



WP(MD)Nos.13399, 13494 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 30.06.2023

PRONOUNCED ON : .01.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)Nos.13399, 13494 of 2013

and

MP(MD)No.1 of 2013 in Rev.Aplw(MD)No.SR52198 of 2013

and

MP(MD)Nos.1 (2), 2 (2) of 2013, 1 of 2014

WP(MD)No.13399/2013:

Y.Francis Raja

: Petitioner

Vs.

1.The Commissioner of Survey and Settlement,
Survey House,
Chepauk, Chennai.

2.The District Collector,
Trichy District, Trichy.

3.The Revenue Divisional Officer,
Trichy.

4.The Tahsildar,
Thiruvarambur Taluk,
Trichy District.



WP(MD)Nos.13399, 13494 of 2013

5.D.R.Jahir Hussain (Died)

6.Ayisha

7.Abdullah

8.Shiek Dawood (Minor)

Rep. by his Mother / Natural Guardian

Ayisha

: Respondents

[R.6 to R.8 are substituted for the deceased R.6, vide order dated 30.11.2018]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the records relating to the impugned order of the first respondent in D.O.Lr.E1/11135/2010 dated 11.02.2011 and quash the same.

WP(MD)No.13494/2013:

R.Umashankar

: Petitioner

Vs.

1.The Commissioner of Survey and Settlement,
Survey House,
Chepauk, Chennai.



WP(MD)Nos.13399, 13494 of 2013

2.The District Collector,
Trichy District,
Trichy.

3.The District Revenue Officer,
Trichy District,
Trichy.

4.The Revenue Divisional Officer,
Trichy.

5.The Tahsildar,
Thiruvarambur Taluk,
Trichy District.

6.D.R.Jahir Hussain (Died)

7.Ayisha

8.Abdullah

9.Shiek Dawood (Minor)
Rep. by his Mother / Natural Guardian
Ayisha

: Respondents

[R.7 to R.9 are substituted for the deceased R.6, vide order dated
05.12.2018]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the records relating to the impugned order of the first respondent in D.O.Lr.E1/11135/2010 dated



WP(MD)Nos.13399, 13494 of 2013

11.02.2011 and the consequential report in No.Na.Ka.A7/2001-2011 dated

15.07.2013 passed by the fourth respondent and quash the same.

MP(MD)No.1 of 2013 in Rev.Aplw(MD)No.SR52198/2013:

Y.Francis Raja

: Petitioner

Vs.

1.D.R.Jahir Hussain

2.The Commissioner of Survey and Settlement,
Survey House,
Chepauk, Chennai.

3.The District Collector,
Trichy District,
Trichy.

4.The Revenue Divisional Officer,
Trichy.

5.The Tahsildar,
Thiruvarambur Taluk,
Trichy District.

: Respondents

PRAYER in MP(MD)No.1 of 2013 in Rev.Aplw(MD)No.SR52198 of 2013:

Petition filed under Article 226 of the Constitution of India seeking leave to file the review application to review the order passed in WP(MD)No.1694 of 2013, dated 31.01.2013.



WP(MD)Nos.13399, 13494 of 2013

PRAYER in Rev.Aplw(MD)No.SR52198 of 2013: Petition filed under Order 47 Rule 1 read with 114 of the Civil Procedure Code to review the order passed in WP(MD)No.1694 of 2013, dated 31.01.2013.

For Petitioners : Mr.T.Mohan,
Senior Counsel
Assisted by
Mr.Elendevan Chandran Jeyabalan
(In all petitions)

For Respondents: Mr.R.Baskaran,
Additional Advocate General
Assisted by
Mr.S.Saji Bino,
Special Government Pleader
for R.1 to R.4 in WP(MD)13399/2013
for R.1 to R.5 in WP(MD)13494/2013

Mr.N.Ananda Kumar
for R.6 to R.8 in WP(MD)13399/2013
for R.7 to R.9 in WP(MD)13494/2013

COMMON ORDER

One Francis Raja, claiming to be the owner of the land in S.No.67/4A and 67/5C at Suriyur Village, Thiruverumbur Taluk, Tiruchirappalli District, filed the writ petition in WP(MD)No.13399 of 2013 challenging the



WP(MD)Nos.13399, 13494 of 2013

order of the Commissioner of Survey in D.O.Lr.E1/11135/2010 dated 11.02.2011.

2. Similarly, one Umashankar, claiming to be the owner of the property in S.Nos.67/3A, 67/6A, 67/7A and 67/8A at Suriyur Village, Thiruverumbur Taluk, Tiruchirappalli District, filed the writ petition in WP(MD)No.13494 of 2013 as against the very same order of the Commissioner of Survey in D.O.Lr.E1/11135/2010 dated 11.02.2011 and the consequential report of the Revenue Divisional Officer dated 15.07.2013.

3. Since both the writ petitions are filed challenging the order passed by the Commissioner of Survey dated 11.02.2011, both the writ petitions are taken up together and are disposed of by way of this common order.

4. The case of the writ petitioners is that the subject lands belong to them and that they are in exclusive possession and enjoyment of the same. The petitioners claim to have purchased the lands through registered



WP(MD)Nos.13399, 13494 of 2013

documents and their predecessors were assigned with the subject lands by the Tahsildar, Thiruverumbur Taluk in the year 1984. While so, the Commissioner of Survey and Settlement, by his orders in D.O.Lr.E1/11135/2010 dated 11.02.2011, has held that the lands were recorded as “held over” lands during the settlement proceedings under the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 (Act 26 of 1963) and that the Tahsildar, Thiruverumbur is not having any right to assign those lands. Therefore, the Commissioner has directed the District Collector to take necessary action to cancel the assignments which were issued without any jurisdiction and against law. Following the orders of the Commissioner dated 11.02.2011, the Revenue Divisional Officer has submitted a report dated 15.07.2013 that the lands which were kept as “held over” were wrongly assigned during the UDR survey and as such, he recommended for cancellation of the assignment granted to the petitioners' predecessors.

5.Learned Senior Counsel appearing for the petitioners submitted that the subject lands were assigned by the Tahsildar, Thiruverumbur in



the year 1984 in favour of Rabi Ahamed Khan, Gopalakrishnan and Devaki. The assignees have sold the lands to various persons and the petitioners herein are the subsequent purchasers of the lands. The Commissioner of Survey has entertained a review petition filed by the sixth respondent who claims to be the power agent of some 45 persons and has passed the impugned order dated 11.02.2011 under the pretext that it was “held over” lands during the settlement proceedings. This impugned order was passed without providing any opportunity of hearing to the assignees or to the present land owners / petitioners who are in possession of the lands.

6.He further submitted that the consequential report was also made in a careless manner without even ascertaining the records, since the lands were released from the “held over” status as per the orders of the Settlement Officer, Thanjavur dated 27.05.1975 and the lands were classified as “assessed dry waste”. Only thereafter, the Tahsildar, Thiruverumbur, has assigned this government lands as per the RSO 15(3). Therefore, he prayed for appropriate orders.



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7. Learned Additional Advocate General appearing for the respondents submitted that the orders impugned in these writ petitions are the letter in D.O.Lr.E1/11135/2010 dated 11.02.2011 issued by the first respondent and the consequential report of the fourth respondent dated 15.07.2013. Both the impugned orders are interdepartmental communications, which are not liable to be challenged by way of a writ petition. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in *Mahadeo v. Sovan Devi*, reported in **2022 SCC OnLine SC 1118**, wherein it was held as follows:-

“14. It is well settled that inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right. This Court examined the said question in a judgment reported as Omkar Sinha v. Sahadat Khan. Reliance was placed on Bachhittar Singh v. State of Punjab to hold that merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government, two things are necessary. First, the order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and second, it has to be communicated. As already indicated, no formal order modifying



the decision of the Revenue Secretary was ever made. Until such an order is drawn up, the State Government cannot, in our opinion, be regarded as bound by what was stated in the file."

8.Learned Additional Advocate General further submitted that the petitioners are not having any legal right on the subject property, inasmuch as they have purchased the same in violation of the assignment conditions.

9.Considering the rival submissions made, this Court, by order dated 22.06.2023, has called for certain clarifications and the Director of Survey and Settlement by his letter dated 28.06.2013, has replied as under:-

"(i) Whether the petition land which has been declared as held over in the year 1969 was released from the held over Book?

Yes. As per the order of the Thanjavur Settlement Officer in SR.No.23/10pro/Try/74 dated: 27.05.1975. The "Held Over" status of the suit land was released.

(ii) What is the status of a held over land after the settlement proceedings were over. Whether it vest with revenue?

The Held Over will be kept in the same status until the competent settlement authority or appellant forum decide the status its doesn't



vest in the Revenue Department. Until necessary orders are passed for the competent authority.

(iii) Whether the Tahsildar is having competent power to take a decision on the held over land?

As far the Held Over the land is concerned, the Revenue Tahsildar has no power to deal with the land. But in this case the Held Over land was subsequently settled as Assessed Waste Dry by the competent authority i.e., Settlement Officer. Hence the Tahsildar is having power to take a decision in respect of suit land."

10.This Court considered the rival submissions made on either side and perused the materials placed on record.

11.The subject lands were bought by the petitioners and those lands were assigned to their predecessors by the Government in the year 1984. The sixth respondent, acting as a power agent for number of persons, filed an application before the Assistant Settlement Officer under Sections 20 r/w 10(1) & 11 of the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 (26 of 1963) on 15.09.2010. According to the sixth respondent, the subject lands were erroneously treated as "held over"



WP(MD)Nos.13399, 13494 of 2013

during the settlement proceedings as per the proviso under Section 10(1) of the Act in the year 1969. Therefore, they seek for pre-existing kudivaram rights and cancellation of assignment made to the petitioners. On the basis of this application, the Commissioner of Survey, by communication dated 11.02.2011, directed the District Collector to take necessary action to cancel the assignments and to enable the Assistant Settlement Officer to discharge his duty. In the meantime, the sixth respondent filed a writ petition in WP(MD)No.1694 of 2013 to pass orders on the communication of the Commissioner dated 11.02.2011. Consequently, the Revenue Divisional Officer filed his report dated 15.07.2013, recommending cancellation of pattas for the subject lands and to take action in accordance with Act 26 of 1963. These orders recommending cancellation of patta for the lands under the possession of the petitioners are under challenge in these writ petitions.

12.As rightly pointed out by the learned Additional Advocate General, both the impugned orders are inter-departmental communications, which are in the process of consideration for appropriate decision and as such, it cannot be relied upon as a basis to claim any right.



However, by letter dated 11.02.2011, the Commissioner of Survey has issued a direction to the District Collector, Thiruchirapalli to cancel the assignment on the subject properties. This was issued on the basis of the revision petition filed by the sixth respondent. This adverse order was passed by the Commissioner without providing any opportunity of hearing to the assignees or the petitioners.

13. Moreover, it appears that the Commissioner of Survey and the Revenue Divisional Officer have come to a conclusion based on the orders of the Settlement Officer in the year 1969. However, the lands were released from “held over” status by the orders of the Settlement Officer, Thanjavur, dated 27.05.1975. Therefore, the impugned communication has been made by the Commissioner of Survey, without verifying the records, directing the District Collector to cancel the assignment nearly after 40 years.

14. Therefore, in view of the order dated 27.05.1975 of the Settlement Officer, Thanjavur and on the violation of principles of natural justice, the



WP(MD)Nos.13399, 13494 of 2013

impugned order of the Commissioner of Survey dated 11.02.2011 is set aside. Since the consequential report of the Revenue Divisional Officer dated 15.07.2013 is also based on the direction of the Commissioner, the same is also set aside. However, liberty is granted to the respondents to conduct a fresh enquiry after providing opportunity of hearing to the parties concerned and to proceed further.

15. Accordingly, both the writ petitions are allowed in the above terms. In view of the orders passed in the writ petitions, the miscellaneous petition in MP(MD)No.1 of 2013 in Rev.Aplw(MD)No.SR52198 of 2013 and the review application in Rev.Aplw(MD)No.SR52198 of 2023, which is in SR stage, are also closed.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Internet : Yes
Index : Yes / No
NCC : Yes / No
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.01.2024



WP(MD)Nos.13399, 13494 of 2013

To

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Survey House,
Chepauk, Chennai.
- 2.The District Collector,
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WP(MD)Nos.13399, 13494 of 2013

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WP(MD)Nos.13399, 13494 of 2013

.01.2024