



W.A.(MD)No.1440 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.09.2023

CORAM

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.(MD) No.1440 of 2023
and C.M.P. (MD) No.11118 of 2023

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The District Revenue Officer,
Sivagangai District,
Sivagangai.

3.The Special Tahsildar (Assignment),
Sivagangai District,
Sivagangai.

... Appellants/Petitioners

Vs.

M.Saleem Baig

... Respondent/Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent, to set aside the order passed by this Court in W.P.(MD)No.18635 of 2013, dated 01.08.2022.

For Appellants

: Mr.D.Sachi Kumar
Additional Government Pleader



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For Respondent : Mr.V.R.Venkatesan

* * *

J U D G M E N T

(Judgment of the Court was delivered by **S.S.SUNDAR, J.**)

This Writ Appeal is directed against the order of the learned Single Judge of this Court dated 01.08.2022, allowing the Writ Petition in W.P.(MD) No.18635 of 2013, filed by the respondent.

2. Heard Mr.D.Sachikumar, learned Additional Government Pleader appearing for the appellants and Mr.V.R.Venkatesan, learned counsel for the respondent.

3. By consent of both sides, this Writ Appeal is disposed of at the admission stage itself.

4. Brief facts that are necessary for disposal of this Writ Appeal are as follows:-

The respondent made an application for assignment of land under the category of landless poor under the Scheme of Government for



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assignment of dry or waste land to the landless poor. It is stated by the respondent in this appeal that the then Special Tahsildar (Assignment), Sivagangai, by proceedings dated 31.03.1969 assigned an extent of 3.33 acres in S.No.20/1 and an extent of 1.67 Acres in S.No.225/5 in Mangudi Village, Sivagangai Taluk free of costs after following the formalities. Patta passbook was also issued to the petitioner pursuant to assignment on 13.08.1975 vide patta No.692. It is admitted by the respondent that the assignment was on condition that the respondent should bring the land under cultivation within a period of three years from the date of assignment. It is the specific case of the respondent that he started doing cultivation by planting cashew nut trees and other trees. It is also stated by the respondent that the respondent has obtained loan from Government to reclaim and develop the land immediately after assignment. There is no dispute that the petitioner was paying the kist for the assigned land.

5. It appears that by order impugned in the Writ Petition, the assignment was cancelled on 26.03.1997 without issuing any notice to the respondent. Since the respondent did not know about the cancellation



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of assignment, repeatedly requested the appellants to issue UDR patta through his representations. After coming to know about the order of cancellation, the respondent made a representation on 22.08.1994 to the first respondent to furnish the certified copy of the cancellation order said to have been passed on 26.03.1979 and the concerned Tahsildar had even returned the requisition on the ground that the cancellation order number was not mentioned in the representation. The respondent at one point of time entertained a doubt even about the existence of the order dated 26.03.1979 as he could not get the copy of the order.

6. Earlier when the respondent requested the revenue officials to furnish the copy of the order cancelling the assignment, a reply was given by the District Collector informing the respondent that due to the administrative reasons, the copy of the order dated 26.03.1979 cancelling assignment could not be furnished. Therefore, the respondent was forced to file a Writ Petition before the Principal Bench in W.P.No.34017 of 2003 for issuance of the Writ of Mandamus, to furnish the certified copy of the order dated 26.03.1979, cancelling the assignment in favour of the petitioner in 1969. The said Writ Petition was dismissed on 18.09.2013



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without prejudice to the rights of the respondent herein and with liberty to him to agitate the matter in a separate proceedings to protect his possession. It is pertinent to mention that this Court recorded the reason that the proceedings relating to cancellation of assignment could not be furnished because as per the statement of the appellants herein all the files relating to the subject matter were destroyed due to efflux of time. Therefore, it was in the said circumstances, the respondent filed the Writ Petition in W.P.(MD) No.18634 of 2018 for issuance a declaration to declare the un-communicated order of dated 26.03.1979 is null and void and consequently to direct the appellants not to interfere with the respondent's peaceful possession and enjoyment of the land in respect of an extent of 5 Acres comprised in S.Nos.20/1 and 225/5, which were assigned in his name.

7. Learned Single after hearing the parties held that the order passed against the respondent cancelling the assignment, which was not served on the respondent, has no valid existence in the eye of law and no reliance can be placed on the same to assert a claim based on its contents. The principle in a judgement of Hon'ble Supreme Court in the case of



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State Bank of West Bengal v. Mondal reported in **2001(8) SCC 443** was followed by the learned Single Judge to hold that the un-communicated order is a nullity in law and that the petitioner is entitled to declaratory relief as prayed by him. Since the respondent is in possession of the property, the consequential relief was also granted by the learned Single Judge. Aggrieved by the same, the above the Writ Appeal is filed by the appellants / respondents in the Writ Petition.

8. Learned Additional Government Pleader appearing for the appellants has fairly accepted the authenticity of facts recorded by the learned Single Judge about the respondent's possession and the order of assignment in favour of the respondent in 1969. The fact that the said order was not communicated to the respondent is not in dispute.

9. Very strangely an argument was advanced before this Court that the respondent was not paying the kist for a long period and he has violated the conditions of assignment hence, he cannot challenge the lawful order. Learned Additional Government Pleader further submitted that the appellants have absolute right to cancel the assignment for



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violation of conditions of assignment by virtue of G.O.Ms.No.2555, Revenue dated 14.05.1973 and that a lawful order cannot be set at naught after a few decades. Learned Additional Government Pleader also submitted that an order, which is validly passed, cannot be declared as a nullity on the basis of the judgment of the Hon'ble Supreme Court, where the facts are entirely different. When the entry in the UDR record has been rightly removed and the land has been shown as Government Poramboke as per revenue records, learned Additional Government Pleader further submitted that, there is no justification in setting aside the cancellation of assignment merely on the ground that the order was not served on the respondent.

10. This Court is unable to accept any of the contentions of the appellants. First of all, the fact that the respondent obtained an order of assignment free of costs in respect of extent of 5 Acres as stated by him is not in issue. The specific contention of the respondent that the cancellation was without issuing any notice to the respondent or giving an opportunity is admitted. The fact that the order of cancellation was not served on the respondent is also admitted. The contention of the



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respondent is that he came to know about the cancellation of assignment only in 1994 and that his request for furnishing copy of the order had been turned down for no valid reason. Having regard to the facts admitted, this Court is of the view that when the respondent came to know about the cancellation of assignment and the order of cancellation was not served on him, the only option available to him is to challenge the cancellation order by way declaration. Despite a genuine attempt was made by the respondent to get a copy of the order cancelling assignment, the revenue officials originally refused to furnish for different reason but finally for the reason that the order cancelling assignment has been destroyed along with files. The doubt entertained by the respondent as to the existence of order cancelling assignment appears to be reasonable, having regard to the facts admitted and narrated during the course of proceedings.

11. Be that as it may, the respondent came with a positive case earlier and now that the order of cancellation of assignment was passed without issuing a show cause notice and without furnishing a copy of the order adverse to the respondent. Therefore, cancellation of assignment is in utter disregard to the settled law and there is no scope for saving such



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an order merely because the order is not traceable and the records are destroyed. An illegal order cannot be permitted to take a different Avathar to deprive a person's valid title. An assignment of land in terms of Revenue Standing Order is valid and it denotes conveyance of property right in favour of the assignee to make him the absolute owner. Except the power of resumption for the violation of terms and conditions of assignment, the revenue officials have no right to interfere with the rights of the assignee to hold the land as an absolute owner. Though the assignment is admitted, the appellants did not produce any records to show that the property was never brought to cultivation. When the cancellation order is not traceable, even according to the appellants, they cannot make a statement by mere imagination that for valid reason the assignment was cancelled. Therefore, it is a peculiar case where the appellants have nothing on record to controvert the case of the respondent in the Writ Petition. The fact that the respondent was in possession of the property is not disputed.

12. For the reasons stated above, this Court finds no reasons to interfere with the order of the learned Single Judge in allowing the Writ



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Petition as prayed for. Accordingly, this Writ Appeal is dismissed.

However, there is no order as to costs. Consequently, connected Civil

Miscellaneous Petition is closed.

[S.S.S.R., J.] [D.B.C., J.]
07.09.2023

NCC : Yes / No

Index : Yes / No

sj

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