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W.P.(MD)No.12433 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.12433 of 2020 and
W.M.P.(MD)No.10638 of 2020

P.Pitchai

... Petitioner

VS.

- 1.The District Collector,
Tiruchirappalli District,
Tiruchirappalli.
- 2.The District Revenue Officer and
District Additional Magistrate,
Tiruchirappalli District,
Tiruchirappalli.



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3.The Revenue Divisional Officer,
Musiri Taluk, Musiri,
Tiruchirappalli District.

4.The Tahsildar,
Musiri Taluk, Musiri,
Tiruchirappalli District.

5.The Commissioner of Land Administration,
Land Administration Department,
2nd Floor, Ezhilagam,
Chepauk, Chennai-600 005.

... Respondents

***(5th respondent is suo moto impleaded by
this Court, vide this order, dated 29.08.2023,
in W.P.(MD)No.12433 of 2020)***

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records from the 2nd respondent in his proceedings in Ni.Mu.AA6/17207/2018, dated 07.08.2020, to quash the same and



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consequently, to direct the respondents to issue patta to the petitioner's Punja land in Survey No.300/1 to an extent of Acre 1 cents 60 situated at Pulivalam Village, Musiri Taluk, Tiruchirappalli District, within the period stipulated by this Court.

For Petitioners : Mr.N.Sathish Babu
For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned proceedings dated 07.08.2020 passed by the 2nd respondent and consequently, to direct the respondents to issue patta to the petitioner's Punja land in Survey No.300/1 to an extent of Acre 1



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cents 60 situated at Pulivalam Village, Musiri Taluk, Tiruchirappalli District, within the period stipulated by this Court.

2. The contention of the petitioner is that he is doing agricultural activities in his own land. As early as 1970, the government had assignment land to the petitioner in Survey No.300/1 to an extent of 1 acre and 60 cents under the landless poor scheme. When the respondents disturbed his peaceful possession in the year 2015, he had filed O.S.No. 223 of 2012 on the file of District Munsif Court, Thuraiyur, for declaration and injunction and ex-parte decree was passed in his favour on 01.07.2014. However, the respondents did not issue patta to the



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petitioner inspite of several representations dated 24.06.2016, 04.09.201 and 16.05.2018 for granting patta and the petitioner was made to run from pillar to post. Hence, he has filed W.P.(MD)No.13852 of 2018 with a prayer to grant patta. This Court without considering the case on merits has directed the respondents therein to consider and pass orders. Since the respondents therein had not passed orders, instead of filing contempt petition, the petitioner filed another writ petition in W.P. (MD)No.16479 of 2019, and this Court, vide order, dated 19.08.2019, directed the first respondent to give suitable instructions to the District Revenue Officer to act upon the representation and pass appropriate orders. Thereafter, the 4th respondent filed a report on 10.02.2020 before the 2nd respondent and



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the 2nd respondent issued summons to the petitioner to attend the enquiry on 25.02.2020. The contention of the petitioner is that during the enquiry, the 2nd respondent without affording proper opportunity has conducted enquiry. Moreover, without considering the facts has simply rejected the petitioner's application and declined to issue patta, vide order, dated 07.08.2020. Aggrieved over the same, the present writ petition is filed.

3. The contention of the respondents is that the petitioner cannot be considered as landless poor, since without disclosing that his father is in possession of lands, the petitioner has obtained the lands under the landless poor scheme. As far as Survey No.300/2A to an extent of 1.05.0



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hectares stands in the name of petitioner along with Andi Gounder in Patta No.131. Another land in S.No.300/2B an extent of 0.67.5 Ares stands in the name of petitioner in Patta No.1016. The lands in S.No. 300/2C to an extent of 0.63.0 Ares, S.No.300/2 to an extent of 0.30.0 Ares, S.No.345/1B4 to an extent of 0.02.0 Ares stands in the name of the petitioner. Therefore, the petitioner was in possession of many lands including his father's land, hence, hence he cannot be considered as landless poor. The petitioner had concealed these facts and hence he is not entitled to assignment patta. Moreover, the petitioner claims that the land in S.No.300/1 was assigned to the petitioner and as per assignment condition the petitioner ought to have put the land for cultivation within



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a period of three years from the date of assignment, but the petitioner has not put the land for cultivation and thereby violated the condition. Thereafter, the respondents considered the same and cancelled the assignment patta. The respondents further contended that the petitioner claims that he is in possession of the assigned land in S.No.300/1 land if that is so, the petitioner would have approached the respondents under UDR scheme and would have entered the petitioner's name. The petitioner did not do so which would prove that the petitioner was not in possession of the said land, since before UDR itself, the said land has been transferred to State Government for which the respondents are relying on the extract of the A register, wherein the S.No.300/1 has been



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classified as “Tharisu”. Hence for all these reasons the respondents prayed to dismiss the writ petition.

4. Heard Mr.N.Sathish Babu, learned Counsel appearing for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for the respondents and perused the records.

5. On perusal of the records, it is seen that the petitioner has received the said land under the landless poor scheme. The definition of landless poor as per the Revenue Standing Orders is as under:

“(3) Who are eligible for assignment :- (1) Only landless



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and poor persons who are likely to engage themselves in direct cultivation shall be eligible for assignment of land free of land value subject to the conditions of assignment, imposed in the 'D' Form patta. Cooperative societies consisting entirely of landless and poor persons who are likely to engage themselves in direct cultivation, shall also be eligible for cost free assignment of both valuable and non-valuable lands provided lands are available in compact blocks.”

In the present case, the petitioner was assigned land as early as 1970. At that time, the petitioner was 20 years old. Subsequently, in the year 1984, he was appointed as Noon Meal Organizer, continued his service and on attaining superannuation in the year 2010 had retired from service. Since the petitioner has not engaged in direct cultivation, hence



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the petitioner is not coming under the definition of “landless poor”.

6. The next contention of the respondents is that the petitioner's father is owning certain lands and hence the petitioner cannot be considered as landless poor. But the learned Counsel appearing for the petitioner submitted that if the petitioner's father is in possession of the land, the same cannot be considered as a ground to decline assignment under landless poor scheme. As stated supra the definition only states that the person should engage in direct cultivation. Based this definition the fact that the petitioner’s father is in possession of lands cannot be a ground to decline assignment in the name of the petitioner. The petitioner



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is eligible for assignment patta, since he can do direct cultivation, but the petitioner without doing cultivation was serving as Noon Meal Organizer. Hence the contention of the respondents, since the petitioner's father is in possession of land the petitioner cannot be considered under landless poor, cannot be sustained as per definition. But logically the petitioner cannot be considered as landless poor when his father has land because after the demise of his father, the petitioner would inherit the land, hence this Court is of the considered opinion that the petitioner cannot be considered as landless poor. Moreover, the petitioner is having lands in his own name also. But the petitioner submitted that the lands was purchased by him after entering into service. The petitioner has not



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submitted any documents to prove that the said lands were purchased by him after entering into service or before his service.

7. But rightly or wrongly, the petitioner was conferred with assignment patta. In such circumstances, if the respondents intended to cancel the same, it should be as per law. In the present case, the respondents have not issue proper notices and has not granted proper opportunity before cancelling the patta. The Hon'ble Division Bench of this Court has dealt with how and when an assignment patta can be cancelled in W.A.(MD)Nos.1201 of 2019 and batch, vide judgment, dated 08.07.2022, and has stated that without issuing proper notice, the



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assignment patta cannot be cancelled and the relevant portion of the judgment is extracted hereunder:

“18. In this case, the Revenue Divisional Officer appears to have entertained the proceedings for cancellation of Assignment. However, the Show Cause Notices were not issued by the Registered Post. This Court is unable to accept the case of the RDO regarding the service of Show Cause Notice to all the 133 persons by Affixture as per the Order of Cancellation of Assignment, dated 12.8.1987. As pointed out earlier in the case of Vendor of the Writ Petitioner, it is seen that the Village Administration Officer has endorsed that the Assignee by name Villayutham refused to receive the Notice and hence, Notice was served by Affixture on the wall. None of the 133 Assignees against whom Order of Cancellation of Assignment was made



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appeared or submitted objections. It is unbelievable. This Court is of the view that there was no Notice to any of the Assignee before cancellation of Assignment. This was done consciously to pass Order behind the back of Assignees. It is not even stated on whose wall Notice was affixed. Similarly, the Order of Cancellation was also communicated by affixture, as per the endorsement made by the Village Administrative Officer. It is seen that in respect of the persons whose address was not known, the Village Administrative Officer endorsed that the order was served by Affixture in a stick, which was posted in the respective land. In respect of others, the Village Administrative Officer reported that the Order was served by Affixture by pasting the same on the wall or doors of the Assignees. Even in the report, the address of the house of the Assignee, in which the Order was affixed is not mentioned. It is admitted that no Notice was sent by



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Registered Post. This Court is unable to accept or believe that service of Notice and Final Order was effected by Affixture. The arguments of learned Advocate General referring to Tamil Nadu Revenue Summons Act, 1869 is not acceptable as the said Act has no application. Further, when no record is provided to show service of Notice by Registered Post, Notice by Affixture is illegal. In this case, this Court is unable to believe such service in this case, where Assignments in 133 cases were cancelled at one stretch without the participation of any one of the Assignee. Therefore, this Court hold that there was no Notice to the Assignee before cancellation and the Order of Cancellation is not served on the Assignee. It is not established that the Assignee had knowledge about the cancellation of Assignment by any means.”



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Since the respondents have not invoked proper provision, has not served notice through registered post and has not followed the proper procedure that has been stated in the manual, the cancellation of patta is against the dictum laid down by the Hon'ble Division of this Court as well as the Revenue Standing Orders. Moreover, the appropriate authority for cancelling the assignment patta is the Commissioner of Land Administration. In the present case, the 2nd respondent has passed the order, hence the order is passed without jurisdiction.

8. The Commissioner of Land Administration is not arrayed as party. Therefore, the Commissioner of Land Administration is suo moto impleaded as 5th respondent by this Court. This case is remitted back to



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the impleaded 5th respondent and the petitioner is directed to submit a representation before the 5th respondent within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the 5th respondent shall consider the entire case and pass appropriate orders within a period of three months.

9. With the above observation and directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

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Internet : Yes

NCC : Yes / No

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To

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- 2.The District Revenue Officer and
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Tiruchirappalli.
- 3.The Revenue Divisional Officer,
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5.The Commissioner of Land Administration,
Land Administration Department,
2nd Floor, Ezhilagam, Chepauk, Chennai-600 005.



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S.SRIMATHY, J

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