



W.P.(MD)No.15249 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.12.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.15249 of 2020

KR.Lakshminarayanan

... Petitioner

vs.

The Revenue Divisional Officer,
Devakottai, Sivagangai District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records of the impugned order passed by the respondent in his proceedings Pa.Mu.A3/4217/2018 dated 17.07.2019 and quash the same.

For Petitioner :Mr.P.Arun Jayatram

For Respondent :Ms.D.Farjana Ghoushia
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the impugned proceedings of the respondent in Pa.Mu.A3/4217/2018 dated 17.07.2019, wherein, the assignment that was granted with respect to the subject property was cancelled and the land was directed to be resumed.



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2.Heard Mr.P.Arun Jayatram, learned Counsel appearing on behalf of the petitioner and Ms.D.Farjana Ghoushia, learned Special Government Pleader appearing on behalf of the respondent.

3.The case of the petitioner is that the subject property in S.Nos. 244/4, 244/11 and 244/12 was originally assigned in favour of one M.Jothimani, S.Elango and S.P.Andiappan, respectively, through proceedings dated 18.06.1992, 31.05.1994 and 14.06.1992. The property was purchased from them by the vendor of the petitioner, by name, V.Vadivel through registered sale deeds dated 06.12.2004, 04.11.2004 and 20.10.2004. Patta was also transferred in the name of the said Vadivel. The petitioner had purchased this property from the said Vadivel through a registered sale deed dated 27.06.2006 through document No.3443/2006. Thereafter, patta was also issued in the name of the petitioner.

4.The further case of the petitioner is that proceedings were initiated for cancellation of the assignment with respect to the subject property and also other properties and by common order dated



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19.04.2008, the assignment that was granted in favour of nearly 51 persons was cancelled.

5.The petitioner filed a Writ Petition challenging the said order cancelling the assignment insofar as S.Nos.244/4 and 244/11 and 244/12 measuring an extent of 7 acres 4 cents. This Writ Petition came to be dismissed by an order dated 10.06.2011. Aggrieved by the same, the petitioner had filed an appeal in W.A.(MD)No.657 of 2011 and this Writ Appeal was allowed by an order dated 10.04.2018 mainly on the ground that the impugned order was passed without giving an opportunity to the petitioner. In view of the same, the Writ Appeal was disposed of by issuing the following directions:

“9.Accordingly, the Writ Appeal is allowed and the impugned order of the learned Single Judge is set aside. Consequently, the impugned order passed by the respondent only insofar as the lands situated in S.Nos.244/12, 244/11 and 244/4 to the Original assignees Andiappan, S.Elango and M.Jothimani is set aside and the matter is remitted back to the respondent for considering the matter afresh by giving due opportunity of hearing to the Petitioner. Needless to say that the respondent should also give personal hearing to the Petitioner. After hearing the Petitioner, the respondent is at liberty to pass a fresh order insofar as the subjectmatter land alone are concerned, on merits and in accordance with law, within a period of 12 weeks from the date of receipt of a copy of this order. We make it clear that we are not expressing any view on the merits of the claim made by the Writ Petitioner, as we have set aside the impugned order and



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remitted the matter only on the ground of violation of principles of natural justice. No costs. Consequently, connected Miscellaneous Petitions are closed.”

6.Pursuant to the above order, the matter was once again remitted back to the file of the respondent. The respondent through the impugned proceedings dated 17.07.2019 rejected the claim made by the petitioner and confirmed the cancellation of the assignment mainly on the ground that the land in question was never utilised for cultivation and therefore, the same was in violation of Clause-10 of the terms and conditions of the assignment. Aggrieved by the same, the present Writ Petition has been filed before this Court.

7.The learned Counsel for the petitioner submitted that the respondent has filed a counter affidavit and has taken some additional grounds, which are not reflected in the impugned order passed by the respondent. The learned Counsel submitted that the respondent has taken a stand in the counter affidavit to the effect that the very alienation of the property is illegal, since the lands have been sold to persons other than the one, who falls within the eligible category.



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8. In the considered view of this Court, the impugned proceedings of the respondent has to be tested only based on what has been stated in the order and not based on what is stated in the counter affidavit.

9. On carefully going through the impugned proceedings of the respondent, it is seen that the respondent has taken into consideration the report of the Tahsildar, Karaikudi. The Tahsildar, in his report, has stated that a portion of the property was already acquired by the Highways Department and insofar as the remaining portion, there has been no cultivation for more than 30 years and it continuous to remain barren. Even in the earlier proceedings of the year 2008, which was challenged by the petitioner during the earlier round of litigation, it has been mentioned that the subject land was inspected and it was found that the same was not put to cultivation and that it remains to be barren. Therefore, what is apparent is that right from the beginning, the land has not been put to any cultivation and it remains barren.

10. The above fact was taken into consideration by the respondent and it was found that non cultivation of the land was in violation of the



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terms and conditions and therefore, the assignment was cancelled.

Consequently, the land, which was purchased from the assignee by the vendor and thereafter, by the petitioner, were also found to be illegal.

11.The learned Counsel for the petitioner submitted that the cancellation of assignment is taking place in a pick and choose manner. To substantiate the same, the learned Counsel brought to the notice of this Court paragraph 8 of the affidavit filed in support of this Writ Petition.

12.In the considered view of this Court, in various cases, it is seen that the land that is assigned to the landless poor or to any other depressed classes, ultimately gets into the hands of wealthy people and they put up huge constructions in the property and enjoy the same. The authorities wake up at a later point of time and proceed to cancel the original assignment. Invariably, while undertaking this exercise, proper notice is not given and proper opportunity is not given and the same results in the order being put to challenge before this Court. Many such Writ Petitions that are filed are also allowed by this Court on the ground



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of violation of principles of natural justice.

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13.The lands that are assigned to the landless poor are being utilised at a later of point of time by others who do not fall under the particular class of persons, to whom the land was assigned. This seems to be a continuing problem, which has to be attended with sincerity by the authorities. In many cases, the land that is assigned ultimately gets sold to somebody else and the original purpose for which the land is assigned gets completely defeated. Therefore, the Government has to keep this in mind and must follow a uniform standard in identifying the said properties, which is purchased and utilised in violation of assignment conditions and resume those lands.

14.In the instant case, the petitioner has alleged at paragraph 8 of the affidavit that a politically influential person is also possessing lands in various survey numbers, which he has purchased from the assignee and that no action has been taken against him for the cancellation of the assignment and for resumption of the lands. In the considered view of this Court, there is no equality in illegality. The petitioner has to defend



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his case based on the grounds, that have been put against the petitioner.

Just because, no action has been taken with respect to some other lands, that is not a justification for the petitioner to question the proceedings initiated for cancellation of assignment on the ground of violation of the terms and conditions.

14. When this Court issues a Writ of Certiorari, it must be seen if there is any error of law on the face of the record. This Court should not try to substitute its views to the view taken by the authorities unless it is patently illegal. This Court is not sitting and exercising an appellate jurisdiction while exercising its power under Article 226 of Constitution of India. Ultimately, it is only a patent error, that can be corrected, while issuing a Writ of Certiorari and not a wrong decision. It is now settled that even if some action or order is challenged and it is found to be illegal and invalid, this Court can always refuse to upset such an order with a view to doing substantial justice to the parties. The law on this issue was discussed in detail by the Apex Court in the case of ***Central Council for Research in Ayurvedic Sciences and others vs. Bikartan Das and others*** reported in (2023) 5 MLJ 289.



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15. Keeping the above in mind, if the impugned proceedings of the respondent is tested, it is seen that the respondent has assigned sufficient reasons for the cancellation of the assignment on the ground that the land was never put to cultivation for more than 30 years and that it is one of the mandatory condition that was imposed even while the assignment was made in the year 1992. Therefore, where there is a violation of condition, it will always be left open to the Government to cancel the assignment and to resume the land. Ultimately, the land belongs to the Government and the Government assigned the lands to the landless poor or to depressed classes with a particular purpose and object. If that purpose and object gets defeated, it is always left open to the Government to resume the lands after cancelling the assignment. Such power is also traceable to the Board Standing Order. Therefore, the reasons that have been assigned by the respondent in the impugned order does not suffer from any illegality or error of law apparent on the face of record. Hence, there is no ground to interfere with the impugned proceedings of the respondent.



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16.In the result, this Writ Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No

01.12.2023

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To

The Revenue Divisional Officer,
Devakottai, Sivagangai District.



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N.ANAND VENKATESH, J.

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