this Court and after going through the records, this Court has framed the following points for consideration:

(1)Whether the manner of service of show cause notice as well as the order of cancellation of assignment from the documents produced by the appellants can be held as valid.

(2)Whether the cancellation of assignment by order dated 12.08.1987 is vitiated for violation of principles of natural justice?

(3)Whether the sale deed dated 13.08.1999 executed by the assignee in favour of the writ petitioner is valid and convey valid title in favour of writ petitioner?

(4)Whether the impugned order passed by the District Revenue Officer dated 12.12.2018 challenged by the writ petitioner can be sustained?

(5)What are the further directions that may be issued by this Court to the appellants, while dealing with the cases relating to cancellation of assignment?



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(6)Whether the assignment and the cancellation of assignment are required to be registered by the jurisdictional sub-registrar?

Point Nos.1 and 2

15.From the reading of relevant Revenue Standing Orders, this Court is able to see that the lands which are classified as assessed waste, which are fit and available for cultivation, or certain Government proamboke lands, can be assigned in favour of the persons, who are eligible for assignment and the assignment should be made as per the Revenue Standing Orders. When the lands are assigned in favour of the landless for cultivation, the lands should be cultivated within a period of 3 years from the date of assignment, as per the general condition of assignment found in the Revenue Standing Orders. The assignee shall not alienate the land within a period of 10 years. Even after the period of 10 years, the assigned lands can be alienated only with the permission of the competent authority. There were several restrictions in the case of assignment of poramboke lands and the procedure is prescribed with regard to the lands which can be assigned and other conditions to be incorporated in the assignment order. With regard to the lands, which are classified as assessed waste, the lands can be assigned in favour of the persons, who are in occupation of the lands, if they are eligible for assignment. If the encroacher is not landless



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poor, still the land can be assigned by collection of land value after obtaining orders from the Government or other competent authorities depending upon the value of the lands. For violation of conditions, the land is liable for resumption. However, even as per the revenue Standing Orders, the assigning authority must give an opportunity to the assignee mentioning the violation of conditions noticed. It is only after the receipt of the explanation and after a personal hearing, a decision can be taken and it should be communicated to the assignee. It is also to be noted that in respect of assignment made prior to 14.05.1973, it is only the commissioner of land administration /Government are competent to take action on any violation of conditions noticed. After 14.05.1973, the Revenue Divisional Officers are competent to cancel the assignment made by the Tahsildar within a period of 3 years and the Collector or the District Revenue Officers are empowered respectively can cancel or modify the order of assignment made by the Tahsildar and the Revenue Divisional Officer without any time limit. The Government Order in G.O.Ms.No.2555, Revenue, dated 14.05.1973 was held to be prospective by this Court and that no assignment prior to 1973 can be cancelled by the officer, who assigned the land, after the period of three years.

16.It is to be noticed that as per Tamil Nadu Revenue Mannual, the

Land Revenue to be collected in each village after including the water and



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penalty charges for unauthorized occupation, if any and the revenue account should be finalized once in a year before the end of the fasli (ie., before 30th June). This is called Jamabandi, ie., Annual statement of village accounts. Jamabandi is again an annual review of the work done by the Tahsildar, Zonal Deputy Tahsildar, Revenue Inspector and the Village Administrative Officer in each village. The village accounts become final only when they are approved by the Jamabandi officer. Adangal also should be prepared for assessed waste lands and poramboke lands. Adangal accounts contains the details of cultivation and the details of harvest. These accounts are expected to be prepared every month by the Village Administrative Officer with reference to the details of crop cultivated /harvested recorded in the adangal and sent to the Revenue Inspector before 20th of the month. The Revenue Inspector should have perused and incorporated it in his statement sent to the Tahsildars. It should be checked whether the accounts has been prepared in respect of the entire area shown in the accounts at the end of the fasili tally with the abstract noted in the adangal.

17.The Revenue Officials are expected to prepare adangal and finalize the account every year and the special instructions are given to the Village Administrative Officer and the Revenue Inspector to report the cultivation in respect of the land assigned, the violation of the condition and



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cultivation of lands including the assigned land is expected to be noticed every
fasili.

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18.In this case, the Revenue Divisional Officer appears to have entertained the proceedings for cancellation of assignment. However, the show cause notices were not issued by the Registered post. This Court is unable to accept the case of the RDO regarding the service of show cause notice to all the 133 persons by affixture as per the order of cancellation of assignment dated 12.08.1987. As pointed out earlier in the case of vendor of the writ petitioner, it is seen that the Village Administration Officer has endorsed that the assignee by name Villayutham refused to receive the notice and hence, notice was served by affixture on the wall. None of the 133 assignees against whom order of cancellation of assignment was made appeared or submitted objections. It is unbelievable. This Court is of the view that there was no notice to any of the assignee before cancellation of assignment. This was done consciously to pass order behind the back of assignees. It is not even stated on whose wall notice was affixed. Similarly the order of cancellation was also communicated by affixture, as per the endorsement made by the Village Administrative Officer. It is seen that in respect of the persons whose address was not known, the Village Administrative Officer endorsed that the order was served by affixture in a stick which was posted in the respective land. In respect of others, the Village



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Administrative Officer reported that the order was served by affixture by pasting the same on the wall or doors of the assignees. Even in the report, the address of the house of the assignee, in which the order was affixed is not mentioned. It is admitted that no notice was sent by registered post. This Court is unable to accept or believe that service of notice and final order was effected by affixture. The arguments of learned Advocate General referring to Tamil Nadu Revenue Summons Act, 1869 is not acceptable as the said Act has no application. Further, when no record is provided to show service of notice by Registered post, notice by affixture is illegal. In this case, this court is unable to believe such service in this case where assignments in 133 cases were cancelled at one stretch without the participation of any one of the assignee. Therefore, this Court hold that there was no notice to the assignee before cancellation and the order of cancellation is not served on the assignee. It is not established that the assignee had knowledge about the cancellation of assignment by any means.

19. In this context it is useful to refer to the following precedents:

20. In the case of *Seriya Pushpam, rep by her Power of Attorney M.Jayakumar -vs-The Special Commissioner and Commissioner for Land Administration, Chepauk, Chennai & others*, reported in 2021-2- L.W.548.

One of us in a similar case has held in follows:



“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. The conduct of the respondents in the present case indicates that they have no regard for law. The minimum protection available to the citizens of this country under Article 300A of the Constitution of India cannot be ensured if the respondents are allowed to meddle with the rights of the individual in the manner as seen in this case. Despite the fact that the petitioner, on coming to know that the pata in favour of her husband was cancelled, approached every authority by several representations, none of the respondents has considered the said representations. However, the respondent, after driving the petitioner to search in dark, went further by passing the impugned order, giving permission to Slum Clearance Board to enter upon the land. It is open for the respondents to assign or transfer any property in favour of any other department of Government and, in contemplation of such transfer, can permit the transferee department to enter upon the land. It is permissible only if the Government enjoys absolute right over the land. In the instant case, the assignment in favour of petitioner cannot be cancelled beyond a period of three years. Therefore, the order, cancelling the assignment, assuming to be true, is without jurisdiction, as it has been held by this Court in several judgments.



18. *When the order, cancelling the assignment, itself is not communicated to petitioner, it is an irregularity, nothing short of fraud. The authorities cannot act like this by keeping petitioner and her family in dark to their disadvantage.*”

21. A Division Bench of this Court, in the case of **M.G. Chakravarthi Naicker v. K.M. Thillaimoorthy**, MANU/TN/0443/1969 : 1970 (1) MLJ 476 : 1969 (82) L.W.688, has considered the scope of Board's Standing Order 15 (18) and held that an order of assignment cannot be cancelled without following the principles of natural justice. The following portion of the said judgment can be usefully referred to:

"23. Though Board's Standing Order 15, paragraph 3 (3) enumerates the class of persons who are eligible for assignment of lands by the issue of D. Form patta, no person can have a legal grievance if a person belonging to one class is preferred to a person belonging to another class. But once the Tahsildar communicates his order in Form D in Appendix V of Board's Standing Order, Volume 1, as required in Board's Standing Order 15, paragraph 18, certain legal rights accrue in favour of the grantee. As pointed out by Srinivasan, J., in Lakshmi Ammal v. Board of Revenue, Madras MANU/TN/0261/1964 : (1965) 2 M.L.J. 95 : I.L.R. (1965) 1 Mad 526 : (1964) 77 L.W. 293 at 295, referred to by my learned brother, the order of the Tahsildar is a quasi-judicial one subject to cancellation or modification in appeal or revision as provided in the Board's Standing Order. Unlike in the case of Board's



Standing Order 15, paragraph 12, which requires a communication by the Tahsildar to the parties concerned in Form D in Appendix V of Board's Standing Order apart from sending an order to the village authorities, there is no such requirement when the Government directly passes orders as contemplated in Board's Standing Order 15, paragraph 3 (5). The Government has made an order of assignment in favour of Manicka Naicker, the father of the first respondent Thillaimoorthy and directed the Collector of Chingleput to give effect to the order by evicting Chakravarthi Naicker from the land. By virtue of the said order, Manicka Naicker has acquired some rights in the land and the principles of natural justice require that his rights should not be affected adversely without his being heard and except on legal grounds such as those contemplated in Board's Standing Order 15, paragraph 18. In the subsequent order of the Government in favour of Chakravarthi Naicker, there is absolutely no discussion as to the merits of his claim to get the assignment of the land in his favour in spite of the prior order in favour of Manicka Naicker. It is no doubt open to the Government to interfere with their earlier order in favour of Manicka Naicker, if Chakravarthi Naicker is able to bring his case within the provisions of Board's Standing Order 15 paragraph 18, which embody only principles of natural justice usually applied in quasi-judicial proceedings."

22. The judgment of this Court in the case of ***R.Abdul Jabbar and 5 others.,-vs-The State of Tamil Nadu and 4 others***, reported in ***1996 (2) CTC 719 , 1988 (1) MLJ 364 , 1997 (03) LW 784***, wherein it is held as follows:



“10. There is no material before me to show that any notice was served on the petitioners before the impugned order was made, although there was some controversy between the parties that such notice was served by affixture. Having regard to the date of notice and the date of the impugned order, and the both having been signed on the same date, it is very difficult for this Court to accept that notices as required were served on the petitioners. At any rate, when a serious civil consequence has resulted by the passing of the impugned order, affecting the rights of the petitioners over the immovable properties, it was expected that the authorities ought to have in the first place attempted to serve notice on the petitioners personally. More so, when the records stand in the name of the petitioners and the Headquarters Deputy Tahsildar himself had allowed the applications made by the petitioners to permit them to have separate holdings on the basis of the partition deeds. A reading of the impugned order shows that the lands are said to be resumed not on the ground that any one of the conditions was violated but the said order was passed on the ground that the lands are required for NLC and as per Clause 22. If such lands were to taken over, whether the cancellation of assignment was required at all? Clause 22 authorises the State Government to resume the land if NLC requires them for their purposes. Cancellation of assignment possibly could arise only for violation of any one of the conditions attached to the grant. Since the petitioners are not given notice before passing the impugned order and that they were not provided with any opportunity to put forth their case, I have no



hesitation to hold that the impugned order cannot be sustained.

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23. A Division Bench of this Court, in the case of ***M.R. Samiappan v. Secretary to government, Revenue Department, MANU/TN/0263/1987 : 1988 (1) L.W.165 : 1988 (1) MLJ 364***, had an occasion to set aside an order, cancelling the assignment, in the following lines:

"2. The learned Government Pleader contended that till the actual sale deed is executed after receipt of the consideration, the Government could set aside the order. It is true that the Government being an executive authority could cancel the earlier assignment order. But such cancellation should be for valid reasons and it cannot be done arbitrarily. In this case, as already stated, the land was in the occupation of the appellant for a long period prior to the B Memos were issued to him. Though the Government found that his occupation was objectionable and that he cannot be considered to be a landless poor, still the Government considered on the earlier occasion that as a special case, he should be assigned. No fresh facts had come to the notice of the Government to hold that the earlier order was made mistakenly or on wrong assumption of facts. Fully aware of all the circumstances mentioned in the show cause notice they have granted the assignment on the earlier occasion as a special case. In such circumstances, we are of the view that the appellant gets a vested right in the property and therefore that order could not be varied to his disadvantage at any time. The writ appeal is accordingly allowed, the order of the



learned single Judge and also the impugned order of the Government are set aside. There will be no order as to costs in this appeal."

24. Cancellation of assignment of land in favour of ex-servicemen was again the subject matter of lis in the case of ***M.N.C. David v. Commissioner of Land Administration and two Others***, reported in ***MANU/TN/1617/1997 : 1997-3 L.W.784***, and a learned single Judge of this Court has held therein as follows:

"The petitioner has also produced D Form Patta. The said Form D, does not say that the petitioner himself, being in service, should cultivate the land. Under those circumstances, it is hard to believe that the person, who is in service, should cultivate the land personally. The submission of the learned Government Advocate that after his retirement, the person, to whom the land has been assigned should personally cultivate, cannot be accepted. The land has been assigned, when he was serving and there is no clause in the assignment order, that, he should personally cultivate the land, after his retirement. Further, the grounds assigned by the respondents for cancellation of the assignment that the petitioner is not a resident of the village and he has not mentioned the income, are not the grounds for cancellation of the assignment. The authorities below have proceeded on the basis that the land has been assigned to the petitioner, as an Ex-Serviceman and not as a person, who was in service. Under those circumstances, the



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respondents were not justified in cancelling the assignment, which was granted in the year 1969, after a lapse of more than 20 years."

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25. This Court and the Hon'ble Supreme Court repeatedly held that the order in violation of principles of natural justice is bad when order is likely to affect the civil rights of the persons concerned. For the purpose of this case. It is useful to refer to the following judgment in ***P.C. Thanikavelu vs. The Special Deputy Collector for Land Acquisition, Madras and Ors. AIR (1989) Mad 222*** where following the judgement of the Hon'ble Supreme Court in the case of ***Swadeshi Cotton Mills vs. Union of India reported in (1981) 2 SCR 533***, a full bench of this court has observed as follows:

6. But the rule of law which governs and controls the executive functions in the thread that runs through the fabric of constitutional democracy, the rule of law behoves the Government to act fairly and reasonably and the principles of natural justice are the quintessence of such fair play and reasonableness. The decision reported in Padmavathi v. State of Tamil Nadu (1978) 91 MLW 80 does not reflect the true statement of law. The Supreme Court has held in Swadeshi Cotton Mills v. Union of India, MANU/SC/0048/1981 : [1981]2SCR533 that even in the absence of express reference to observance of principles of natural justice, such principles should be followed whenever it affects the rights of parties.



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26. While holding that The Evidence Act has no application to enquiries conducted by the tribunals, the Constitutional Bench of Hon'ble Supreme Court, in the case of ***Union of India vs. V.T.R Varma*** reported in ***AIR 1957 SC 882***, has held as follows:

'10.Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of Law. Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.'

27. A Three Member Bench of the Hon'ble Supreme Court, in the case of ***The Commissioner of Coal Mines Provident Fund, Dhanbad and Ors.***



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Vs. J.P. Lalla and Sons, reported in ***AIR 1976 SC 676***, held as follows:

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'12.This Court in the India Sugars and Refineries Ltd. v. Amravathi Service Corporation Society Ltd. and Anr. etc. C. As. Nos. 2070 2074 of 1970 decided on 19 November, 1975, said that "situations in which a duty will arise to act judicially according to the natural justice cannot be exhaustively enumerated. A duty to act judicially will arise in the exercise of a power to deprive a person of legitimate interest or expectation that additional price would be paid The facts which point to an exercise of powers judicially are the nature of the interest to be affected the circumstances in which the power falls to be exercised and the nature of the sanctions, if any, involved". When a body or authority has to determine a matter involving rights judicially the principle of natural justice is implied if that body or authority affects individual rights or interests. Again, in such cases having regard to the particular situation it would be unfair for the body or authority not to have allowed a reasonable opportunity to be heard, see State of Punjab M.K.R. Erry & Sobhag Rai Mehta MANU/SC/0602/1972 : (1973)ILLJ33SC : AIR 1973 SC 834.'

28. Again a Three Member Bench of the Hon'ble Supreme Court in the case of ***S.L. Kapoor Vs. Jagmohan and Ors.***, reported in ***AIR1981SC136***, wherein the relevant paragraphs are extracted hereunder:

'16.Thus on a consideration of the entire material



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placed before us we do not have any doubt that the New Delhi Municipal Committee was never put on notice of any action proposed to be taken under Section 238 of the Punjab Municipal Act and no opportunity was given to the Municipal Committee to explain any fact or circumstance on the basis that action was proposed. If there was any correspondence between the New Delhi Municipal Committee and any other authority about the subject matter of any of the allegations, if information was given and gathered it was for entirely different purposes. In our view, the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. We do not suggest that the opportunity need be a 'double opportunity' that is, one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met. We disagree with the finding of the High Court that the Committee had the opportunity to meet the allegations contained in the order of supersession.

24.The matter has also been treated as an application of the general principle that justice should not only be done but should be seen to be done. Jackson's Natural Justice (1980 Edn.) contains a very interesting discussion of the subject. He says :



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The distinction between justice being done and being seen to be done has been emphasised in many cases. The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of the maxim are found in Lord Widgery C.J's judgment in R.V. Home Secretary, Ex. P. Hosenball (1977) 1 W.L.R.766 whereafter saying that 'the principles of natural justice are those fundamental rules, the breach of which will prevent justice from being seen to be done' he went on to describe the maxim as "one of the rules generally accepted in the bundle of the rules making up natural justice. It is the recognition of the importance of the requirement that justice is seen to be done that justifies the giving of a remedy to a litigant even when it may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by an impartial tribunal. The maxim is applicable precisely when the Court is concerned not with a case of actual injustice but with the appearance of injustice, or possible injustice. In Altco Ltd. v. Sutherland (1971) 2 Llo Rep. 515 Donaldson J said that the court, in deciding whether to interfere where an arbitrator had not given a party a full hearing was not concerned with whether a further hearing would produce a different or the same result. It was important that the parties should not only be given justice, but, as reasonable men, know that they had had justice or "to use the time hallowed phrase" that justice should not only be done but be seen to be done. In R.V.



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Thames Magistrates Court, ex.p. Polemis (1974) 1 W.L.R.1371 the applicant obtained an order of certiorari to quash his conviction by a stipendiary magistrate on the ground that he had not had sufficient time to prepare his defence. The Divisional Court rejected the argument that, in its discretion it ought to refuse relief because the applicant had no defence to the charge. It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say : 'Well, even if the case had been properly conducted, the result would have been the same'. That is mixing up doing justice with seeing that justice is done (per Lord Widgery C.J. at p. 1375). In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It will comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal.



29. It is useful to refer to the judgement of the Hon'ble Supreme Court, in the case of ***State of Haryana vs. Ram Kishan and Ors.***, reported in ***AIR 1988 SC 1301***, while dealing with a case where mining lease was prematurely terminated without prior notice to writ petitioners, The Hon'ble Supreme Court interpreted the statutory provision to imply affording an opportunity of being heard in the para 7 and para 8 of this judgement in the following lines.

'7.The language of Section 4A clearly indicates that the Section by itself does not prematurely terminate any mining lease. A decision in this regard has to be taken by the Central Government after considering the circumstances of each case separately. For exercise of power it is necessary that the essential condition mentioned therein is fulfilled, namely, that the proposed action would be in the interest of regulation of mines and mineral development. The question of the State Government granting a fresh mining lease in favour of a Government Company or a Corporation arises only after a decision to terminate the existing mining lease is arrived at and given effect to. The Section does not direct termination of all mining leases, merely for the reason that a Government Company or Corporation has equipped itself for the purpose. The Section was enacted with a view to improve the efficiency in this regard and with this view directs consultation between the Central Government and the State Government to be held. The two Governments have to consider whether premature



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termination of a particular mining lease shall advance the object or not, and must, therefore, take into account all considerations relevant to the issue, with reference to the lease in question. It is not correct to say that an existing mining lease can be terminated merely for the reason that a Government Company or Corporation is ready to undertake the work.

8.Considered in this light, the Section must be interpreted to imply that the person who may be affected by such a decision should be afforded an opportunity to prove that the proposed step would not advance the interest of mines and mineral development. Not to do so will be violative of the principles of natural justice. Since there is no suggestion in the Section to deny the right of the affected persons to be heard, the provisions have to be interpreted as implying to preserve such a right. Reference may be made to the observations of this Court in Baldev Singh and Ors. v. State of Himachal Pradesh and Ors. MANU/SC/0098/1987 : AIR1987SC1239 , that where exercise of a power results in civil consequences to citizens, unless the statute specifically out the application of natural justice, such rules would apply. The cases, Union of India and Anr. v. Cynamide India Ltd. and Anr. MANU/SC/0076/1987 : [1987]2SCR841 ; D.C. Saxena v. State of Haryana AIR 1987 1463, and State of Tamil Nadu v. Hind Stone etc. MANU/SC/0394/1981 : [1981]2SCR742 , relied upon by Mr. Mohanta do not help the appellant. The learned Counsel placed reliance on the observations in paragraphs 5 to 7 of the



judgment in Union of India v. Cynamide Ltd. which were made in connection with legislative activity which is not subject to the rule of audi alteram partem. The principles of natural justice have no application to legislative activities, but that is not the position here. It has already been pointed out earlier that the existing mining leases were not brought to their end directly by Section 4A itself. They had to be terminated by the exercise of the executive authority of the State Government. Somewhat similar was the situation with regard to Section 4A of Haryana Board of School Education Act, 1969 which was under Consideration in D.C. Saxena v. State of Haryana MANU/SC/0624/1987 : (1987)IILLJ360SC . A matter of policy was adopted and included by the legislature in the impugned section. Besides, the validity of the Section was not under challenge there, as was expressly stated in paragraph 6 of the judgment. So far as the case, State of Tamil Nadu v. Hind Stone is concerned, the learned Counsel for the appellant cited it only with a view to emphasise the importance of the mineral wealth of the nation which nobody denies. We, therefore, held that a final decision to prematurely terminate a lease can be taken only after notice to the lessee.'

30. It is not only a person is entitled to be heard before passing of an order affecting his civil right but it is more essential that an order affecting a person's civil rights shall be communicated to the party. The Hon'ble Supreme Court in the case of **Saral Wire Craft Private Limited-v-Commissioner of**



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Customs, Central Excise and Service Tax and Others, reported on (2015) 14

Supreme Court Cases 523, has considered the effect of non- communication of order in the following lines:

7.It is an anathema in law to decide a matter without due notice to the concerned party. Every effort must be taken to meaningfully and realistically serve the affected party so as not merely to ensure that he has knowledge thereof but also to enable him to initiate any permissible action. The Appellant justifiably submits that it was statutorily impermissible for the Respondents to serve the Adjudication Order on a "kitchen boy", who is not even a middle level officer and certainly not an authorized agent of the Appellant. The version of the Appellant that it learnt of the passing of the Adjudication Order dated 30.3.2012 only when, in the course of the recovery proceedings, the Department's officials had visited its unit, is certainly believable. The fact that, firstly, the Order had not been passed in the presence of the Appellant, so as to render its subsequent service a formality, and secondly, that the Order came to be passed after an inordinate period of eight months should not have been ignored. This fact should not have been lost sight of by the Authorities below as it has inevitably led to a miscarriage of justice.

8.The Inspector of the Department should have meticulously followed and obeyed the mandate of the statute and tendered the Adjudication Order either on the party on whom it was intended or on its authorized agent and on one else. It is not the Respondents' case that Shri Sanjay was the authorized agent.



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Even before us, despite several opportunities given, the Respondents have failed to file their response to the Special Leave Petitions so as to controvert the asseveration of the Appellant that Shri Sanjay on whom the decision was tendered was a mere daily wager 'kitchen boy' and that the Appellant had no knowledge of the passing of the Adjudication Order. We are also informed that the recoveries envisaged in the Adjudication Order have already been effected.

9.It is in these circumstances that we are of the clear conclusion that a miscarriage of justice has taken place, in that the Authorities/Courts below have failed to notice the specific language of Section 37C(a) of the Act which requires that an Order must be tendered on the concerned person or his authorized agent, in other words, on no other person, to ensure efficaciousness. We must immediately recall the decision in Taylor v. Taylor (1875) 1 Ch. D 426, rendered venerable by virtue of its jural acceptance and applicable for over a century. It was approved by the Privy Council in Nazir Ahmad v. King Emperor (1935-36) 63 IA 372 and was subsequently applied in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh MANU/SC/0053/1954 : AIR 1954 SC 322, State of UP v. Singhara Singh MANU/SC/0082/1963 : AIR 1964 SC 358, Babu Verghese v. Bar Council of Kerala MANU/SC/0168/1999 : (1999) 3 SCC 422 and more recently in Hussein Ghadially v. State of Gujarat MANU/SC/0613/2014 : (2014) 8 SCC 425. As observed by this Court in Babu Verghese,

“31.It is the basic principle of law long settled



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that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all.”

10.The Inspector who ostensibly served the copy of the Order should have known the requirements of the statute and therefore should have insisted on an acknowledgement either by the Appellant or by its authorized agent. The Inspector had a statutory function to fulfil, not a mere perfunctory one. The Appeals are accordingly allowed and the impugned Orders are set aside.”

31.Since this Court has held that the show cause notice as well as the order of cancellation was not served on the assignee at any point of time, the order of cancellation of assignment dated 12.08.87 is bad, illegal and liable to be treated as void and non est. When the order cancelling the assignment is not even communicated, it is a serious irregularity amounting to fraud with an intention to create vested interest in third parties behind the back of original assignees as the lands are still assessed waste and impugned order gives an indication that the lands are available for fresh assignment.

32. It is to be noticed that the cancellation of assignment is on the ground that the assignee had not brought the land under cultivation within 3 years. Therefore, the cancellation depends upon the fact whether the assignee



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had brought the land under cultivation within 3 years. When the proceedings are initiated merely after 12 years of assignment, the question was whether the assignee had complied with the valid condition or not. Unless the assignee was given an opportunity it will be unfair to proceed further. Even the report based on which the Revenue Divisional Officer proceeded to initiate action for cancelling the assignment ought to have been served on the assignee. Therefore, the order cancelling assignment is certainly in violation of the principles of natural justice. When the order is not communicated to the assignee and it is not established before this Court that the order was communicated to the assignee, this Court is of the view that the order of cancellation can be treated as void and non-est in the eyes of law. Hence, Points No.1 and 2 are answered by holding that the show cause notice or the order cancelling assignment was served on the assignee.

33. Further, the assignment was subject to the condition that the assignee should bring the land for cultivation within a period 3 years. No record is produced before this Court to show that there was no cultivation in the land any time after the assignment. It is to be noted that the assignment was not cancelled within a reasonable time, after noticing violation. When there is no restrictions of the alienation beyond 10 years from the date of assignment, this Court is of the view that the cancellation of assignment after 12 years on the



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ground that the land was not brought under cultivation within 3 years is arbitrary. Though there is no specific clause in the order of assignment, from the object behind the policy of Government to assign lands, which are classified as assessed waste, this Court is of the view that it is unreasonable to initiate proceedings for cancellation of assignment only on the ground that the lands were not brought under cultivation after 12 years.

Point No. 3

34. Admittedly, there is no material produced before this court or before the Writ Court to show that the assignee had knowledge of cancellation of assignment in the year 1987. It is now established that the revenue records shows the name of assignee till he executed the sale deed in favour of writ petitioner on 13.08.1999. It is also evident that the revenue records were updated by introducing the name of writ petitioner in the place of assignee as pattadar. The documents produced before this Court and the revenue records falsifies the endorsement/report of Tahsildar dated 20.10.1988 to the effect that the order of Revenue divisional officer dated 12.08.1987 has been given effect to by updating the revenue records. When it is admitted that the lands have not been reclassified or restored to revenue before the impugned order, this court entertains a doubt as to the truth and genuineness of the proceedings. This court has witnessed several instances of land grabbing by person with money power with the convenience of corrupt revenue officials. The land classified as



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assessed waste indicates that the land is a ryotwari land assessed to land revenue before settlement. During settlement, there was no individual notice to all ryots and settlement proceedings were completed by Assistant settlement officers sitting in distant places. For want of particular about the ryots who are in physical possession of ryotwari lands which were in the lawful holdings of ryots such lands were classified as assessed waste. Government identified these lands to be assigned to landless poor or in favour of persons in possession.

35. In this case the respondent has produced before this court, the application submitted by the assignee to get assignment of specific extent, that is an extent of 40 cents in S.No. 101/11 and 15 cents in S.No. 101/12. This suggests that the assignee has acquaintance with the lands and might be in enjoyment of the land. Since he did not own any other land, the undertaking in the printed format is to the effect that he will not alienate the land for a period of 10 years. The assignment order signed on 14.04.1975 shows assignment of lands in favour of 30 persons including the vendor of respondent by name villayutham. There is no indication specifying any condition for assignment. Based on the written undertaking obtained in the application it can be said that the assignee had given an undertaking that he will not alienate the land for a period of 10 years. No record is produced to show that the conditions restraining alienation without permission even after 10 years was

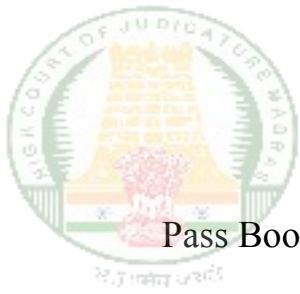


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communicated to the assignee. The order of assignment does not refer to any Government order or Revenue/Board standing order. In such circumstances, the contention of learned counsel appearing for respondent that there was no restriction to alienate the lands after 10 years is acceptable. Further the alienation in this case is after 25 years and hence the alienation as such by a registered sale deed dated 13.08.1999 is not illegal and it is not in violation of any condition of assignment. From the sale deeds executed by assignee in favour of writ petitioner, the land which is classified as Nanja land has been sold by the assignee by describing him as the absolute owner without reference to any assignment. From the facts noticed and admitted before this Court as evident from the documents produced, this court is of the view that the sale deed dated 13.08.1999 executed by the assignee in favour of the writ petitioner is perfectly valid and it conveyed valid title in favour of the writ petitioner.

Point No.4

36. It is admitted that the writ petitioner immediately after purchasing the lands have applied for mutation of revenue records. It is to be noted that as per sub section (2) and (3) of section 5 of Tamil Nadu Patta Pass Book Act, on the registration of a document of conveyance, the registering authority shall make a report of such registration and send a certified extract of the entries to the Tahsildar and the Tahsildar shall carry out necessary changes in the Register of Patta Pass Book maintained by him and shall carry out changes in the Patta



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Pass Book issued under section 3 and issue a new Patta Pass Book on collection of such fees. In the present case, the extract of settlement report prepared after UDR has been produced by the appellants. This clearly shows that the writ petitioner's name "Gunasundari" has been written after rounding the name of "Villayutham". This document clearly proves that the mutation of revenue records had taken place even though patta had not been issued to the writ petitioner.

37. It is surprising to note that the representation of the writ petitioner to issue patta to her was also forwarded by the second appellant (DRO) to the fourth respondent on 28.03.2017. The writ petitioner earlier filed a writ petition in W.P. No. 2948/17 for getting patta and the said writ petition was disposed of with a direction to consider the application of writ petitioner. The writ petitioner sent a fourth representation to the District Collector along with the copy of order in W.P. No. 2948 of 2017 on 01.04.2017. A further representation from the writ petitioner to the District Collector was also acknowledged by the office of collectorate on 25.10.2018. It was only thereafter the District Revenue Officer passed the impugned order dated 12.12.2018

38. It is pertinent to mention that the Second Appellant (DRO) has referred to the mutation of revenue records in favour of writ petitioner pursuant



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to the order of Tahsildar dated 30.11.1999 after the registration of sale deed.

However, the impugned order also refers to the entry made by a surveyor in 2000 about the rounding of name of the writ petitioner to change the land as Government Nanja Tharisu. Earlier, in W.P. No. 2948 of 2017, the Tahsildar was directed to consider the representation of petitioner for grant of patta after giving due opportunity of hearing to the petitioner/ or a rival claimant if any. However, the second appellant without any notice of hearing passed the impugned order by recording that the impugned order is passed as per the order in W.P. No. 2948 of 2017. The impugned order is as follows:

“இந்நிலையில் திருமதி.குணசுந்தரி க/பெ.சுந்தரம் என்பவரால் சென்னை உயர்நீதிமன்ற மதுரைக்கிளையில் தொடரப்பட்ட W.P(MD)No2948/2017 வழக்கின் தீர்ப்புரையில் மனுதாரரின் கோரிக்கையை பரிசீலனை செய்ய ஆவுடையார்கோவில் வட்டாட்சியருக்கு உத்தரவிடப்பட்டுள்ளது.

எனவே சென்னை உயர்நீதிமன்ற மதுரைக்கிளையில் வழக்கு எண் W.P(MD)No2948/2017-யின் 21.02.2017 நாள்ிட்ட நீதிமன்ற உத்தரவின்படி ஆவுடையார்கோவில் தாலுகா ஆலத்தூர் வருவாய் கிராமம் புல எண்.101/11 பரப்பு 0.18.0 ஏர்ஸ் மற்றும் 101/12 பரப்பு .06.0 ஏர்ஸ் அரசு நன்செய் தரிக இடங்களுக்கு தகுதியின் அடிப்படையில் நில ஒப்படை வழங்க உத்தரவிடப்படுகிறது.”

39. The impugned order is in violation of Principles of Natural Justice as no opportunity was given to the writ petitioner as directed by this Court. For the first time, the appellants have come forward with a case that the



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assignment in favour of writ petitioner's vendor had been cancelled by an order dated 12.08.1987. It is pertinent to mention that the order dated 12.08.1987 was not cited as reference but only the report of Revenue Divisional Officer dated 13.11.2018. This court has already held that the order cancelling assignment was not served on anyone and no notice was issued to the assignee before cancellation of assignment. This court has already held that the order cancelling assignment is liable to be treated as void and non est. This court is convinced that the serious irregularity and unexplained lapses clearly raises serious doubts about the integrity of Revenue Officials. The intention appears to be to reclassify the land as assessed waste and then to create vested interest in favour of strangers. With the reputation already earned by revenue officials, this court is unable to accept this case as a *bona fide* action to resume the land for violation of condition of assignment. Even though the learned Single Judge has not dealt with facts for want of complete records, in view of the conclusion reached above, this court has no reasons to interfere with the order of learned Single Judge. The appeals are devoid of any merits.

POINT 5:

40. Since the State Government and the Commissioner of Administration are not parties in the proceeding, this Court without hearing all stake holders is not inclined to give general direction to the State or Revenue



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Department out of caution. However, this Court expresses its concern over the manner in which the Revenue officials respect the individual's right with reference to their land holdings.

POINT 6:

41. It is useful to refer to some of the provisions of the Registration Act and the Rules framed by the State Government.

17.Documents of which registration is compulsory.—

(2)Nothing in clauses (b) and (c) of sub-section (l) applies to—

(vii)any grant of immovable property by[Government]; or

89. Copies of certain orders, certificates and instruments to be sent to registering officers and filed.—*(1) Every officer granting a loan under the Land Improvement Loans Act, 1883 (19 of 1883), shall send a copy of his order to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved or of the land to be granted as collateral security, is situate, and such registering officer shall file the copy in his Book No. 1.*

(2) Every Court granting a certificate of sale of immovable property under the Code of Civil Procedure, 1908 (5 of 1908), shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1 or get it scanned.

(7)Every officer granting any deed or other document purporting to be or to evidence, the grant or a assignment by the Government of land or of any interest in land shall send a copy of such deed or other document to the registering officer within the local limits of whose jurisdiction the whole or any part of the land comprised in such deed or document is situate and such registering officer shall file the copy in his Book No.1 or get it scanned.



90.Exemption of certain documents executed by or in favour of Government.

(1)Nothing contained in this Act or in the Indian Registration Act, 1877 (3 of 1877), or in the Indian Registration Act, 1871 (8 of 1871), or in any Act thereby repealed, shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps, namely:—

(d)sanads, inam, title-deeds and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land; or

11.(i)A file book shall be maintained in each registration office corresponding with book No.1. In this shall be filed-

(a)copies of maps and plans mentioned in Section 21;

(b)copies and memorandum of registered instruments received under Sections 64 to 67;

(c)copies of certificates and orders received under Section 89;

(d)returns of lands acquired under the Land Acquisition Act;

(e)communications received from officers of other departments intimating the cancellation, modification or rectification of transactions evidenced by papers previously filed;

(f)copies of instruments of collateral security executed under the Land Improvement Loans Act received from Revenue Officers.

(ii)A separate file shall also be opened for filing copies and translations presented under Sections 19 and 62 of the Act or under rule 15(i). The copies and translations placed in this file shall be connected by cross reference with the entry in the register.”



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42. As per Section 17(2) (vii) any grant of immovable property by the Government, Section 17(1) of the said Act, is not applicable to any grant of immovable property by the Government or competent authority. As per Section 89(7) of the Registration Act, every officer granting any deed or other document purporting to be or to evidence, the grant or a assignment by the Government of land or of any interest in land shall send a copy of such deed or other document to the registering officer within the local limits of whose jurisdiction the whole or any party of the land is located and registering officer shall file the copy of the such document in his book No.1 or get it scanned. Section 90 of the Registration Act, also exempts the applicability of the provisions of the Registration Act to any document to evidence assignment of Government land.

43. As per Rule 11 of the Registration Rules, framed under The Registration Act, indicates that a file book shall be maintained in each registration office corresponding with book No.1. The copies of orders received under Section 89 shall be filed and maintained in the Register Office. From the provisions of Registration Act r/w., relevant Rules, this Court is of the view that the Revenue Officials granting assignment by any deeds or other document purporting to be or to evidence, any grant or a assignment is required to send a copy of such document to the registering officer who shall file the copies in his



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Book No.1. Similarly, when a deed of assignment or a grant is filed in the register's book No.1, the cancellation of such assignment also shall be entered in the same book. Hence, it is the duty of the Registrar to make entries regarding assignments or grants. Similarly cancellation or modification of assignment by subsequent orders shall also be forwarded to the Registering Officer and the same shall be duly entered in the same book in Book No.1. When any one files an application for encumbrance, the entries in Book No.1, shall also be reflected in the encumbrance certificate.

44.In view of the specific provisions under Registration Act and the Rules above referred to, this Court is inclined to suggest the following recommendations to the Revenue Department.

- (i) Copy of every deed or document purporting to be one to evidence any grant or assignment shall be submitted by the authority concerned to the Registering Authority in whose jurisdiction the land or portion of the land is situated within a reasonable time from the date of grant or assignment for making necessary entries in the Book No.1
- (ii) Every copy of proceeding or order modifying or cancelling the grant or assignment shall also be forwarded to the Registering Authority by the competent authority within a reasonable time.
- (iii) Upon receipt of such copy of deed or document or order or



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proceedings evidencing any grant or assignment or cancelling or modifying the grant or assignment shall be entered in Book No.1 by the concerned Sub Registrar within one month and Registrar shall ensure reflection of such entries in the encumbrance certificate that may be issued.

(iv) Since the Additional Advocate General did not respond to the submission on this issue, this Court only requests these recommendations to be followed in public interest and this will be subjected to any notification or guidelines or circular that may be appropriately issued or to be issued in future either by Government or Inspector General of Registration.

45. In view of the above, this Court is of the view that the appeals are liable to be dismissed. Accordingly, the same stands dismissed. The names of the respondents 1 to 4 shall be entered in the revenue records, as pattadhars forthwith and separate patta shall be granted to them by the concerned Tahsildar, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R.J.) (S.S.Y.J.)
08.07.2022

Index : Yes / No
Internet: yes



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S.S. SUNDAR, J.,
and
S.SRIMATHY,J.,
Ns

To

- 1.The District Collector,
Pudukkottai District,
Pudukkottai.
- 2.The District Revenue Officer,
Pudukkottai District,
Pudukkottai.
- 3.The Revenue Divisional Officer,
Pudukkottai District,
Pudukkottai.
- 4.The Tahsildar,
Avudaiyarkovil Taluk,
Pudukkottai District.

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and

C.M.P(MD)Nos.10381 of 2019 and 5191 and 6785 of 2020

in

W.A(MD)No.1201 of 2019

and

C.M.P(MD)No.12592 of 2019

in

W.A(MD)No.1588 of 2019

08.07.2022