



W.P.No.29150 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 03.11.2023

Orders Pronounced on : 09.11.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.29150 of 2023

Mr.K.Annadurai

.. Petitioner

Vs.

1. The District Collector,
Dharmapuri District,
Dharmapuri-636 705.

2. The Revenue Divisional Officer,
Harur, Dharmapuri District.

3. The Tahsildar,
Pappireddipatti Taluk,
Dharmapuri District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for records relating to the impugned order in Moo.Mu.No.3311/2023/Tha2, dated 28.04.2023 on the file of the first respondent and quash the same and consequently, direct the first respondent to re-assign the land in Survey Nos.145/1, 145/4 and 145/5 to the



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extent of 4 acres 92 cents, situated in 130, 'A' Pallipatti Revenue Village, Pappireddipatti Taluk, Dharmapuri District, to the petitioner, being the legal heir of original assignee Mr.Kaanan, by vide the judgment delivered in W.A.No.624 of 1988, dated 22.01.1991 by the High Court, Madras, and also a judgment delivered in C.A.No.6741 and 6742 of 2012, dated 20.09.2012 by the Supreme Court of India, within the time frame that may be fixed by this Court.

For petitioner : Mr.S.Arokiamaniraj

For respondents: Mr.P.Gurunathan, Addl. G.P.

ORDER

The petitioner has filed the above Writ petition praying for issuance of a Writ of Certiorarified Mandamus to call for records relating to the impugned order in Moo.Mu.No.3311/2023/Tha2, dated 28.04.2023 on the file of the first respondent and quash the same and consequently, direct the first respondent to re-assign the land in Survey Nos.145/1, 145/4 and 145/5 to the extent of 4 acres 92 cents, situated in 130, 'A' Pallipatti Revenue Village, Pappireddipatti Taluk, Dharmapuri District, to the petitioner, being the legal heir of original assignee Mr.Kaanan, by vide the judgment delivered in W.A.No.624 of 1988, dated 22.01.1991 by the High Court, Madras, and also a judgment delivered in C.A.No.6741 and 6742 of 2012, dated 20.09.2012 by the Supreme Court of

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India, within the time frame that may be fixed by this Court.

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2. The lands in question were classified as "depressed class land" and originally, the lands in S.Nos.145/1, 145/4 and 145/5 of an extent of 4 acres 92 cents, situated in 130, 'A' Pallipatti Revenue Village, Pappireddipatti Taluk, Dharmapuri District, were classified as 'depressed class land' meant for the welfare of Scheduled Caste community and the petitioner's father, by name Kaanan, son of Kuzhandhai, was economically poor and belongs to Schedule Caste community. The Government assigned the said land and granted the land to his father in Patta No.306 and from that date onwards, till his father's date of death being 17.01.2020, he was enjoying all his properties. During his lifetime, his father got two sons, namely the petitioner and his brother Chennamurthy, who died on 20.03.1987 and he pre-deceased his father. After the death of his father and brother, the petitioner was in possession of the property. When the petitioner made application under the Right to Information Act to the first respondent to provide copy of "A" Register, Chitta and Adangal, the first respondent provided a copy of the Adangal on 22.09.2021 standing in the name of his father till then. Further, a copy of the document obtained from the first respondent under the Right to Information Act on 05.09.2022 revealed that the Patta stands in his father's name and the same was cancelled by Circular of the Tahsildar, Harur, UOC 19427 of 1974 on 12.12.1974 and further, it is also shown

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in the circular that the land was re-assigned as Government land and transferred as AWD (Assessed Waste Dry) and it was conditionally classified as Depressed Class land and it cannot be converted as AWD. However, when the petitioner applied for transfer of Patta from the name of his father and to re-assign the Patta land in his favour, the application was not considered and hence he filed a Writ Petition before this Court and this Court, in W.P.No.30679 of 2022 on 18.11.2022, directed the respondents therein to consider the representation and pass orders. Subsequently, the first respondent passed the impugned order and that the land is not a Depressed Class land and after passing of the order of this Court, the first respondent considered and dismissed the claim of the petitioner, stating that it was not a Depressed Class land and it was only 'waste land' and subsequently, even under the UDR scheme also, 'A' Register shows that it is only waste land. Therefore, challenging the same, the present Writ Petition has been filed for the relief stated supra.

3. The respondents have filed counter affidavit stating that the subject lands in S.Nos.145/1, 145/4 and 145/5 were classified as Government Poramboke lands before commencement of the update of scheme i.e. in the year 1987 and they did not reserve for assignment to Adi Dravidar Community people. The judgment delivered in Writ Appeal No.624 of 1988 and C.A.Nos.6741-6742 , dated 20.09.2012 are applicable only for Panjami lands (i.e) reserved for SC/ST



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people only and does not relate to this case. The land in S.No.145/1 of an extent of 4.92 acres in A.Pallipatti Village, Pappireddipatti Taluk, does not exist in 'A' Register before update scheme. Similarly, the above subject land did not reserve for depressed SC/ST people. In the Revenue Records such as 'A' Register, Chitta, Adangal and other relevant records, the name of the pattadar (late Kaanan) does not exist in the above records. Further, since the land in S.No.145/1 did not reserve for SC/ST community people, the succession right for assignment SC/ST land need not be considered. As against the representation made by the petitioner, he had filed a case in W.P.No.30679 of 2022, and this Court, by order dated 18.11.2022, directed the respondents therein to consider his representation on merits and in accordance with law and pass appropriate orders. As per the said order of this Court, the first respondent-District Collector conducted detailed enquiry on the representation of the petitioner. At the time of enquiry, the petitioner stated that the land in S.No.145/1 measuring an extent of 4.92 acres of Panjami land, was assigned to his father Kaannan, S/o Kolanthai and his father was cultivating till his death. Further, he has stated that his father died on 17.01.2000 and his family left from A.Pallipatti Village and migrated to other place for 20 years before his father's death and they were not continuously cultivating for the past 20 years on the subject land. Moreover, they did not know about the cancellation of Patta No.306 in the name of his father by the



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Tahsilar, Harur in the year 1974.

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4. Further, the writ petitioner stated that he did not have any records regarding the assignment of the subject land in the name of his father and also the copy of the order cancelling the Patta issued by the Tahsildar, Harur. Finally, he has requested to grant Patta as per the above order of this Court, dated 18.11.2022. Further, the Village Administrative Officer, A.Pallipatti Village in his statement given before the District Collector, Dharmapuri stated that the land in S.No.145/1 is sub-divided and classified as stated below:

<i>Sl. No.</i>	<i>Extent</i>	<i>Classification</i>	<i>Remarks</i>
145/1	0.20.0	Tharisu	stands in the name of Tmt.Mottachi as per R.O.C.No.21278/91(B3)10/91/8A/32/90, dated 14.07.1981
145/4	0.34.0	Tharisu	stands in the name of Jadayan as per R.O.C.21278/91(B)10/91/8A/32/90,dated 14.07.1981
145/5	1.45.0	Tharisu	Tmt.Kalavathi encroached the land and 'B' Memo

The Village Administrative Officer (i.e. VAO - for short), Pallipatti Village, in his statement given before the District Collector, Dharmapuri stated that the Patta of the subject land in S.No.145/1 extent 4.92 acres, stands in the name of Kaanan S/o Kolanthai, which was cancelled by the Tahsildar, Harur in the order No.R.O.C.19427/74, dated 12.12.1974, i.e. even before commencement of



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updating scheme and that the land was not cultivated and under the possession of the writ petitioner for the past 40 years and no entries regarding the land was reserved for SC/ST community people in the Revenue Records. At last, the District Collector, Dharmapuri dismissed the petition requesting to grant Patta in his name, since the Patta issued in respect of the subject land to his father, was already cancelled in the year 1974 due to breach of assignment conditions as per the impugned proceedings in No.Mu.Mu.3311/2023/Z2, dated 28.04.2023.

5. Further, the District Collector, in the order stated that the Patta issued in the subject land in S.No.145/1 of an extent of 4.92 acres, was cancelled by the Tahsildar, Harur in the year 1974 due to breach of assignment conditions and the subject land was not reserved for depressed schedule class members. The subject land was classified as Government Poramboke before update scheme as per the Revenue Records and no entries exist in the Revenue Records to prove that the subject land was reserved for SC/ST persons. Further, S.No.145/5 of an extent 1.45.0 hectares, classified as Government "Tharisu Poramboke" and "B" memo had been booked in the name of encroacher Tmt.Kalavathi. The writ petitioner wrongly understood that the subject land in S.No.145/1 with an extent 4.92 acres, was reserved for SC/ST persons without verifying the village Revenue Records. The petitioner's plea relates to SC/ST Panchami lands, whereas the subject land in S.No.145/1 extent 4.92 acres, was



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not reserved for SC/ST persons as per the Revenue Records.

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6. It is the further stand of the respondents in the counter affidavit that as against the cancellation of assignment given to Late Kaanan by the Tahsildar, Harur, the original assignee did not file any appeal before the Revenue Divisional Officer, Harur, or the District Collector, Dharmapuri. The District Collector, Dharmapuri, after careful consideration of the enquiry statements and on a perusal of the Revenue Records, dismissed the petitioner's representation, by the impugned proceedings dated 28.04.2023. Further, there is no provision in the Board's Standing Order or other Government Orders to grant Patta which was cancelled 50 years before on breach of conditions to their heirship. According to Revenue Rules, if a person encroached the Government land and cultivating regularly, 'B' memo has to be booked and penalty levied and being collected from him/her.

7. Learned counsel for the petitioner submitted that originally, the land was classified as Depressed Class land and since the father of the petitioner belonged to depressed class belonging to SC community, and is a landless poor, the land was assigned to him. The petitioner's father was enjoying the property till his lifetime and after that, the petitioner is enjoying the property and after the death of his father, the petitioner filed an application for transfer of his name and there was no consideration, and therefore, he earlier filed a Writ Petition before

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this Court, and this Court directed the petitioner to consider his representation and pass orders. The petitioner also obtained a certificate from the Revenue Records under the Right to Information Act, and originally, the land was assigned to his father and his name is also found in the "A" Register. Subsequently, assignment of land was cancelled and re-transferred as AWD land and also a copy of the said records obtained through the Right to Information Act, is also produced by the petitioner. Learned counsel further submitted that when once the land is classified as 'Depressed Class land', it cannot be re-transferred as 'waste land'. The Depressed Class land cannot be re-assigned or re-transferred or re-classified as any other land. He relied on a decision of the Supreme Court in the case of State of Rajasthan and others Vs. Aanjaney Organic Herbal Pvt. Ltd., in Civil Appeal Nos.6741 and 6742 of 2012 (arising out of SLP (Civil) Nos.33006 and 33007 of 2010), dated 20.09.2012, in support of his submissions.

8. Learned counsel for the petitioner further submitted that the first respondent/District Collector, while passing the impugned order, failed to consider the above issues, and the land was assigned to his father, was subsequently cancelled and re-transferred as AWD land. He therefore, prayed that the impugned order passed by the first respondent, is liable to be set aside and prayed to allow the Writ Petition.

9. Learned Additional Government Pleader appearing for the respondents



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submitted that the subject matter of land had never had been shown as Depressed Class land, though the land was originally assigned to the father of the writ petitioner and there was no cultivation for more than 40 years and no one was using that land, and therefore, based on the report of the VAO and even prior to the UDR scheme, way back on 22.02.1974 itself, the assignment was cancelled and resumed to the Government and transferred as AWD land as per Thasildar UOC.19427/74, dated 12.12.1974 itself. Even thereafter also, till the lifetime of the father of the petitioner, he has not challenged the same and also did not file any application or representation and even after UDR scheme also, the same has been continued as only AWD land and subsequently, now the third parties are in possession of the assigned land to them. The "A" register and other Revenue Records show that the land is only 'waste land' ('Tharisu') and not as Depressed Class land and there is no order or any material to show that the subject matter of the land is shown as Depressed Class land and subsequently, it was re-classified as 'waste land'. There is no doubt that Depressed Class land cannot be converted as "waste land" and the Government also issued a circular dated 19.08.1996 in Letter No.F1/69400/94, by the Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai to all the District Collectors observing that the Depressed Class land, or "Panjami lands", cannot be sold or gifted to a person belonging to non-SC community. But they are

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following said Circular and they are not converting any land from Depressed Class land into any other classification of the land, and therefore, neither the writ petitioner's father, nor the writ petitioner for more than 40 years, were in possession of the property, and therefore, since it was not used either by the writ petitioner or his legal heirs and even in 1974 itself, it was re-transferred from his father and his father died only in 2000 and till then, he did not challenge the same, and the petitioner also did not cultivate or utilise the land, and therefore, now a third party is in possession and since the land is not 'Depressed Class land', the Writ Petition is liable to be dismissed.

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

11. The petitioner has filed the present Writ Petition challenging the order dated 28.04.2023 passed by the first respondent. The main contention of the writ petitioner is that the land was originally classified as 'Depressed Class land' and his father was assigned with the said land and subsequently, the same was cancelled and without giving any notice to his father or to the Writ Petitioner and after the death of the petitioner's father, the petitioner applied for name transfer of Patta and the same was not considered. The petitioner has earlier filed a Writ Petition in W.P.No.30679 of 2022, and this Court, by order date 18.11.2022, directed the respondent(s) therein to consider the reference application submitted by the petitioner by way of representation, dated 28.09.2021 on



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merits and in accordance with law and pass appropriate orders within a period of 12 weeks from the date of receipt of a copy of that order. Thereafter, the first respondent conducted enquiry, but has not considered the representation of the petitioner, and since the land is Depressed Class land, it cannot be converted or transferred as any other land, and further, through the Right to Information Act, the petitioner obtained particulars which shows that even in the year 1974, assignment granted in favour of the petitioner's father, was cancelled and the land was transferred to ADW scheme which is against law and also the decision of the Supreme Court stated supra.

12. On a perusal of the records, it is seen that admittedly, the land was assigned to one Kaanan. In 1974, it was cancelled. Further, on a perusal of "A" Register, it is to be noted that no-where it is stated that prior to 1974, what was the classification of the land. Admittedly, the said Kaanan belonged to a member of Scheduled Caste and he was assigned the land measuring 4 acre 92 cents. The respondents also admitted that the said assignment was also cancelled in 1974. Except the above entry, even the Register/Records produced by the respondents had not revealed that prior to cancellation, notice was sent to the said Kaanan and opportunity was given to the said Kaanan and enquiry was conducted in the manner known to law, and thereafter, it was cancelled and the same was also communicated to the said Kaanan.



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13. Further, from 1974 till the UDR (Updating Registry Scheme), the land under dispute, is shown as "Tharisu" and even thereafter, in the UDR entry also, the Register shows that it was only "Tharisu", whereas, in the Adangal of the year 1993, and even after cancellation deed of 1974 and even after the UDR, the name of the "Pattaiyar" assignee, was mentioned as only Kaanan, for the Fasli 1883/1993. Therefore, there is no record to show as to what was the original classification of the land and as to what was the condition imposed and the respondents/Government is not able to show that, originally, it was not a 'Depressed Class land' and the condition imposed was violated by the said Kaanan and hence, it was cancelled. Except the entry made regarding the cancellation and re-transfer to the 'Tharisu' (waste land), no other records are produced to show the same.

14. Further, the above said decision rendered by this Court and even the Supreme Court, referred to above, it is clear that when once the land is classified as 'Depressed Class land' or 'Panchami' land, and it cannot be transferred or re-classified from the 'Depressed Class land' or 'Panchami' land to classification of other land.

15. Admittedly, the said Kaanan died on 17.01.2000, in proof of which, a copy of the Death Certificate is also produced and till 1993, even the entry in the Government Adangal register shows the name of the said Kaanan as cultivator



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and nature of cultivation is Maize, Beans and Dhal and hence, the decision to classify the land as "Tharisu", is not valid. The original classification is not mentioned and transfer of land as AWD (assessed waste dry) and prior to that, it is not known as to the classification of the land and thereafter, it was mentioned as "Tharisu". Before cancellation as to whether the notice was issued to the said Kaanan or not, is not known. Subsequently, the Government/Revenue Department had issued a Circular in the form of instructions, in Letter No.F1/69400/94, dated 19.08.1996 with regard to the transfer of 'Depressed Class land' through sales, etc., and effecting transfer of the Registry, meaning thereby, that no classification should be made and no conversion of land should be done.

16. Considering the above facts from the Register/Records, it is clear that the writ petitioner has established that the land in question was allotted to Kaanan originally and it belongs to 'Depressed Class land' and further, no notice was issued and no enquiry was conducted before/after re-classification or re-transfer.

17. The impugned order shows that the land in question was cancelled and re-allotted to some other person. Therefore, the respondents as Government, who are custodian of the original records, have to establish that the land originally was not the 'Depressed Class land' or 'Panchami' land and even



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also subsequently, the said Kaanan violated the same and he was served with notice and enquiry was conducted in the manner known to law. Even otherwise, due to violation of the condition, it was cancelled, whereas, the land or 'Tharisu' land, which was the original classification and if any assignee violated the conditions, then it can be cancelled only after conducting enquiry and the said land can be allotted to only qualified Depressed Class persons and not to any other third party other than the 'depressed class' community people and the 'Depressed Class land' also cannot be re-classified into any other classification, and therefore, under the said circumstances, the impugned order passed by the first respondent, is liable to be set aside.

18. Furthermore, the persons who are occupying or trespassing the land in question, had to be evicted in the manner known to law and the land has to be re-allotted to the legal heirs of the deceased Kaanan, if they are otherwise eligible and if they are not found eligible, the same has to be allotted to the qualified DC people.

19. Further, on a perusal of the records, and all the papers filed along with the typed set of papers to this Writ Petition, it shows that the land was originally assigned to the petitioner's father and his name was found in the cancellation order. Subsequently, the order dated 12.12.1974 in U.O.C.19427/74 was passed and the assignment was cancelled and resumed to Government and



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transferred as AWD as per Harur Tahsildar's said proceedings. But the "A" Register also filed by the respondents and other records show that from 1974 onwards, till the UDR scheme, it was classified only as 'waste land' ('Tharisu') and even after the UDR scheme, it continued only as "Tharisu". From the Death Certificate produced by the writ petitioner, it is seen that the petitioner's father died on 17.01.2000. Though the respondents have produced a copy of the Register/Records, from that, it is only seen that, on 12.12.1974, the assignment in the name of the father of the petitioner, was cancelled, but there are no records to show as to whether the father of the petitioner was given notice and they had conducted enquiry in the manner known to law to cancel the Patta.

20. Therefore, in the above circumstances, this Court finds perversity in the impugned order passed by the first respondent and the Writ Petition is liable to be allowed.

21. Moreover, in the case on hand, there are no materials to show that the land, prior to 1974, was cancelled at the time when the father of the petitioner was owning the land and it was not 'Depressed Class land'. Hence, the above decision of the Supreme Court is applicable to the case on hand. The land cannot be transferred or re-classified other than to 'Depressed Class land' and there are lack of particulars. As to whether the land was originally classified as 'Depressed Class land' or not, is the moot point in this case and hence, as the



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Government is the custodian of the records, but they have not produced the records to show as to whether the land was waste land/Tharisu. The fact remains that the land was originally assigned to the father of the petitioner. There are no records to show that proceedings were initiated in the manner known to law before cancellation of the same.

22. However, it is seen from the records that the land was assigned to the father of the writ petitioner, but cancellation of records does not show the classification of the land, was 'Tharisu', simply it shows that the assignment in favour of the petitioner's father, was cancelled and it was transferred as waste land. The respondents have also not produced any records to substantiate that, due to violation of certain conditions imposed in the assignment, the same was cancelled.

23. In the above circumstances, in the absence of any particulars, the land was at any point of time prior to cancellation of assignment deed in the year 1974, on 12.12.1974, was classified as 'Tharisu'. Hence, there are materials to interfere with the impugned order passed by the first respondent and the same is set aside. The Writ Petition is therefore allowed. There shall be no order as to costs.

24. However, if the respondents are able to prove with any material showing that prior to the cancellation of the assignment deed, the land was not



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classified as 'Depressed Class land', then the respondents are at liberty to initiate proceedings in the manner known to law, after giving notice to the legal heirs of the original assignee Kaanan.

25. In view of the foregoing reasonings, this Writ Petition is allowed, by setting aside the impugned order of cancellation and with the above directions/observations. There shall be no order as to costs.

09.11.2023

Index: Yes/no
Speaking Order: Yes/no
Neutral Case Citation: Yes/no
CS

To

1. The District Collector,
Dharmapuri District, Dharmapuri-636 705.
2. The Revenue Divisional Officer,
Harur, Dharmapuri District.
3. The Tahsildar,
Pappireddipatti Taluk,
Dharmapuri District.

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CS

Pre-delivery Order in
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Judgment delivered on 09.11.2023

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