



W.P.No.33643 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.33643 of 2017
and WMP.No.37226 of 2017

B.Venkatachari

...petitioner

Vs.

1. The Secretary to the Government,
Department of Revenue and Disaster Management,
Fort St. George,
Chennai 09.
2. The Commissioner of Land Administration,
Chepauk,
Chennai 600 005.
3. The District Collector,
Krishnagiri District.
4. The District Revenue Officer,
Krishnagiri.
5. The Tahsildar,
Hosur,
Krishnagiri District.

...respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India
seeking to issue a Writ of Certiorarified Mandamus to call for the records of



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the 1st respondent pertaining to G.O. (standing) No.404, dated 11.12.2017 and to quash the same as invalid and unlawful and to direct the 1st respondent to assign the land ad measuring an extent of 0.48 acre comprised in Survey No.903 in Chennathur Village, Hosur Taluk in his favour in terms of the order dated 12.01.1998 passed by the 2nd respondent.

For petitioner : Mr.Yasod Varadan, Senior Counsel
for M/s.P.Sesubalan Raja

For respondents : Mr.J.Ravindran, AAG
assisted by A.Selvendran, SGP

ORDER

(The Order of the Court was made by S.VAIDYANATHAN, J)

The present Writ Petition has been filed to quash G.O.404, dated 11.12.2017 as illegal and sought for a direction permitting the first respondent to assign the land admeasuring 0.48 acres comprised in Survey No.903 in Chennathur Village, Hosur Taluk in terms of the order dated 12.01.1998 passed by the second respondent.

2. The case of the petitioner is that during 1970, Hosur area was considered as most backward area and therefore, the State Government had announced various schemes to develop Small Scale Industries. As a small



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scale entrepreneur, the petitioner in order to avail the opportunity made an application to the fourth respondent on 27.09.1979 seeking permission to construct a shed in the property to an extent of 0.14 acre comprised in Survey No.903 to enable him to start a small scale industry for manufacturing agricultural implements.

3. The fourth respondent, based on the report of the fifth respondent vide order dated 27.12.1979, permitted the petitioner to construct a shed in the north-west corner of the property. The fourth respondent has also stated that it is open to the petitioner to get the land assigned by paying market value. Based on the allotment, the petitioner constructed a shed and started M/s.Ambika Agricultural Engineering Industries and began manufacturing all types of agricultural implements from plough to crowbar. The said Small Scale Industry is registered with the Director of Industries and Commerce, Chennai. When the business grew and the production developed, the petitioner had taken lease of the land to an extent of 0.48 acres. The petitioner Management employed 80 employees and they not only paid wages, but also extended Provident Fund and ESI to them. In spite of repeated requests for assignment of land in favour of the petitioner, the same was not considered.



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4. In spite of the best efforts, the petitioner could not get the assignment of land. Therefore, the petitioner had approached this Court by filing WP.No.9974 of 1996 seeking a direction against the third respondent to consider the representation dated 14.07.1995 with regard to assignment of property. This Court, vide order dated 16.07.1996, directed the third respondent to consider the representation of the petitioner within a period of twelve weeks. However, the third respondent, in his order dated 10.10.1996, refused to assign the land citing the ban on assignments, but offered the land on lease to the petitioner. As against which, an appeal was preferred before the Commissioner of Land Administration. Apart from that, the petitioner also filed WP.No.18131 of 1996 seeking to quash the proceedings of the third respondent and sought a direction to the appellate authority to decide the appeal dated 18.11.1996. On 12.12.1996, the order of the third respondent was upheld and it was observed that as and when the petitioner is able to get assignment on specified terms, the lease can always be permitted. On 12.01.1998, the appeal preferred by the petitioner was allowed setting aside the order of the third respondent and directed the fourth respondent to submit a proposal for eventual assignment of land admeasuring 0.48 acres in S.No.903 mentioned supra.



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5. Unfortunately, the assignment was not made in spite of the fact that huge amount has been deposited apart from paying necessary charges to the property. It is stated that the petitioner has also been issued with B-memo, which shows that the land has been given on lease.

6. According to the petitioner, the first respondent has passed an order on 11.12.2017 rejecting the request for assignment of land in favour of the petitioner without reference to the proceedings dated 12.01.1998 of the second respondent. G.O.(Ms).No.4122, dated 21.02.2006 cannot be a ground to deny assignment when the order has been passed as early as on 12.01.1998.

7. According to the petitioner, he had spent huge amount and dedicated his entire life for developing the industry and that non assignment of land is bad, as it is hit by the doctrine of legitimate expectation.

8. Even assuming that the petitioner is not entitled to the assignment of land, as the land is not required for any purpose to the Government for the present, the lease can be continued by renewing periodically and the



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rejection of assignment by means of impugned order is opposed to the policy of the Government to encourage Small Scale Industries in an undeveloped area. Though the said place could have been developed, the same is not at all required by the Government for the present and permitting the petitioner to avail the land on lease, will cause no loss to the Government. Since the order passed by the first respondent vide G.O.No.404, dated 11.12.2017 is contrary to the establishment of principles of law, the impugned order need to be interfered with and the land measuring an extent of 0.48 acres in Survey No.903 in Chennathur Village may be allotted to the petitioner.

9. Mr.J.Ravindran, learned Additional Advocate General assisted by Mr.A.Selvendran, Special Government Pleader appearing for the respondents 1 to 5 contended that mere holding of B-memo will not give a title to the property. The petitioner is an encroacher and he needs to be evicted. Whether the land is required for any purpose or not and whether it should kept as a vacant land or not, should be decided by the Government and the petitioner a matter of right cannot demand that the lease should be given to him.



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10. When a question is posed by this Court to the learned Additional Advocate General that as to whether the lease can be continued till the land is actually needed for the Government for development, it is stated that the Government will decide this issue and they will ensure that there is no encroachment in the property and if any Authority permits encroachment, he will be punished.

11. He also drew the attention of this court to G.O.No.122 dated 21.02.2010 and contended that based on the said G.O., the assignment cannot be granted and the said G.O. has not been tested by the Writ Petitioner. Further, he would submit that there is no valid lease agreement to the petitioner. In view of the same, the petitioner will not be entitled to any relief.

12. Heard both parties and perused the materials available on record.

13. The facts mentioned supra are not in dispute. Admittedly, the land does not belong to the petitioner. The petitioner had the benefit of lease, pursuant to the order of the Authority and he has been paying various taxes to the Government, which has been accepted by the Government. The



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authority also recognised the lease. Hence, the petitioner cannot be termed as an encroacher.

14. At the most, he may be considered as a permissive occupier and not as an encroacher. That apart, it is stated by the learned Senior Counsel appearing for the petitioner that a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs) has been paid in advance, which is lying with the Government, pursuant to the interim order granted by this court.

15. It has been contended in para 3 of the impugned order that amounts due to the respondent have got to be paid by the petitioner. As huge amount of the petitioner is lying in deposit with the Government, the same can be adjusted for the due amount after intimating the petitioner and by giving break-up details.

16. We make it clear that the petitioner is not an encroacher and he is having the property on lease, pursuant to the decision of the Authorities concerned. However, the petitioner as a matter of right cannot claim that he should be allowed to continue the lease for ever. Whether the land is going to be utilized or unused it is for the Government to decide.



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17. We also record the submission of the Mr.Ravindran, learned Additional Advocate General, that there will be no encroachment and if any encroachment is found, the concerned Officers will be punished for major misconduct with regard to the dereliction of duty.

18. We are not in agreement with the contention of the petitioner that he should be given lease and hence, the petitioner sought one year time to vacate the place in question stating that 80 employees are working and he need some time to find alternate place to accommodate the industries. The one year time sought for by the petitioner is opposed by the learned Additional Advocate General and suggested that the petitioner may be granted two months time to vacate the premises.

19. Even though there is no written lease agreement, pursuant to the decision of the authorities, the petitioner has been permitted to continue the lease all along. Taking note of the fact that the industry is carrying on business activities from 1979, and at no stretch of imagination an illegal act has been committed by the petitioner. Though the petitioner as a matter of right cannot demand for continuation of lease, this Court is of the view that



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a period of 6 months time can be granted to the petitioner to vacate the place. Hence, the petitioner is permitted to vacate the place on or before 31 March 2024.

20. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(S.V.N.J.) (K.R.S.J.)
20.09.2023

Index : Yes / No
Speaking order: Yes/No
pvs

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