



W.P.No.18348 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2023

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.18348 of 2016

and

W.M.P.Nos.16052 and 16053 of 2016

1.N.Venkitusamy Gounder
2.V.Maheswari
3.Govindammal

... Petitioners

versus

1.The Commissioner of Land Administration,
Chepauk, Chennai – 600 005.

2.The Assistant Commissioner,
Land Reforms,
Erode, Erode District.

3.The Revenue Divisional Officer,
Dharapuram Division,
Tiruppur District.

.....Respondents

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the impugned order made in D.1/56/2014 (L.Ref.) D1/SMRP1/2016 (L.Ref) dated 28.04.2016 issued by the 1st respondent and quash the same.

Pg.Nos.1/14



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For Petitioners : Mr.N.Manokaran
For Respondents : Mr.P.Gurunathan
Additional Government Pleader

ORDER

This Writ Petition has been filed to quash the impugned order in D.1/56/2014 (L.Ref.) D1/SMRP1/2016 (L.Ref), dated 28.04.2016, issued by the first respondent herein.

2. The case of the petitioners is that they were inducted as cultivating tenants for the properties comprised in S.F.Nos.47 to 51 and 52/A situated at Kozhumanguli Village, Dharapuram Taluk ad-measuring 30 acres. Based on the petition dated 07.01.1983 given by the petitioner and his father under Section 4(2) of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969, the Tenancy Recording Officer/Revenue Tahsildar, Dharapuram vide order in T.R.No.1/1983, dated 26.10.1987 registered the name of the petitioner and his father as cultivating tenants. While that being so, the above said extent of the land was notified as surplus lands and the



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Assigning Authority invited applications for assigning the same to landless poor people. Initially, the second respondent declined to grant assignment to the petitioners. However, continuous efforts taken by the petitioners by way of filing appeal, on 28.08.2001, the second respondent being an Assigning Authority granted assignment for an extent of 12 acres out of the total extent of 30 acres, under Section 8(4) of the 'Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965' [hereinafter referred to as 'Rules, 1965'] to the petitioners herein and one Veerammal, who is the mother of the first petitioner. The said Veerammal had relinquished her right in the name of the first petitioner on 03.12.2001 and she died on 01.02.2003. However, the impugned notice has been issued in the name of a dead person. From the date of obtaining assignment, the petitioners have been in possession and enjoyment of the said lands for more than five decades. Since assignment was issued in favour of the petitioners only for 12 Acres, in respect of the remaining 18 acres, the first petitioner had already filed civil suits and the same are pending for adjudication. When the parties had already approached the competent Civil Court for ventilating their rights, it may not be permissible for the respondents to conduct parallel enquiry, otherwise it



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would have some bearing over the rights of the parties to the suit. While that being so, the first respondent issued impugned order in D.1/56/2014 (L.Ref.) D1/SMRP1/2016 (L.Ref), dated 28.04.2016, to take up *suo motu* revision by invoking Rule 11(3)(b) of the Rules, 1965 against the order of assignment issued on 28.08.2001. Challenging the said order, the petitioner is before this Court.

3. Learned counsel for the petitioners submitted that the impugned notice is not valid on two grounds i.e limitation and one another is *suo motu* revision power can be done within five years. In the present case, the petitioners were granted with assignment on 28.08.2001, whereas, impugned notice was issued on 28.04.2016, which is beyond the period of five years. Therefore, the impugned notice issued by the first respondent is *per se* arbitrary and illegal. The further contention of the learned counsel for the petitioners is that, the views expressed by the authorities in the impugned notice is nothing but empty formalities. Even after the petitioners appeared for enquiry, they did not get any favourable orders. Therefore, the impugned order is liable to be set aside.



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4. The learned counsel in support of his contentions has relied upon the following judgments:-

- (i) 2015 (3) SCC 695, [Collector Vs. D.Narsing Rao]***
- (ii) 95 L.W, [Devaraja Padayachi, M. Vs. The District Revenue Officer]***
- (iii) 2009 (9) SCC 352 [Santoshkumar Shivgonda Patil and others Vs. Balasaheb Tukaram Shevale and Others]***
- (iv) 2010 SCC Online AP 406 : (2010) 6 ALD 748 : (2010) 4 ALT 538 [Joint Collector, R.R.District, Hyderabad and another Vs. D.Narasing Rao and others]***
- (v) 2003 (7) SCC 667 [Ibrahimpatnam Taluk Vyavasaya Coolie Sangham Vs. K.Suresh Reddy and Others]***
- (vi) 2013 (5) MLJ 53 [K.Desikan Vs. State of Tamil Nadu rep.by its Secretary (Land Reforms) Chennai and Others.***
- (vii) 1997 (6) SCC 71 [Mohammad Kavi Mohamad Amin Vs. Fatmabai Ibrahim]***



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(viii) 2007 (5) CTC 737 [G.Karmegal Vs. The Joint Sub

Registrar]

(ix) 2010 (3) MLJ 1 [K.S.Arjun & Ors. Vs.

Asst.Commissioner]

(x) 2010 (13) SCC 427 [Oryx Fisheries Pvt. Ltd Vs.

Union of India]

5. Learned Additional Government Pleader appearing for the respondents submitted that the Land Commissioner taken up the case on *suo motu* revision by invoking Rule 11(3)(b) of the Rules, 1965 based on the representation given by one A.Balasubramanian, dated 10.04.2014, in and by which, the said A.Balasubramanian sought to cancel the assignment made to the petitioners herein on the ground that they got assignment on suppression of facts. In order to provide an opportunity to the petitioners, the first respondent has issued the impugned notice. The impugned order is nothing but a show cause notice to the petitioners to appear for enquiry on 12.05.2016. Since the petitioners and A.Balasubramanian had not appeared for enquiry, the case was adjourned to 25.05.2016 and on that day the



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complainant not turned up and the petitioners herein represented by their counsel sought time for filing counter. In the meanwhile, the petitioners filed the present writ petition. He further contended that the petitioners have got an alternative remedy to appear before the authority concerned to make their submissions, hence, this writ petition is not maintainable.

6. Heard both sides and perused the materials available on record.

7. It is seen from the records that out of 94.25 acres, 35.43 ½ acres was declared as surplus lands in Kolumanguzhi Village of Dharapuram Taluk under Section 18(1) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, as amended by the Tamil Nadu Land Reforms (Reduction of Ceiling on Land) Act, 1970. As such above said extent of 35.43 ½ acres was assigned to 34 persons on 31.12.1993. Challenging the same, the petitioners herein filed appeals before the Land Tribunal and the Land Tribunal by order dated 13.12.1999 set aside the order of the assignment dated 31.12.1993 and remanded back to the second respondent for fresh enquiry and disposal. After enquiry, the petitioners herein have got



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assignment of land to an extent of 12.00 acres on 28.08.2021. Ever since they are enjoying the property for more than 15 years and cultivating the lands by planting coconut trees and also they put up pump set. While that being so, one A.Balasubramanian made a representation dated 10.04.2014 to the Land Commissioner stating that the petitioners misrepresented that as if they are landless poor and got the assignment. Further, the petitioners suppressed the facts that the assignee Maheswari's (second petitioner herein) husband is working as a Government Servant and also the assignee Govindammal (third petitioner herein) is permanently residing at Erode and she has got assignment by giving wrong address. Now, the entire land of 12.00 acres is under the occupation of the first petitioner herein and hence, he requested to cancel the assignment issued in favour of the petitioners. Based on the representation dated 10.04.2014, the Land Commissioner had issued impugned notice dated 28.04.2016. Even after receipt of the said notice, instead of appearing before the first respondent for enquiry, the petitioners have filed the present writ petition.

8. Learned counsel for the petitioners mainly contended that after five



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years from the date of the order of assignment, the proceedings cannot be *suo motu* re-opened. The citations referred by the learned counsel for the petitioners relating to *suo motu* powers under the limitation can be relied in normal course and the same is not applicable when a fraud is committed by the petitioners. This Court is not inclined to go into the same as they are not applicable to the facts of the present case and hence, the judgments referred to by the learned counsel for the petitioners are not applicable to the present case.

9. In the present case the main allegation is that the petitioners suppressed the material facts and played fraud and obtained assignment Patta for the subject properties. Further, the first respondent had issued impugned notice only based on the representation given by one A.Balasubramanian. In order to give opportunity to the petitioners/ assignees, to conduct enquiry after giving notice and pass appropriate orders in accordance with law, the Land Commissioner issued impugned notice and fixed the date for enquiry. In the counter affidavit itself it is stated that the copy of the representation made by A.Balasubramanian was served on



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the petitioners. Therefore, certain things mentioned in the impugned notice that may not prejudice to the petitioners for appearing before the respondents and make their submissions.

10. Resultantly, this Court finds that the petitioners were obtained assignment on 28.08.2001, and the authority concerned received representation from one A.Balasubramaian on 10.04.2014, based on that the first respondent issued impugned notice to the petitioners on 28.04.2016, therefore, there was no enormous delay in issuing the impugned notice. Further, the impugned notice was issued on the main ground that the petitioners suppressed the facts and played fraud and obtained assignment and therefore, the limitation period mentioned under 11(3)(b) of the Rules, 1965 would not be applicable to the present case. The impugned notice clearly shows that, it is only an enquiry notice, therefore, the petitioners may not be prejudiced for that. However, the petitioners should get a fair chance before the authority concerned.

11. For better appreciation, it is appropriate to extract Section 11(3)(b) of Rules, 1965:



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"The land Commissioner may, at any time, of his own motion, within a period of five years from the date of the order of assignment or the date of the order of the appellate authority, as the case may be, set aside, cancel, revise or in any way modify the order of assignment or the order on appeal or revision or issue such directions as he may deem fit, if he is satisfied that the order was grossly inequitable. If he is satisfied that there has been a material irregularity in the procedure or that the order was passed under a mistake of fact or owing to fraud or misrepresentation or that the assignee is not eligible for assignment or that the extent assigned together with other lands if any held by the assignee or the members of his family other than a Co-operative Society exceeds the limits specified in sub Rule (2) of Rule (5), he may exercise such powers without any limit of time. He may also issue directions as he may deem fit even while the proceedings are in progress before the assigning authority or the appellate authority."

12. Under these circumstances, the first respondent is directed to issue a fresh notice to the petitioners and one A.Balasubramanian within a period of fifteen days from the date of receipt of a copy of this order.



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Thereafter, the first respondent is directed to conduct an enquiry and pass appropriate orders on merits and in accordance with law, without any influence or observations made in this writ petition and dispose of the *suo motu* revision petition on merits and in accordance with law, within a period of three months, thereafter.

13. With the above directions, this Writ Petition is disposed of. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

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Chepauk, Chennai – 600 005.
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P.VELMURUGAN, J.

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