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W.P.(MD)No.24909 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.02.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.24909 of 2022

and

W.M.P.(MD)Nos.19009 and 19010 of 2022

1.S.S.Baskar

2.S.S.Janarthanan

3.S.S.Jeyakumar

4.S.S.Mohan

5.S.S.Sundar

6.Geetha @ Katti Thangam

7.Sujatha

... Petitioner

Vs.

1.The District Collector,
O/o. District Collector Office,
7A, National Highway, PSP Nagar,
Korampallam, Tuticorin.

2.The District Revenue Officer,
O/o. District Collector Office,
7A, National Highway, PSP Nagar,
Korampallam, Tuticorin.

3.The Revenue Divisional Officer,
Revenue Divisional Officer,
Bench Road,
Tuticorin.



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4.The Revenue Tahsildar,
Tuticorin Taluk,
Tuticorin.

5.The Village Administrative Officer,
Kumaragiri Pudukottai,
Tuticorin Taluk,
Tuticorin District

6.The Block Development Officer
Kumaragiri Village Panchayat, Kumaragiri Village,
Tuticorin.

7.The President,
Kumaragiri Village Panchayat,
Kumaragiri, Tuticorin.

(R6 and R7 are suo motu impleaded vide
Court order dated 04.01.2023)

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the entire records in connection with the impugned orders passed by 1st respondent vide proceedings Ref.No.Na.Ka.No.T1/21574/2013 dated 04.08.2022, confirming the impugned order passed by the 2nd respondent vide his proceeding Ref. No:B3, 1235/80 dated 16.03.1981 and quash the same, consequentially direct the respondents herein to restore the patta in the name of petitioners/ Legal Heirs of Late Mrs. Kasikaniammal, in respect of land in S.No.509/6, measuring to an extent of 1.62 Acres situated at Kumaragiri Pudukottai Village, Tuticorin Taluk and District, within a stipulated time period that may be fixed by this Court.



For Petitioners : Mr.Niranjan S.Kumar
For Respondents : Mr. R.Baskaran,
Additional Advocate General
Assisted by
Mr.M.Siddharthan
Additional Government Pleader

ORDER

Heard the learned counsel for the writ petitioners and the learned Additional Advocate General assisted by the learned Additional Government Pleader for the respondents.

2.The petitioners challenge the order dated 04.08.2022 passed by the District Revenue Officer, Tuticorin, dismissing the appeal filed by them, questioning the cancellation order dated 16.03.1981 passed by the then Sub Collector, Tuticorin. The sequence of events would run thus:

The mother of the writ petitioner herein Mrs.Kasikkaniammal was assigned an extent of 1.62 acres in Survey No.509/6 in Kumaragiri village in Tuticorin Taluk on 27.12.1969. Patta No.1565 was also issued in her favour on 24.11.1973. The said Kasikkaniammal passed away in the year 2003. The father of the writ petitioners also passed away in the year 2009. In the year 2009, the petitioners realized that the property originally assigned in favour of their mother has been classified as



“assessed waste”. They therefore approached the authorities by invoking the provisions of Right to Information Act wanting to know under what proceeding the re-classification had been done. The efforts did not yield any response. Therefore, the petitioners filed W.P.(MD)No. 14882 of 2012 for directing the revenue authorities to restore the patta in their names in respect of the petition-mentioned land. The writ petition was disposed of on 24.11.2017, by directing the authorities to enquire into the matter and pass order.

3. Pursuant to the said direction, the Tahsildar, Tuticorin, conducted an enquiry and vide order dated 12.02.2018 rejected the request of the petitioners. It is interesting to note that the said order dated 12.02.2018 reads that there is nothing on record to indicate that assignment was ever made in favour of Mrs. Kasikaniammal. Questioning the said order, the second petitioner filed W.P.(MD)No.6919 of 2018. The said writ petition was allowed on 28.03.2018 in the following terms:

"6. The impugned order has been passed on the ground that there is no entry in the Village Assignment Register, regarding the assignment granted in favour of the petitioner's mother and in the 'A' Register. From the perusal of the records, it could be seen that a patta passbook has been issued to the petitioner's mother, wherein, it has been clearly mentioned that



the land was assigned to the mother of the petitioner and that the petitioner has also produced receipts for payment of taxes. Apart from that in the earlier writ petition filed by the petitioner and other legal heirs, this Court, after having considered the entire materials, specifically held that an assignment was made in favour of the mother of the petitioner. The relevant portion of the order reads as follows:

"5.It is seen that originally, the patta was issued in the name of the mother of the petitioners on account of assignment of land and thereafter, the was land was classified as a poramboke land without any intimation or notice to the petitioners, which act of the authorities cannot be countenanced at any cost. It is also seen that the petitioners were also made to run from pillar to post to know the exact position as of now and they have also not been furnished with the order copy of cancellation of patta, despite they made a representation to the District Collector.

6.In such view of the matter, the respondents 2 and 3 are directed to conduct an enquiry with regard to the claim of the petitioner on the basis of their representation dated 14.05.2010 in line with the communication of the District Collector / first respondent, dated 16.07.2010 and thereafter, pass appropriate orders on the issue, after affording an opportunity of hearing to the petitioners and other interested parties, if any. Such exercise be completed within a period of six weeks from the date of receipt of a copy of this order."

7.This Court after considering the materials available on record has held that pursuant to the order of assignment in favour of the mother of the petitioner, a patta was also granted in her favour, therefore, this Court directed the concerned



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Tahsildar to consider the request for transfer of patta and pass appropriate orders on the representation made by the petitioner along with the other heirs of the deceased Kasikaniammal. But the Tahsildar, without considering none of the materials submitted by the petitioner, has mechanically come to a conclusion that in the Village Assignment register, there was no entry in respect of the Assignment granted in favour of the mother of the petitioner and rejected the request for transfer of patta. Merely because there was no entry found in the village revenue records, it cannot be said that no such assignment was made in favour of the mother of the petitioner. The Tahsildar ought to have considered the patta issued in favour of the mother of the petitioner wherein, it has been clearly mentioned that the land in question was assigned in her favour. Apart from that to show their possession and enjoyment the petitioner has also produced Kist and other Tax receipts. The Tahsildar without considering all those materials has mechanically rejected the claim of the petitioner based on the village revenue records. Thus, this Court is of the view that the impugned order has been passed by the Tahsildar on a total non application of mind and so, it is liable to be set aside.

8.In the above circumstances, the impugned order passed by the fourth respondent is set aside. The matter is remanded back to the fourth respondent, and the fourth respondent is directed to consider all relevant records including the patta passbook issued in favour of the petitioner's mother and the Kist and other Tax receipts and also the order passed by this



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Court in W.P.(MD)No.14882 of 2012, and pass suitable orders after affording sufficient opportunity to the petitioner, within a period of six weeks from the date of receipt of a copy of this order. Until such final order is passed by the fourth respondent, the respondents are directed to maintain status quo as-on-today and further directed not to assign the land to any third party.

9. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed."

4. Since the matter had been once again remanded to the file of the Jurisdictional Tahsildar, enquiry was conducted and vide order dated 03.08.2018, the request of the writ petitioners was once again rejected. Only in the order dated 03.08.2018, it had been mentioned that as early as on 16.05.1981, the then Sub Collector, Tuticorin had cancelled the assignment made in favour of Mrs. Kasikaniammal. Copy of the said order was also served on the writ petitioners. The Tahsildar, Tuticorin, took the stand that since the then Sub Collector, Tuticorin had already cancelled the assignment, it is not open to the Tahsildar to issue patta at this point of time.

5. Questioning the order dated 03.08.2018, the first petitioner herein filed an appeal before the Sub Collector, Tuticorin. The Sub



Collector, Tuticorin vide order dated 28.02.2019, confirmed the order passed by the jurisdictional Tahsildar and dismissed the appeal. He also relied on the cancellation order dated 16.03.1981. Challenging the order dated 28.02.2019 by the Sub-Collector, Tuticorin, the second petitioner filed revision before the DRO, Tuticorin. The petitioners also independently filed an appeal before the DRO, Tuticorin, challenging the cancellation order dated 16.03.1981. The DRO, Tuticorin, heard the appeal as well as the revision together and passed the impugned order dated 04.08.2022 rejecting the petitioner's request and confirming the order passed by the Subordinate authorities. Challenging the order dated 04.08.2022, as well as the cancellation order dated 16.03.1981, this writ petition has been filed.

6.The learned counsel 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 orders and grant relief as prayed for.

7.The respondents have filed a detailed counter affidavit and the learned Additional Advocate General took me through its contents. The primary contention of the learned Additional Advocate General is that



Mrs.Kasikaniammal, the original assignee did not choose to challenge the order of cancellation during her lifetime. He took me through the contents of the cancellation order dated 16.03.1981 and pointed out that the cancellation order is grounded on the premise that the assignee did not comply with the terms of assignment ie., failure to bring the land to cultivation within a period of three years. He further pointed out that the assignee herself appears to have been conceded the charge that assignment condition was not complied with.

8.The other major ground relied on by the learned Additional Advocate General is that immediately after the cancellation order was passed, in the relevant revenue records, the land had been reclassified as 'தரிசு' and that the land has been used for public purposes. In para-11, it has been mentioned that the southern portion of the land is used as burial ground, the northern portion of the land has been fenced by the local body and used as bio fertiliser unit and public yard. The categorical stand of the respondent is that the petitioners are out of possession. According to the learned additional advocate general, the writ petitioners will have to be non suited also on the ground of laches. He pressed for dismissal of the writ petition and he wanted this Court to sustain the order impugned in this writ petition.



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9.I carefully considered the rival contentions and went through the materials on record. I must observe at the very outset that it is not a dispute between two private parties. The State is the respondent. The State ought not to plead defences which a private party may plead. The core issue that arises for consideration is whether the authorities were justified in cancelling the assignment made in favour of the mother of the writ petitioners. Though in the first round, the jurisdictional Tahsildar had taken a strange stand that there was nothing on record to show that assignment was ever made in favour of Mrs.Kasikaniammal, subsequently, there was an about-turn and the administration contended that the assignment was subsequently cancelled.

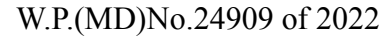
10.The only ground on which the cancellation was done was that the land was not brought for cultivation within a period of three years. I went through the photo copy of the cancellation order dated 16.03.1981. Even a cursory look would reveal that it is a stereotyped order in which the blanks have been filled up. In at least one case, the Madras High Court deprecated the practice of passing such cyclo-styled orders.



11.It is true that official acts are presumed to have been performed regularly. But this is not a conclusive presumption. I hesitate to invoke this maxim for the simple reason that in the first round, even the factum of assignment was not acknowledged by the jurisdictional Tahsildar. Only when this Court took up cudgels, the cancellation order surfaced. Since it is a format order, I am not in a position to assume that it was preceded by notice or that Kasikaniammal even offered her explanation. In the absence of deposition or signed testimony of Kasikkaniammal in the relevant file, I cannot infer that the statement attributed to her is true; it is not borne out by records.

12.There is again no proof to show that this order dated 16.03.1981 was ever communicated to the assignee. It has been held in more than one decision that an order kept in the file and not communicated to the party, does not have any legal consequence. The Hon'ble Supreme Court in the decision reported in **(2001) 8 SCC 443** (*State of W.B v. M.R.Mondal and anr*) held as follows :

“16....an order passed but retained in file without being communicated to the plaintiff can have no force or authority whatsoever and the same has no valid existence





correspondingly nullified. As already noted, patta pass book was issued in favour of Kasikanniammal. There is also record to show that kist was paid till 1990. It is not as if some buildings have been erected in the place in question. While the right to property has ceased to be a fundamental right (Articles 19(1)(f) and 31 of the Constitution of India, deleted by 44th Amendment), it still retains the status of constitutional right under Article 300A of the Constitution of India. The respondents cannot therefore, casually meddle with the property right of the citizens.

14. In this view of the matter, the orders impugned in the writ petitions are set aside. The fourth respondent is directed to make appropriate mutation in the revenue records by reflecting the name of the writ petitioners in respect of the petition mentioned land. This shall be done within a period of five weeks from the date of receipt of a copy of this order.

15. This writ petition is allowed, accordingly. Consequently, connected miscellaneous petitions are closed. No costs.

21.02.2023

NCC: Yes / No

Index : Yes / No

Internet: Yes/ No

Note: Issue order copy on 08.**03.2023**

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- 1.The District Collector, O/o. District Collector Office,
7A, National Highway, PSP Nagar, Korampallam, Tuticorin.
- 2.The District Revenue Officer,
O/o. District Collector Office,
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