



W.P.No.16273 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.16273 of 2017
and W.M.P.Nos.17601 & 18417 of 2017

D.Mahiram

.... Petitioner

-Vs-

1.The District Revenue Officer-cum-
Appellate Authority under the Land
Reforms, Thiruvannamalai
Thiruvannamalai District.

2.The Assistant Commissioner (Land Reforms)
Office of the Assistant Commissioner (Land Reforms)
Villupuram.

3.M.Arumugam

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings of the 1st respondent vide Na.Ka.No.M2/1323/2015 dated 27.04.2017 and quash the same as illegal and passed against rule 10(1) of the Tamil Nadu Land Reforms (Disposal of surplus Land) Rules 1965 and consequentially confirm the assignment and patta granted in favour of the petitioner in respect of the land in Survey No.29/1.29/4 in Kavaniyathur village Vandavasi Taluk Thiruvannamalai District.



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W.P.No.16273 of 2017

For Petitioner : Ms.G.V.Seetha Lekshmi
for M/s.E.Vijay Anand

For Respondents : Mr.P.Sathish
Additional Government Pleader- for RR 1&2
Mr.M.Marudhachalam – for R3

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings of the 1st respondent vide Na.Ka.No.M2/1323/2015 dated 27.04.2017 and quash the same as illegal and passed against rule 10(1) of the Tamil Nadu Land Reforms (Disposal of surplus Land) Rules 1965 and consequentially confirm the assignment and patta granted in favour of the petitioner in respect of the land in Survey No.29/1, 29/4 in Kavaniyathur village Vandavasi Taluk Thiruvannamalai District.

2. The property at Survey No.29/1, 29/4 in Kavaniyathur village Vandavasi Taluk Thiruvannamalai District, which was excess land pursuant to the land ceiling proceedings under the Land Ceiling Act, 1961, had been originally allotted according to the 3rd respondent, in favour of the father of the 3rd respondent some time in 1974. The 3rd respondent's father died in 1991 and during his life time, the necessary cost of the land has not been paid by him. Therefore, sometime in 1992 that assignment had been cancelled, as against



W.P.No.16273 of 2017

which the 3rd respondent preferred an appeal to set aside the cancellation of the assignment. That appeal was allowed on 28.09.1994 in favour of the 3rd respondent. Subsequently, on 23.08.2000, the assignment has been given and mutation has also been effected in favour of the 3rd respondent in the subject land only to the extent of 1.68 acres. The remaining 0.76 cents has been left as an excess land.

3. However, by proceedings dated 28.10.2013 that 0.76 cents along with some other extent of land in some other survey number has been assigned in favour of the petitioner by proceedings dated 28.10.2013. Challenging the same, the 3rd respondent preferred an appeal to the 1st respondent, which was considered and decided by the 1st respondent vide order dated 27.04.2017, where it was the impression of the 3rd respondent that the assignment given in favour of the petitioner alone was cancelled. Therefore, the petitioner has chosen to challenge the said order passed by the 1st respondent dated 27.04.2017, but the 3rd respondent has not chosen to file a writ petition challenging that portion of the order, where the assignment given in favour of the 3rd respondent also by order dated 23.08.2000 had been cancelled by the orders of the 1st respondent appellate authority by order dated 27.04.2017.



W.P.No.16273 of 2017

4. With this factual background, this writ petition has come up for final hearing. Reiterating the aforesaid, the learned counsel for the petitioner would submit that, such a cancellation made by the appellate authority by order dated 27.04.2017 which is impugned herein is nothing but a colourable exercise of power, as the assignment was given in favour of the petitioner to the extent of 0.76 cents in S.Nos.29/1 and 29/4 and other land in other survey numbers 29/1B and 29/4B. Therefore, the said cancellation made through the impugned order is liable to be interfered with, she contended.

5. On the other hand, the learned counsel appearing for the 3rd respondent has realized the fact that, in the operative portion of the order passed by the 1st respondent dated 27.04.2017, it is not only the assignment given in favour of the petitioner, but the assignment in favour of the 3rd respondent also had been cancelled and as a sequel, the 1st respondent directed the 2nd respondent to conduct a fresh enquiry, where the advantageous position of the 3rd respondent that on behalf of his late father, the 3rd respondent has paid the necessary cost of the land was also directed to be taken into account. Only at this juncture, the learned counsel for the 3rd respondent would submit that, the remedy has to be worked out by both parties including the 3rd respondent in the manner known to law as directed by the 1st respondent in the impugned order.



W.P.No.16273 of 2017

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6. Mr.P.Sathish, learned Additional Government Pleader would contend that, whether the assignment given after cancellation was made in the year 1992 subsequently in favour of the 3rd respondent in the year 2000, of course followed by the appeal allowed by the orders of the 1st respondent dated 28.09.1994 itself is a question. Therefore, in order to have a complete enquiry over the same, the assignment made even in favour of the 3rd respondent has to be cancelled. He would also submit that, correspondingly the petitioner's assignment is also cancelled, who was eligible for allotment under the excess land pursuant to the land ceiling proceedings, for which whether assignment is to be sustained for the entire extent of 1.68 acres or the remaining 0.76 cents can be assigned in favour of the petitioner, is to be decided. All these aspects have to be gone into by the 2nd respondent to conduct a fresh enquiry and that was in fact directed by the 1st respondent through the impugned order. Therefore, citing these aspects, the learned Additional Government Pleader appearing for the official respondents wants to sustain the impugned order.

7. I have heard the submissions of the learned counsel for both sides and have perused the materials available on record.



W.P.No.16273 of 2017

8. As has been rightly pointed out by the learned Government Pleader the assignment already been made in favour of both the petitioner as well as the 3rd respondent by two orders between 2000 and 2013 since has been cancelled and a fresh enquiry was directed to be conducted, whether the land cost was subsequently paid by the 3rd respondent was directed to be taken into account, and whether the petitioner is entitled to get 0.76 cents of land, which according to the petitioner has been kept as excess land for the purpose of allotting the same to the landless poor like the petitioner, all these aspects since can be gone into by conducting a full fledged enquiry in this regard by giving an opportunity of hearing to both parties, this Court feels that there is no infirmity in the order impugned and hence the said order needs to be sustained.

9. Accordingly, this Court is inclined to dispose of this writ petition with the following order.

- That the impugned order dated 27.04.2017 is sustained and as stated therein, enquiry shall be conducted by the 2nd respondent by giving notice to the petitioner as well as the 3rd respondent and after hearing both of them, the respective entitlement in favour of the petitioner as well as the 3rd respondent in respect of the land in question and if so, to what extent, can be decided by the 2nd respondent on merits and in accordance with law.



W.P.No.16273 of 2017

- An order to that effect shall be passed by the 2nd respondent within a period of eight weeks from the date of receipt of a copy of this order.

10. With the above directions, this writ petition is disposed of. No costs.

Consequently, connected miscellaneous petitions are closed.

31.01.2023

Index : Yes/No

Neutral Citation : Yes/No

Speaking Order / Non-speaking order

KST

To

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W.P.No.16273 of 2017

R. SURESH KUMAR, J.

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W.P.No. 16273 of 2017

31.01.2023