



W.P(MD)No.375 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.375 of 2015

and

M.P.(MD)Nos.1 & 2 of 2015

P.Surulisamy

... Petitioner

Vs.

**1.The Commissioner of Land Reforms,
Chepauk,
Chennai-5.**

**2.The Assistant Commissioner,
Land Reforms,
Madurai-2.**

3.R.Murugesan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order vide MR-IV/354/Bodi/B1 dated 18.8.2008, with respect to the survey no.1794/1, to an extent of 45cents, on the file of the 2nd respondent and quash the same as illegal.

For Petitioner : Mr.P.Muthu Vijayapandian

**For Respondents : Mr.S.RA.Ramachandran
Additional Government Pleader for R1 & R2
: Mr.A.Rahul for R3**



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ORDER

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Heard the learned counsel on either side.

2. The petitioner challenges the assignment order made in favour of the third respondent.

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 assignment order and grant relief as prayed for.

4. The official respondents have filed counter affidavit and the private respondent has also filed counter affidavit. The learned Additional Government Pleader as well as the learned counsel for the third respondent took me through the contents of the respective pleadings. They pressed for dismissal of the writ petition.

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

6. Vide order dated 18.08.2008, the Assistant Commissioner, Land Reforms, Madurai assigned lands in favour of as many as 8 beneficiaries. The third respondent is figuring as the 8th beneficiary. He was granted 45 cents of nanja land in Survey No.1794/1 and 30 cents of land in Survey No.136/5 in Bodinayakanur Village. The learned counsel appearing for the third respondent



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would contend that this assignment order is consequential to the proceedings taken under Tamil Nadu Act 58 of 1961 against the excess land holdings of the legal heirs of one Veera Lakshmi. Copies of the primary notification published in the Government Gazette have been enclosed in the typed set of papers. The stand of the third respondent is that so long as the primary notifications have not been set aside in the manner known to law, challenge cannot be mounted against the consequential assignment order.

7. This contention is conceptually sound. But I am not persuaded by the said technical objection because the case of the petitioner is altogether different. The land owner against whom the proceedings had been taken under Tamil Nadu Act 58 of 1961 cannot question the consequential order of assignment without challenging the primary notification. The learned counsel for the petitioner points out that as against the petitioner or his vendor, no proceedings under Tamil Nadu Act 58 of 1961 were ever taken. He points out that the land comprised in Survey No.1794/1, Bodinayakanur Village belonged to one Allapitchai Rowthar. The said land owner settled the property in favour of his daughter Ameetha Beevi. She appointed one Sheik Abdullah as power agent. The said power agent sold the property to the petitioner vide sale deed dated 21.10.2011 (Document No.6413/11) on the file of the SRO, Bodinayakanur. The core question turns on whether the property originally



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belonged to Veera Lakshmi or Allapitchai Rawthar. The petitioner has enclosed in the typed set of papers the relevant 'A register' entries. It is seen therefrom that Survey No.1794/3 and 1794/5 stood in the name of S.Veeralakshmi Ammal but Survey No.1794/1 stood in the name of Allapitchai Rawthar. I fail to understand as to how Survey No.1794/1 was included in the land holdings of S.Veeralakshmi Ammal. Even though such a categorical stand has been taken in the affidavit filed in support of the writ petition and it has been duly backed by the entries in the settlement land register, in the counter affidavit filed by the official respondents, this aspect of the matter has not at all been controverted or contested. Instead, some unconnected pleas have been taken. Since the assertion of the petitioner that Survey No.1794/1 never belonged to Veera Lakshmi has not been contested or controverted, the assignment order made in favour of the third respondent insofar as the aforesaid survey number is concerned is set aside. As already noted, the assignment order is in two parts. That part of the assignment order pertaining to Survey No.136/5 measuring 30 cents of land is untouched.

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

29.08.2023

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

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