



W.P(MD)No.28468 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.28468 of 2022

and

W.M.P(MD).Nos.22475 and 22476 of 2022

Venkadesan

... Petitioner

Vs.

1.The District Collector,
Thanjavur District,
Thanjavur.

2.The District Revenue Officer,
Thanjavur District,
Thanjavur.

3.The Revenue Divisional Officer,
Kumbakonam, Thanjavur District.

4.The Tahsildar,
Taluk Office,
Thiruvudaimaruthur,
Thanjavur District.

... 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 pertaining to the impugned order of Na.Ka.No.4889/2020-A3 dated 02.09.2022 passed by the third respondent and quash the same.



For Petitioner : Mr.R.Murugappan
For Respondents : Mr.M.Siddharthan
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. The petitioner challenges the order impugned dated 02.09.2022, whereby the petitioner's assignment has been cancelled. 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 order and allow this writ petition as prayed for.

3. The respondents have filed a detailed counter affidavit and the learned Additional Government Pleader took me through its contents. The primary stand of the respondents is that the petitioner has not brought the assigned land to cultivation. The land has now become fallow and it is found to be “தரிசு” on ground during inspection. The petitioner is also not residing in the village in question. These three reasons are good enough to sustain the order of cancellation. This is the contention of the learned Additional Government Pleader.



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

5. The petitioner is an Ex-Army Man. He was assigned with a piece of land in Survey No.88/1 measuring 0.56 Hectares in Mullukudi Village, Thiruvidadaimaruthoor Taluk in the year 2007. The relevant provisions of the Revenue Standing Order are as follows:

“RSO-15

3.Scope of the rules in this Section:(1)....

(2)Definitions:-

(i).....

(ii)

(iii)...

(iv)...

(v)..

(vi)..

(vii)Direct cultivation: Direct cultivation shall mean cultivation on one's own account by one's own labour, by the labour of any member of one's family or by servants on wages payable in cash or kind (but not in crop share) or by hired labour under one's own supervision or the personal supervision of any member of the family.

...



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(10) Rules for preference when there are two or more applicants:-(1).....

The term “residents” means people who live or own land in the village, whether or not they own a house in it, and includes people who own a house or land in the village, whether or not they live in the village. A resident of the village, through whose relinquishment or default in payment of revenue, the land has become unoccupied, shall have no preferential claim. As between non residents inter se preferential claims will be determined in accordance with the same principles. As between residents on the one hand and non residents claiming in accordance with the above mentioned principles on the other hand, residence in the village shall be taken into account so far as to give preference. “

6. Let me test each of the reasons set out in the impugned order. The first reason is that the petitioner should have brought the assigned land for cultivation within one year. If really the petitioner did not adhere to the said condition, certainly the authority concerned would have issued notice on expiry of the said period. That was not done. Only when the petitioner sought assignment of some more land and also filed a petition in W.P(MD).No.6078 of 2022, the present enquiry came to be conducted and the impugned order came to be passed. In other words, the authorities on their own have not taken the stand that within one year, the land in question was not brought for cultivation.



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7. The petitioner, on the other hand, has enclosed in the typed set of papers the Adangal issued by the Zonal Deputy Tahsildar for the fasli year 1410 and subsequently. This is more than sufficient to disbelieve the case of the respondents that the property was not brought to cultivation. It is not necessary that the land should be under cultivation forever. This Court can take judicial note of the fact that due to failure of monsoon and several other reasons, it may not be possible to conduct agricultural operation during a given period and that cannot be put against the assignee.

8. The other reason that the petitioner should reside elsewhere also, cannot be accepted. The condition for assignment is that the assignee must reside in the village in question. This condition can be made applicable only at the time of assignment. The petitioner can reside in the neighboring village and still carry on direct cultivation. In the case on hand, it is stated that the petitioner's wife is suffering from cancer and for her treatment, the petitioner had to be in Trichy. This circumstance cannot be put against the writ petitioner.

9. The learned Additional Government Pleader would strongly contend that in the vicinity, lands have been assigned in favour of the scheduled caste persons and only to ensure that they have right of access, the cancellation order



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has been passed. This reason also is unacceptable. When the land in question had been issued in favour of the Ex-Army Man, the authorities should treat the land as his property thereafter. If the authorities want to create access for the other sections of society through the said land, they must acquire the same in the manner known to law. Of course, the petitioner has to abide by the other conditions of assignment. The order impugned in the writ petition is set aside and the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

27.01.2023

NCC : Yes / No

Index : Yes / No

Rmk

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G.R.SWAMINATHAN, J.,

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