



W.P(MD)No.12642 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.12642 of 2014

and

M.P(MD)No.1 of 2014

Amaravathi

... Petitioner

Vs

1.The Principal Secretary and
Commissioner of Land Administration,
Chepauk,
Chennai – 5.

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

3.The Revenue Divisional Officer,
Sivagangai Division,
Sivagangai District.

4.B.Murugesan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned order of the first respondent herein in Rc.No.G2/27996/2005, dated 21.01.2014 and quash the same insofar as it is against the petitioner.



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For Petitioner : Mr.G.Mohan Kumar
For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader
for R.1 to R.3

Mr.G.Kalieswaran for R.4

ORDER

Heard the learned counsel on either side.

2. The writ petitioner was assigned 1.11.5 Hectares of land in Survey No.265/3 in Arasanoor Village, Sivagangai Taluk, Sivagangai District on 17.10.1999. The fourth respondent lodged complaint before the Revenue Divisional Officer, Sivagangai that the petitioner had obtained assignment by misrepresentation. Enquiry was conducted. The Revenue Divisional Officer, Sivagangai vide proceedings dated 13.03.2003 cancelled the assignment. Aggrieved by the same, the petitioner filed appeal before the District Revenue Officer, Sivagangai.

3. The reasons for cancelling the assignment were as follows:

- a) The assigned land was constituted within 16 kms from the District Head Quarters.
- b) The petitioner's husband was in possession of lands in his own name.



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The appellate authority after conducting full inspection came to the conclusion that even though Arasanoor Village is located within 16 kms, the assigned lands fall outside the prohibited distance. He however noted that the petitioner's husband was having 1.12.75 Hectares either as joint pattadhar and in his individual capacity in all. An applicant will be eligible for assignment only if none of the family members are having immovable property. It is obvious that the petitioner had obtained assignment by suppressing this fact. However, taking humanitarian view, the District Revenue Officer permitted the petitioner to retain the lands on payment of land cost. The fourth respondent preferred revision before the Commissioner of land Administration, Chepauk, Chennai. The Commissioner of Land Administration vide order dated 21.01.2014, modified the order passed by the District Revenue Officer in the following terms:

“I have considered the contentions on the Revision Petitioner's side as well as Respondent's side with reference to the records available. The suit land was assigned by the Tahsildar, Sivagangai in his proceedings No.D.A.132/1409, 17.10.1999. At the time of assignment, TMT.Amaravathi's husband was having 0.98.0 hectares dry land in Arasanoor Village vide patta No.105 and ½ share in 0.28.5 hectares dry land vide patta No.1042. The village records thus clearly establish that Tmt.Amaravathi's husband Thiru.Arumugam was having 1.12.75 hectares of dry land at the time of assignment itself,



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which was suppressed by the Respondent to get the assignment. Her argument that the land in question is family property only though the pattas are in the name of her husband cannot be accepted as she has given no proof for this contention. Hence it is clear that Tmt.Amaravathi has got the assignment by suppression of fact and this land cannot be said to be the sole source of livelihood of her family. As of now, the statements of the Village Administrative and Zonal Deputy Tahsildar and the inspection report of the Tahsildar, Sivagangai establish that out of the total extent of land, there is a kalam in 20 cents in the south eastern part of the land which is being used by the public. This kalam has been built with public funds in 2001, that is, after the grant of assignment. Presently, on the eastern side of the land there is a bore well and a mango plantation in an extent of 0.20.5 hectares or 50 cents. This has also been admitted by the respondent in her statement. The rest of the land is left vacant and has been recently ploughed for cultivation. It is relevant to note that while the assignee has not objected to the construction of the kalam on the suit land and has presently not blocked the use of the kalam by the public, there is no guarantee that this will not happen at a later stage as the usage and value of the land increases.

The District Revenue Officer has admitted in his order that Tmt.Amaravathi has suppressed the facts that her husband is having lands and has got assignment. On these grounds alone, the entire assignment deserves to be cancelled. However, only on humanitarian grounds, since she has made efforts to



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reclaim the lands and bring it into cultivation, the District Revenue Officer has ordered to reassign the land to her, and that too on payment of land cost, excluding the area of the kalam. From all the evidence, it is clear that only 0.20.5 hectares has been planted with mature mango trees, and since there should be no obstruction to the use of the kalam for which public money has been spent in the future, it seems to be sufficient that the reassignment on prevailing market value, which is anyway made only on humanitarian grounds, be restricted to 0.20.5 hectares in which the mature fruit trees are situated. The rest of the assignment will stand cancelled and the land reclassified accordingly in the village records.”

Aggrieved by the same, the present writ petition came to be filed.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

5. The learned Additional Government Pleader on the other hand submitted that the impugned order is well reasoned and that it does not call for interference. He pressed for dismissal of the writ petition.



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6. I carefully considered the rival contentions and went through the materials on record.

7. The writ petitioner through her counsel undertook before this Court that whatever land is eventually conveyed to her will be retained for agricultural operations and that they would not be alienated by her. This undertaking given by the petitioner that the land in question will not be alienated during her lifetime is placed on record. The petitioner is unable to dislodge the categorical findings in the impugned orders that there was suppression on her part at the time of seeking assignment. It is a fact that the petitioner's husband was having 0.98.0 hectares in the very same village in his individual capacity and $\frac{1}{2}$ share in 0.28.5 hectares vide patta No.1042. It is obvious that 1.12.75 hectares of the petitioner's husband are only a dry land. The order passed by the Commissioner of Land Administration has not been put to further challenge by the fourth respondent.

8. I find considerable force in the contention of the learned counsel appearing for the petitioner that even though the District Revenue Officer had rendered a finding that 90 cents of land have been brought to cultivation in all, the Commissioner of Land Administration has chosen to uphold the order of



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Revenue Divisional Officer only to the extent of the land wherein mature trees have been grown.

9. The underlying approach of the Commissioner of Land Administration is that the land which has been brought for cultivation by the petitioner should be allowed to remain with the petitioner. Going by the finding of the District Revenue Officer, the petitioner should be allowed to retain 90 cents of land.

10. The learned counsel appearing for the petitioner states that the land in question is a dry land. It does not have the facility of irrigation. The purpose of assignment of such lands is to give not only economic security to the assignee but also to encourage economic activities. It appears that the petitioner had dug borewell.

11. 20 cents of the assignment land had already been dedicated to common purpose “Kalam”. The petitioner cannot have claim thereon. Considering the overall facts and circumstances of this case, adopting the humanitarian approach that underlies the order passed by the District Revenue Officer as well as the Commissioner of Land Administration the petitioner can be allowed to retain 1 ½ acres. In other words, the remaining one acre and 20



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cents (including Kalam area) shall be resumed by the third respondent forthwith and without any delay. The petitioner undertakes to hand over possession the moment it is demanded. The borewell portion can very well be retained by the petitioner. The land cost payable by the petitioner for 1 ½ acres of land will be with reference to the date of assignment. The District Revenue Officer shall quantify the cost payable by the petitioner as expeditiously as possible and the petitioner shall honor the demand without any delay thereafter. The order impugned in this writ petition is interfered with to the above extent.

12. This writ petition is partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

12.07.2023

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

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