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W.P.Nos.12833 & 15312 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.12833 & 15312 of 2020

and

W.M.P.No.19141 of 2020

W.P.No.12833 of 2020:

A.Venkatachalam

... Petitioner

Vs.

1. The Additional Chief Secretary and
Commissioner of Land administration,
Chepauk, Chennai-600 005.

2. The District Collector,
Kallakurichi District.

3. The Thasildar,
Chinnasalem Taluk,
Kallakurichi District.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, to call for the records on the file of the 1st respondent proceedings under R.O.C. No.G1/ 37291/2010 dated 11.08.2020 and quash the same.



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For Petitioner : Mr.Avinash Wadhwani for
Mrs.V.Srimathi

For Respondents : Mr.R.Ramanlal,
Additional Advocate General, assisted by
Mr.T.Arun Kumar,
Additional Government Pleader

W.P.No.15312 of 2020
and W.M.P.No.19141 of 2020:

P.Shanmugam

... Petitioner

Vs.

1. The Commissioner of
Land Administration,
Chepuak, Chennai-5

2. The District Collector,
Kallakurichi District,
Kallakurichi.

3. K.Ramasamy

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the impugned Notice made in Roc. Proceeding No.G1/37291/2010 dated 11.8.2020 issued by the 1st respondent, quash the same consequently forbear the respondents infringing petitioner right to property in respect of the assigned lands measuring 2.04.5 Ares in S.F. No.376/10 and an extent of 0.82.0 Ares in S.F.No.376/11, Rayappanur Village, Chinna Salem Taluk, Villupuram District.



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For Petitioner : Mr.N.Manokaran

For Respondents :
(for R1 & 2) : Mr.R.Ramanlaan,
Additional Advocate General, assisted by
Mr.T.Arun Kumar,
Additional Government Pleader

(for R3) : Mr.P.Sesu Balan Raja

COMMON ORDER

Both the writ petitions are filed challenging the order dated 11.08.2020, passed by the Commissioner of Land Administration, cancelling the land assignment given to the writ petitioners under the Revenue Standing Orders.

2. The petitioner in W.P.No.15312 of 2020 was assigned to an extent of 2.34 acres comprised in S.F.No.376/11 in the year 1970. The petitioner has stated in his affidavit that his father late Periya Gounder was assigned a Government land to an extent of 5.00 acres in S.F.No.376/10 in the year 1964. Thus, the father of the writ petitioner and the petitioner were assigned government land to an extent of 7.34 acres in total.



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3. The petitioner in W.P.No.12833 of 2020 states that he was assigned with the government land to an extent of 2.91 acres in Survey No.376/1A in Royapponur Village. Though the petitioner has not stated about the previous assignment made in favour of his mother, the learned counsel appearing on behalf of the 3rd respondent in W.P.No.15312 of 2020 brought to the notice of this Court that the mother of the writ petitioner A.Venkatachalam was assigned Government land to an extent of 5 acres prior to the assignment made in favour of the petitioner and the petitioner Mr.Venkatachalam suppressed the said fact and secured assignment of Government land from the authorities.

4. The mother of the petitioner in W.P.No.12833 of 2020 was assigned 5 acres of land in Survey No.376/7 in the same village.

5. Several writ petitions, complaints and appeals filed before the authorities. However, the common facts between the 2 writ petitioners are that the writ petitioners in both the writ petitions were assigned government lands to an extent of more than 2 acres and the father of Mr.P.Shanmugam (petitioner in W.P.No.15312 of 2020) was assigned 5



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acres and the mother of Mr.A.Venkatachelam (petitioner in W.P.No.12312 of 2020) was assigned with the Government land to an extent of 5 acres.

6.The learned counsel for the petitioner Mr.P.Shanmugam mainly contended that the third respondent K.Ramasamy had given a complaint on personal vengeance since he is a neighbour to the writ petitioner. The assignment was made 55 years back and the petitioner is cultivating the land himself through his labour and therefore, the cancellation of the assignment made by the Commissioner of Land Administration is improper. It is contended that the petitioner has not violated any of the assignment conditions and more so, the Odai i.e., watercourse was prevailing even at the time of the assignment and the petitioner is not encroaching upon the watercourse in the subject land and thus, there is no other reason, whatsoever, to cancel the assignment granted 55 years back.

7. The learned counsel for the petitioner drew the attention of this Court with reference to the assignment order and also the statement made by the Deputy Tahsildar and the District Revenue Officer. Relying on the report, it is contended that the petitioner has not violated any of the conditions stipulated in the assignment order and the cancellation of the



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assignment was made merely based on the complaint given by the 3rd respondent with some personal motive. The learned counsel for the petitioner relied on the judgement of the Division Bench of this Court by stating that the writ petitions were filed by the writ petitioners wherein the Division Bench remanded the matter back to the Commissioner of Land Administration for adjudication and to pass orders on merits. The Commissioner of Land Administration has failed to consider the fact that the petitioner has not violated any of the assignment conditions and merely on the ground that Odai and a Burial ground are found in the subject land, the assignment was cancelled. In fact, the petitioners are protecting the watercourse and the burial ground, not causing any nuisance to them and that being the factum, the order impugned is to be set aside.

8. The learned counsel appearing on behalf of the petitioner in W.P.No.15312 of 2020 made a submission that absolutely there is no reason to cancel the assignment. The assignment was made in accordance with the revenue standing orders. There is no finding in the impugned order to establish that the petitioner has violated the assignment conditions. The petitioner is in peaceful possession and enjoyment of the government land assigned for the past several years and is cultivating the same. The



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purpose for which the land was assigned has not been violated and therefore, the order impugned is to be set aside. The learned counsel for the petitioner relied on the findings made by the Commissioner of Land Administration and contended that the assignment was cancelled without any valid reason and by merely stating that there is an Odai and a burial ground. Said facts are not disputed by both the petitioners and in fact the petitioners are not causing any inconvenience to the people of that locality who all are burying bodies in the burial ground. More so, the watercourses are also protected and they are not causing any damage to the watercourse and thus, the impugned order is to be set aside.

9. The learned Additional Advocate General, appearing on behalf of the State mainly contended that the very assignment made in favour of the petitioner is in violation of the Revenue Standing Order 15. RSO 15(38)(ii) denotes “watercourse Poramboke”. It states that “great care should be taken to preserve the margins of canals, channels, and streams. The transfer and assignment of such watercourse source porambokes can be ordered only by the Government in consultation with the Commissioner of Land Administration and the Chief Engineer of Public Works Department.” In view of the said Revenue Standing Order, the assignment made in respect



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of the watercourse Poramboke is untenable. The Hon'ble Supreme Court of India and the High Court, in catena of Judgments held that the watercourse and water bodies have to be preserved to protect the water resources in the country. Assignments cannot be made in respect of the watercourse or water bodies.

10. The learned counsel for the petitioners made a submission that the said Government order in RSO 15 was inserted in the year 1997. In such circumstances, the Commissioner of Land Administration or the Government, is empowered to initiate suo motu review of the assignment for the purpose of cancelling the assignment, if any, made in the water bodies or objectionable Government Poramboke lands. This exactly is the reason why the suo motu power has been conferred on the Commissioner of Land Administration and the Government for the purpose of setting right the errors if any occurred or based on the new policy decision taken by the Government.

11. RSO 15(3) provides who are eligible for assignment. Accordingly, "only landless and poor persons who are likely to engage themselves in direct cultivation shall be eligible for assignment of land free



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of land value, subject to the conditions of assignment, imposed in the 'D' Form patta.” Therefore, the landless poor persons are alone eligible for assignment of Government land at free of cost for cultivation and power of alienation has not been conferred on them.

12. In the present case, in respect of the writ petitioner P.Shanmugam, his father was earlier assigned with the Government land to an extent of 5 acres. By suppressing the said assignment made in favour of his father, the petitioner got the assignment of the Government land at free of cost to an extent of 2.34 acres.

13. The petitioner Mr.A.Venkatachalam was assigned Government land to an extent of 2.91 acres. However, he secured such assignment by suppressing the fact that his mother was assigned with Government land to an extent of 5 acres long back. Both the writ petitioners got assignment by suppressing the fact that their father and mother respectively were assigned Government lands to the extent of 5 acres each. Now, both the petitioners are in possession of Government land to an extent of more than 7.5 acres each. This, very fact would be sufficient to form an opinion that the petitioners are not entitled for the assignment which was made in their



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name subsequently after the assignment of their father and mother respectively. Thus, the conditions of assignments are violated, pertinently the eligibility criteria fixed in the revenue standing order has been violated even at the time of initial assignments of Government lands.

14. The learned counsel appearing on behalf of the third respondent in W.P.No.15312 of 2020 relied on the judgment of the Hon'ble Supreme Court of India, in the case of case of **Meghmala and others vs. G. Narasimha Reddy and others, 2010(8) SCC 383**, has held as follows:

"Fraud/Misrepresentation :-

20. It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts ecclesiastical or temporal." (Vide S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. & Ors. AIR 1994 SC 853). In Lazarus Estate Ltd. Vs. Besalay 1956 All. E.R. 349), the Court observed without equivocation that

"no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

21. In Andhra Pradesh State Financial Corporation



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Vs. M/s. GAR Re-Rolling Mills & Anr. AIR 1994 SC 2151; and State of Maharashtra & Ors. Vs. Prabhu (1994) 2 SCC 481. this Court observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and sub-letties invented to evade law."

22. In Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers. AIR 1992 SC 1555, it has been held as under:-

"Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct."

23. In United India Insurance Co. Ltd. Vs. Rajendra Singh & Ors. AIR 2000 SC 1165, this Court observed that "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries.

24. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court



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should not perpetuate the fraud. (See District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. Vs. M. Tripura Sundari Devi (1990) 3 SCC 655; Union of India & Ors. Vs. M. Bhaskaran (1995) Suppl. 4 SCC 100; Vice Chairman, Kendriya Vidyalaya Sangathan & Anr. Vs. Girdharilal Yadav (2004) 6 SCC 325; State of Maharashtra v. Ravi Prakash Babulalsing Parmar (2007) 1 SCC 80; Himadri Chemicals Industries Ltd. Vs. Coal Tar Refining Company AIR 2007 SC 2798; and Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr. (2009) 8 SCC 751).

25. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. (Vide Dr. Vimla Vs. Delhi Administration AIR 1963 SC 1572; Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550; State of Andhra Pradesh Vs. T. Suryachandra Rao AIR 2005 SC 3110; K.D. Sharma Vs. Steel Authority of India Ltd. & Ors. (2008) 12 SCC 481; and Regional Manager, Central Bank of India Vs.



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Madhulika Guruprasad Dahir & Ors. (2008) 13 SCC 170).

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26. *An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. (Vide S.P. Changalvaraya Naidu (supra); Gowrishankar & Anr. Vs. Joshi Amba Shankar Family Trust & Ors. AIR 1996 SC 2202; Ram Chandra Singh Vs. Savitri Devi & Ors. (2003) 8 SCC 319; Roshan Deen Vs. Preeti Lal AIR 2002 SC 33; Ram Preeti Yadav Vs. U.P. Board of High School & Intermediate Education AIR 2003 SC 4628; and Ashok Leyland Ltd. Vs. State of Tamil Nadu & Anr. AIR 2004 SC 2836).*



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27. In kinch Vs. Walcott (1929) AC 482, it has been held that "....mere constructive fraud is not, at all events after long delay, sufficient but such a judgment will not be set aside upon mere proof that the judgment was obtained by perjury."

Thus, detection/discovery of constructive fraud at a much belated stage may not be sufficient to set aside the judgment procured by perjury.

15. In the present case, misrepresentation has been explicitly established and the assignment of the Government land in favour of the father and mother of the respective petitioners are not denied by the writ petitioners. In fact, they are enjoying the said Government land also, and that being the factum established under the eligibility criteria fixed in the Revenue Standing Orders, both the petitioners are ineligible to get assignment in their favour.

16. The very purpose of assigning the Government land at free of cost is to protect the livelihood of the landless poor people of this County. When the Revenue Standing Orders are stipulating certain eligibility conditions for the purpose of assignment of government land at free of

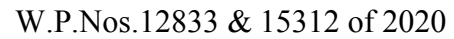


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cost, the authorities competent are bound to verify the eligibility scrupulously before assigning the land. In the present case, the authorities who granted the assignment also committed lapses, negligence and dereliction of duty by not verifying the fact that the Government lands to an extent of 5 acres were granted to father and mother of the respective petitioners. Thus, the authorities have committed a serious lapse in assigning the Government lands in favour of the writ petitioners.

17. As far as the assignment conditions are concerned, Condition No.18 stipulates that if the assigned lands are required for the Government/public purpose, the same will be resumed without paying any compensation. In the present case, the authorities found that the watercourse passes through to the assigned lands and a portion of the lands has been utilised as a burial ground by the people of that village. Therefore, such portions of the lands are to be resumed by the Government as it is required for public use. The said proposition has been laid down by the Hon'ble Full Bench of this Court, in the case of ***T.K. Shanmugam v. State Of Tamil Nadu [(2015) 5 LW 397]***

“40. As noticed above, the Division Bench while adding a word of caution that they are not advocating a general



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encroachments could be regularised. What the Government has failed to see is the cause as to why these water bodies, lakes, tanks have fallen into dis-use. If this aspect is analysed, it would come to light that in several cases the disuse was man-made and there appears to be a cartel, which systematically works with a view to grab Government property. In such scenario while taking a 'conscious decision', the Government cannot ignore the fiduciary duty of care and responsibility cast upon it and simultaneously analyse as to why such dis-use has occurred. The plethora of decisions on the point elucidate the basic principle of the public trust doctrine when the water bodies vest with the Government, placing the Government in the capacity of a trustee, there is little option except to strictly adhere to the trust and faith reposed and if the Government has failed to protect these water bodies, it amounts to breach of the public trust and in such cases, the duty of the Government is more onerous to restore the land back to its original position and thereby restore the trust reposed on it. Therefore, we are not inclined to accept the proposition that merely because a water body has put to dis-use that by itself would be a good ground to regularise the encroachments."



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18. Condition No.1 in the assignment order stipulates that if any inequality has been identified after assignment of land or a mistake of fact has been noticed, then the assignment is liable to be cancelled.

19. In the present case, it is not only inequality but misrepresentation and fraud committed by the petitioners by not revealing the fact regarding the earlier assignments made in favour of their respective father and mother. More so, watercourse / Odai is also passing through the land and a portion of the land has been utilised as a burial ground by the village people.

20. Assignment of Government lands are made to ensure that landless poor people and their livelihood are protected. Once such people are considered as not eligible, then under the constitutional ideologies, the Government has to step in by exercising the suo motu powers and cancel such assignments and re-assign the Government lands to the eligible persons. The principles of social justice initiated in the constitution is a dynamic mechanism wherein the Government has to periodically ascertain the eligibility and accordingly cancel the assignment and re-assign the Government land to the poor people.



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21. In the present case, the lands were assigned 55 years ago and the petitioners have suppressed the fact and secured assignment to an extent of more than 7.5 acres of land each in total. Therefore, the lands resumed are to be assigned for landless poor persons in order to achieve the constitutional goal of “social justice”. It is not as if the assigned land is to be permanently granted to the family of the original assignee. If the family of the original assignee does not fall under the eligibility criteria as contemplated under the Revenue Standing Order, then the Commissioner of Land Administration or the Government, as the case may be, are empowered to exercise suo motu powers and accordingly, cancel the assignment and to re-assign the lands to the eligible persons.

22. It is not only the violation of assignment conditions that is to be considered. It is the eligibility that is also to be considered with reference to the constitutional mandates. Violation of conditions are grounds to cancel the assignment of the land. However, due to inequality or if not falling within the eligibility criteria under the Revenue Standing Order, then the Government authorities are empowered to conduct an inquiry and cancel the assignment of land and re-assign the same in favour of other



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eligible persons who all are longing to secure assignment of the Government land at free of cost. This exactly is the process through which the principles of social justice can be achieved and it is not as if the rich alone will become richer and poor will become poorer. The concept of equality lies by eradicating inequality in the matter of assigning Government land to the landless poor people. The principles in this regard must be scrupulously followed by the authorities.

23. Even in the case of no violation of conditions, the assessment of eligibility have to be made periodically by the competent authorities. If any inequality is noticed, actions are to be initiated. In the event of failure, the same would result in unconstitutionality or causing deprivation of an opportunity to the persons who all are still remaining as landless poor people.

24. In view of the facts and circumstances, this Court do not find any infirmity in respect of the order impugned passed by the first respondent-Commissioner Of Land Administration.



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Consequently, connected miscellaneous petition is closed.

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Neutral Citation : Yes
(sha)

To

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S.M.SUBRAMANIAM. J.,

(sha)

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