



W.P.(MD) No.28773 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD) No.28773 of 2022

and W.M.P.(MD) Nos.22748 & 22750 of 2022

1.P.Ponnu Durai

2.M.Vijayalakshmi

3.K.Nanthini

4.M.Senthamarai

5.A.Pappathiammal

6.M.Girija

7.S.Muthukumar

8.A.Mariammal

9.M.Ramaraj

10.G.Selvalakshmi

Vs.

... Petitioners

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- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Adi Dravidar Welfare Department,
St. George Fort,
Chennai.
- 2.The District Collector,
Thoothukudi District,
Thoothukudi.
- 3.The Special Tahsildar,
O/o. The Adi Diravidar Welfare Department,
Kovilpatti,
Thoothukudi District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned notices issued by the 3rd respondent vide his proceedings in Na.Ka.A/SR1/2004 dated 23.09.2022 and the consequential impugned notice issued by the 3rd respondent vide his proceedings in Na.Ka.A/SR1/2004 dated 19.10.2022 and quash the same as illegal.

For Petitioners : Mr.Ajmalkhan,
Senior Counsel for
Ms.H.Jasima Yasmin

For Respondents : Mr.M.Sarangan,
Addl. Government Pleader.



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ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

This Writ Petition has been filed for issuance of a Writ of Certiorari, calling for the records relating to the impugned notices issued by the 3rd respondent, vide his proceedings in Na.Ka.A/SR1/2004 dated 23.09.2022 and the consequential impugned notice issued by the 3rd respondent vide his proceedings in Na.Ka.A/SR1/2004 dated 19.10.2022 and quash the same as illegal.

2. When the matter is taken up for admission, after elaborate arguments, the learned Senior Counsel appearing for the petitioners has pointed out that as against the impugned notices, there is an appeal provision to file an appeal before the District Collector and therefore, he is inclined to approach the District Collector, without withdrawing the writ petition. Therefore, we have to proceed with the writ petition based on the available materials and based on the submission made by the parties concerned.



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In the year 1998, the first respondent has acquired the land in S.Nos.479/1, 479/2, 481/1 and 481/2 for the purpose of distributing house sites to the poor Harijans and issued patta to 502 beneficiaries. In the meantime, the land owners have filed a writ petition before this Court and obtained an interim order and therefore, the beneficiaries were not able to put on possession in the said house sites. Challenging the said interim order, the beneficiaries filed W.A.Nos.161 and 162 of 2006 and this Court, by order dated, 06.08.2009, allowed the writ appeals in favour of the land owners and challenging the said order, the land owners preferred a SLP before the Hon'ble Apex Court and the same was dismissed on 22.11.2010. According to the petitioners, the Government has acquired the land for total extent of 19.12 acres out of which, 3.02 acres of land was returned to the original owners in accordance with the orders of this Court. Therefore, the remaining area to an extent of 16.10 acres is available for implementing the project of providing house sites to the beneficiaries. In the meantime, these petitioners were purchased the property from the beneficiaries and they have been in continuous possession in the aforesaid property for several



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decades. The petitioners being the poor downtrodden people and working as labour and coolies, constructed a concrete house in the aforesaid land. The said fact is also admitted by the respondents in the impugned proceedings. In the meantime, the Tamil Nadu Arunthathiyar Sangam has filed a writ petition before this Court, represented by its District President, M.Paul Pandi @ Paul Pandiyan before this Court in W.P.28428 of 2012. The relevant portions of the said order reads as follows:

“2. The case of the petitioner is that he is the District President of the Tamil Nadu Arunthathiyar Association situated at Kovilpatti, Tuticorin District. The members of the above said association have applied to the Government as well as to the District Collector, Tuticorin to provide house sites for construction of houses under Harijan Welfare Act. The respondents 2 and 3 have acquired the land in S.No.479/1 to an extent of 5.28 hectares, S.No.479/2 to an extent of 0.245 hectares, S.No.481 to an extent of 099.0 Hectares, S.No.481/1 to an extent of 0.87.5 Hectares and S.No.481/2 to an extent of 0.35.0 Hectares for the purpose of distributing house sites to the poor harijans and accordingly, the Government have issued pattas to 502 beneficiaries in the year 1998. After receiving the said pattas, the respective beneficiaries entered into the lands in order to put up huts in the house sites allotted to them. Pursuant to the



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passing of the award, the original land owners approached this Court by filing W.P.Nos.5470 and 5471 of 1998 and obtained interim orders. Hence, the beneficiaries were not able to put huts in the said house sites. Thereafter, the beneficiaries, who are the respondents in the writ petition, filed writ appeal in W.A.Nos.161 and 162 of 2006 challenging the interim orders. This Court, vide its order dated 06.08.2009, allowed the writ appeals. Aggrieved by the orders, the land owners preferred an SLP before the Hon'ble Apex Court and the same was dismissed on 22.11.2010.

3. It is the further case of the petitioner association that earlier, the total land acquired by the respondents 2 and 3 was measuring to an extent of 19.12 acres, out of which, 3.02 acres of land was returned to the original owners as per the Judgment of this Court. The remaining area of an extent of 16.10 acres is available for implementing the project. However, it is the case of the petitioners that even after lapse of a decade, the petitioners are not able to construct the houses, as persons have illegally encroached upon the lands and the respondents have not taken any steps to evict the said persons and to implement the scheme in favour of the beneficiaries. Having no other option, the petitioner Association has filed the present writ petition before this Court seeking appropriate directions.



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4. The learned counsel for the petitioner submitted that this Court may issue a direction to the official respondents to remove the illegal encroachers and to reissue patta in favour of the original allottees so as to enable the members of the petitioners' association, who were originally allotted lands, to construct houses, within the reasonable time as fixed by this Court.

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8. This Court gave its anxious consideration to the submissions as also the report filed by the respondents, which clearly reveal that certain illegal encroachments have come up within the lands, which have been allotted to the original beneficiaries. In such circumstances, on the basis of the report filed by the Tahsildar, this Court directs the respondents to take necessary action against the illegal occupants with the co-ordination of the Rural Development Department and TANGEDCO and upon removing the illegal encroachers from such occupation in the manner known to law, thereafter, the respondents shall identify the original beneficiaries and allot the land to the original beneficiaries as per the revised layout. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

9. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.”



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4. The said order has been passed by the writ Court based on the report submitted by the Tahsildar and the said order has become final. According to the petitioners, in the aforesaid order, the petitioners have not impleaded as party. Based on the said order, the third respondent has chosen to issue the impugned notices dated 23.09.2022 and the consequential notices dated 19.10.2022. As against the same, the petitioners have filed this writ petition.

5. The learned Senior Counsel appearing for the petitioners submitted that the petitioners have filed their explanations to the show cause notices dated 07.10.2022. However, without considering the same, the third respondent has issued the consequential notices dated 19.10.2022. He further submitted that these petitioners are also entitled to get assignment patta, since, they are in the category of downtrodden people and therefore, the action of the third respondents is illegal and the same is liable to be set aside.

6. Per contra, the learned Additional Government Pleader appearing for the respondents submitted that only for giving benefits to the Adi Dravidar



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Community people, assignment patta was granted by the Government and therefore, the petitioners have no legal right for seeking patta in the aforesaid lands. He further submitted that in Clause 4 of the said assignment patta, it is clearly stated that there is a bar for the beneficiaries to mortgage or to sale or to gift or to lease the said lands in favour of any third parties. Contrary to the aforesaid conditions, the beneficiaries have sold the said lands to the petitioners. He further submitted that except the first petitioner, all other petitioners are not belonging to the Adi Dravidar Community and therefore, the contention of the learned Senior Counsel appearing for the petitioners that the petitioners are entitled to get assignment patta, is not sustainable. He further submitted that based on the order passed by this Court in the writ petition filed by the Tamil Nadu Arunthathiyar Sangam in W.P.No.28428 of 2012, the third respondent has taken action for removal of encroachments by issuing the impugned notices dated 23.09.2022 and 19.10.2022 and therefore, this Writ Petition is liable to be dismissed.



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7. This Court heard the submissions made by the learned counsel appearing on either side and perused the materials available on record.

8. On a perusal of the records, it is seen that originally the lands have been acquired by the department for the purpose of providing free house sites patta to the Adi Dravidar community people and issued assignment patta to the beneficiaries. It is the contention of the learned Senior Counsel appearing for the petitioners that these petitioners have purchased the lands through unregistered sale deeds from the original beneficiaries, constructed houses for several decades and they are in continuous possession of the said property. With regard to the aforesaid submission of the learned Senior Counsel appearing for the petitioners is concerned, we are of the view that the original beneficiaries are entitled for the possession of the said property as per the allotment issued by the respondents and the petitioners have also admitted that they have purchased the property by way of unregistered sale deed and in Clause 4 of the assignment patta, there is a bar to sell the property to the third parties and therefore, these petitioners cannot seek any legal rights for continuous possession of the said



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property and the petitioners also have not been granted any assignment patta by the department.

9. Therefore, in the light of the above order, dated 07.04.2022, passed by this Court in W.P.No.28428 of 2012 and the factual submissions made by the respondents, the contention of the petitioner that no order can be passed behind the back of a person adversely affecting his rights and if any such order is passed, the same is liable to be ignored as not binding on such a person since it has been passed in violation of the principles of natural justice, cannot be countenanced.

10. At this juncture, it would be relevant to refer the decision of the Hon'ble Supreme Court in *Aligarh Muslim University vs. Mansoor Ali Khan [(2000) 7 SCC 529]*, wherein, in paragraph No.24, it has been held as follows:

“24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L. Tripathi Vs. State Bank of India (1984(1) SCC 43), Sabyasachi Mukherji, J. (as he then was) also laid down the



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principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed: quoting Wade's Administrative Law, (5th Ed.PP. 472-475) as follows: (SCC p.58, para 31)

"....it is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as their scope and extentThere must have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth".

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in State Bank of Patiala Vs. S.K. Sharma (1996(3) SCC 364). In that case, the principle of 'prejudice' has been further elaborated. The same principle has been reiterated again in Rajendra Singh Vs. State of M.P. (1996(5) SCC 460)."

11. Further, it is seen that the impugned notice has been issued only after issuance of Section 7 and Section 6 notices to the petitioners. Therefore, we are of the view that there is no irregularity or illegality in the impugned



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notice issued by the third respondent and we find no merit in the contentions raised by the petitioners and the writ petition is, therefore, liable to be dismissed.

12. Accordingly, the writ petition is dismissed. However, it is made clear that this order will not stand in the way of the respondents granting any other alternative lands to the petitioners, if they are permissible under law. No costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K., J.] [R.V., J.]

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Index : Yes / No

Internet : Yes / No

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D.KRISHNAKUMAR, J.
and
R.VIJAYAKUMAR, J.

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To

- 1.The Secretary,
State of Tamil Nadu,
Adi Dravidar Welfare Department,
St. George Fort,
Chennai.
- 2.The District Collector,
Thoothukudi District,
Thoothukudi.
- 3.The Special Tahsildar,
O/o. The Adi Diravidar Welfare Department,
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