



W.P(MD)No.20983 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**W.P(MD)No.20983 of 2015
and
M.P.(MD)Nos.1 & 2 of 2015**

Marimuthu

... Petitioner

Vs.

**1.The District Collector,
Pudukkottai.**

**2.The Revenue Divisional Officer,
Illuppur,
Pudukkottai District.**

**3.The Tahsildar,
Kulathur Taluk,
Keeranur,
Pudukkottai District.**

4.K.Veeramuthu

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in his proceedings in Na.Ka.A1/1853/2015 dated 8.10.2015 and quash the same as of no legal consequence and direct the respondents 1 to 3 not to interfere with the possession and proprietary rights of the



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petitioner in the property in S.F.No. 179/17 an extent of 001.0 hectares at Perambur, Kulathur Taluk, Pudukotai District.

For Petitioner : Mr.Vasanth

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader for R1 to R3

: No appearance for R4

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for R1 to R3.

2. The petitioner was assigned 2.47 cents by the Tahsildar, Kulathur. Vide proceedings dated 10.10.2008, the assignment was cancelled. Challenging the same, the present writ petition came to be filed.

3. 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.



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4. The learned Additional Government Pleader appearing for the official respondents on the other hand submitted that the petitioner has breached the conditions subject to which assignment was made. He pointed out that normally, assignments are given based on the long possession and enjoyment of the assigned property. He pointed out that the second part of the writ prayer is for forbearing the authorities from interfering with the petitioner's possession. Therefore, it is not open to the petitioner to claim that the land has not been handed over to the petitioner herein. More than anything else, patta has already been issued in favour of the petitioner. Therefore, it is too much for the petitioner to argue that he has not been given possession of the land. Once this argument is rejected, according to the learned Additional Government Pleader, the petitioner has to necessarily comply with the assignment condition. The condition is that the petitioner must build a house within one year. Admittedly, the petitioner has not complied with the said condition. Therefore, the order cancelling the assignment has to be necessarily sustained. He also took me through the contents of the



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cancellation order and submit that the reasons given therein are well founded. He pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. The impugned order contains three reasons:-

(I) Violation of the assignment condition.

(II) The land is required for public purpose.

(III) The petitioner is not eligible for assignment, since he is owning land elsewhere.

6. As rightly pointed out by the learned counsel for the petitioner, none of these grounds can be sustained. It is true that the assignment order was issued in favour of the petitioner in the year 2008. If as claimed by the learned Additional Government Pleader, considering the possession and enjoyment of the property, the assignment order has been issued, then, that would imply that the petitioner was already residing therein. What has been assigned is less than 2 ½ cents of land. If the petitioner has already been residing there, the question of he having to put up construction does not arise



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at all. There is nothing on record to show that the land was specifically earmarked and four-boundaries were fixed. No proceedings has been produced before me indicating formal handing over of the possession to the petitioner. It is true that patta has been issued in favour of the petitioner. But patta merely contains the very same description set out in the assignment deed. The authorities cannot take advantage of their own wrong. The case of the petitioner is further probabilsed by the fact that he had earlier filed W.P. (MD)No.5123 of 2015 for directing the Tahsildar, Kulathur Taluk to measure the assigned site, fix the boundaries and hand over the possession. Vide order dated 01.04.19 in W.P.(MD)No.781 of 2017 etc., I had held as follows:-

“2. It is seen from the materials enclosed in the typed set of papers that after the assignment orders were made, the assignees submitted petitions before the Tahsildar, Madurai, seeking measurement and demarcation of the assigned sites. The petitioners were asked to remit the fees. The petitioners complied with the said demand. Even thereafter, the revenue authority declined to carry out the exercise of survey, measurement and demarcation. As a result, the petitioners were not sure as to where they can put up the construction.

3. The authority cannot take advantage of their own wrong. Merely assigning a site and issuing proceedings and patta alone would



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not be sufficient. The authority will have to formally demarcate the assigned site and physically hand over the same to the assignees. It is because they did not do so, the assignees were not in a position to comply with the condition to put up a construction.

4. Since I have come to the conclusion that the assignees cannot be blamed for non fulfilment of the condition stipulated in the assignment order, the order impugned in these writ petitions stand quashed. These Writ Petitions are allowed. The jurisdictional Tahsildar is directed to carry out the work of survey, measurement and demarcation of the assigned sites within a period of twelve weeks from the date of receipt of a copy of this order.”

7. I am inclined to adopt the very same approach in the present case also. The other reason that the petitioner as a land owner was not eligible for assignment is also not sustainable. In RSO-15, the expression 'landless person' has been defined as a person who owns a total extent of less than 1.21.5 hectare of land if dry or a total extent of less than 60.5 ares, if wet. The petitioner is said to own 0.5 ares. No doubt, the petitioner is owning a small piece of land in the very same village. But the total extent is just around 2 ½ cents. Therefore, the petitioner will very much come within the definition “landless person”. A learned Judge of this Court vide order dated 14.09.2022. in W.P.No.26028 of 2018 has also referred to the very same definition



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'landless person' set out in RSO-15 and granted relief to the writ petitioner therein. Once a land has been assigned in favour of the landless person, it is not open to the authority to subsequently take the stand that the assigned land is required for public purpose and proceed to cancel the assignment. That would be an unreasonable and arbitrary exercise of power. None of the reasons set out in the impugned order hold good. The impugned order is set aside. The third respondent is directed to earmark and demarcate the assigned land and hand over the same to the petitioner forthwith and without any delay.

8. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

02.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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To

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