



W.P(MD)No.7017 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.7017 of 2015

and

M.P.(MD)No.1 of 2015

A.R.Kandaswamy

Vs.

... Petitioner

1.The Additional Chief Secretary,
Commissioner of Land Administration,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The District Collector,
Sivagangai District,
Sivagangai.

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

4.The Sub Collector,
Sub Collector Office,
Devakottai,
Sivagangai District.

5.The Tahsildar,
Karaikudi Taluk,
Sivagangai District.

... Respondents



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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 relating to the order passed by the 1st respondent herein dated 17.11.2014 in Rc.No.G2/14113/2013 and quash the same as illegal and unconstitutional, consequently direct the respondents to restore the assignment patta with respect to 0.76.5 hectares of land comprising in S.No. 414/5 and 075.5 hectares of land comprising in s.No. 414/6 of Tiruvelankudi village, Karaikudi Taluk, Sivaganga that was assigned in favour of the petitioners mother Tmt. Kalayaniammal and his maternal aunt Tmt. Sudandaradevi by the 4th respondent herein in the year 1989 respectively and to forbear them from interfering with the peaceful possession of the petitioner over the above lands which was held by the family of the petitioner for more than 5 decades.

For Petitioner : Mr.G.Prabhurajadurai
for Mr.R.Pon Karthikeyan

For Respondents : Mr.D.Gandhiraj
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2. The petition mentioned lands measuring total extent of 4 acres were assigned in favour of one Sundaradevi and Kalyaniammal vide proceedings dated 11.06.1989 by the Tahsildar, Karaikudi. The said assignees settled the assigned land in favour of the petitioner by executing the gift deeds dated



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16.08.2004 and 18.08.2004. Eucalyptus trees had already been grown on the assigned lands. While so, the Sub Collector, Devakottai vide order dated 29.04.2008 cancelled the assignment and directed resumption of the lands. In fact, along with the petitioner, a number of other persons had also suffered a similar fate. Aggrieved by the same, the petitioner filed an appeal before the District Revenue Officer, Sivagangai. It was however dismissed on 11.04.2012. The petitioner thereafter applied for review. But it was also dismissed. Then, the petitioner went before the Commissioner of Land Administration. The Commissioner of Land Administration vide order dated 17.11.2014 dismissed the appeal and confirmed the order passed by the original and appellate authorities. Challenging the same, this 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.

4. The respondents have filed counter affidavit and the learned Special Government Pleader took me through its contents. He submitted that as many as three authorities have gone into the issue and therefore, the writ Court may



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not exercise its power of judicial review in the matter. He pressed for dismissal of the writ petition.

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

6. The primary ground, on which, the sub collector, Devakottai cancelled the assignment was that the assigned property was not brought to cultivation within three years. As rightly pointed out by the learned counsel appearing for the petitioner, the facts appearing on record belie the basic premise on which the cancellation order rests. He points out that the assignments were made way back on 11.06.1989. Yathasthu enclosed with the assignment order mentions that the assignees were already in possession and enjoyment of the land for five years and that the land had already been assessed to tax. It is pointed out that the eucalyptus trees had already been grown and taking note of the possession of the applicant, the assignment orders were issued. The learned counsel appearing for the petitioner drew my attention to the order dated 19.04.2008 in which it has been mentioned that even though the other assigned lands were remaining fallow, the eucalyptus trees had already been planted. It also refers to the existence of 'Velari plants' on the assigned lands. Thus, the order passed



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by the original authority itself notes distinction in the case of the writ petitioner's land yet he also suffered the very same fate as that of the other assignees.

7. When Clause 10 of the assignment order itself talks about the eucalyptus cultivation on the assigned lands, the incorporation of the condition that the land must be brought under cultivation within three years becomes redundant. In any event, if according to the authorities, the assignment condition has not been complied with, the authorities were duty bound to have conducted a spot inspection within the stipulated period. It is not open to the authority to cancel the assignment after a gap of almost twenty years. It is quite possible that the assignee had brought the assigned land under cultivation within three years and subsequently, due to drought or any other reason, the lands had been allowed to remain fallow. Therefore, the primary ground on which the cancellation order has been passed has to be necessarily held as unsustainable. It is true that before selling or alienating the assigned land, permission from the jurisdictional Revenue Divisional Officer has to be obtained. In this case, such permission was not obtained. But on that ground, the assignment could not have been cancelled.



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8. The learned counsel appearing for the petitioner draws my attention to the decision of the Hon'ble Division Bench reported in **2010-5- L.W. 289 (T.Tirumalai Gounder & Another Vs. The State of Tamil Nadu)**. The Hon'ble Division Bench had held that once after alienation, there has been a mutation of revenue records, absence of permission will not vitiate alienation. In this case, patta was very much standing in the name of the petitioner on the eve of the passing of the impugned order. The copy of the patta standing in the petitioner's name has been enclosed in the typed set of papers. The learned counsel also points out that I had followed the said Division Bench decision vide order dated **03.08.2022 in W.P.(MD)No.12745 of 2022 (Alagarsamy Vs. The Revenue Divisional Officer)**. The said order was also confirmed by the Hon'ble Division Bench vide order dated **11.04.2023 in W.A.(MD)No.1272 of 2022(K.Chinnapandi Vs. Alagarsamy)**. Therefore, the objection of the authorities anchored on absence of permission from the jurisdictional RDO will not hold good. In the order passed by the Commissioner of Land Administration, it has been noted that the original assignees were not eligible for getting assignment. As rightly pointed out by the learned counsel appearing for the petitioner, this was not the ground on which the cancellation was originally made. That apart, the assignment order reads that in recognition of possession by the assignee, the assignment order has been made. The assignees



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did not make any misrepresentation before the authority. Therefore, this ground also will not hold good.

9. Looked at from any angle, the orders impugned in the writ petition are unsustainable. They are set aside. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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

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