



W.A.(MD) No.638 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.06.2024

CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE L.VICTORIA GOWRI

W.A.(MD) No.638 of 2019

and

C.M.P.(MD) No.5296 of 2019

Karuppaiah

... Appellant/
3rd Respondent

Vs.

1.Maruthupillai

... 1st Respondent/
Petitioner

2.The Sub Collector,
RDO Office,
Paramakudi,
Ramanathapuram District.

3.The Tahsildar,
Paramakudi,
Ramanathapuram District.

... Respondents 2 & 3/
Respondents 1 & 2



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Prayer: Appeal filed under Clause 15 of Letters Patent against the order dated 20.03.2019 in W.P.(MD) No.3252 of 2019.

For Appellant	:	Mr.T.Veerakumar
For R1	:	Mr.SP.Vijay Nivas
For RR2 & 3	:	Mr.V.Nirmal Kumar Government Advocate

JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

This appeal is preferred by the third respondent in W.P.(MD) No.3252 of 2019 challenging an order of a learned Single Judge, a petition filed at the instance of the first respondent herein for setting aside the proceedings of the second respondent/Sub-Collector, Paramakudi dated 07.12.2018.

2. The issue involved before the learned Single Judge is the legality of the order passed by the Sub-Collector in cancelling an assignment given to the first respondent/writ petitioner. And this assignment came to be cancelled at the instance of the appellant herein, who is the neighbour of the writ



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petitioner. There has been certain civil dispute between the appellant and the first respondent herein and the learned Single Judge has taken note of it. However, the cause of action for that litigation has little to do with the cause of the action of the writ petition, but the trigger is that civil dispute. The learned Single Judge has taken note of the same.

3. The ground for cancellation of the assignment was that the assignee of the land did not put up a residential building in the property assigned within the time stipulated. The date of the assignment was 30.09.2002 and it was made to two individuals, both of whom seem to be cousins and they share the same name Maruthu. Of the two individuals, one Maruthu had passed away and the assignment also benefits his heirs. Before the learned Single Judge, it was contended by the first respondent herein that he could not put up a construction as stipulated in the order of assignment essentially because of his poverty. He had also made an accusation that the appellant herein had interfered with his construction.

4. Heard both sides.



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5. Two aspects became evident as to why the assignee of the land could not put up construction: (i) his alleged poverty; and (ii) necessity to institute a suit in O.S.No.87 of 2007 by the assignees for declaration of their title over the property assigned and for certain ancillary reliefs *inter alia* against the appellant herein in O.S.No.87 of 2007.

6. Very evidently, the cause of action for institution of the aforesaid suit has arisen beyond the period of one year since the date of assignment within which the order of assignment mandates that the assignees of the land put up their construction. There might have been some interference from the appellant and others, but that is well beyond the stipulated one year period for putting up construction. The other reason stated for not complying with the condition was who are the assignees of the land?

7. Poverty obviously cannot be a sin in this country. After all, Government assigns land only to the landless and if the land given could not be utilized owing to the poverty of the assignees, then it defeats the very object behind



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it. Therefore, before cancelling any assignment, it is imperative that the authorities show focus not on the factum of non-construction in the land assigned, but the cause behind the same.

8. This Court perused the judgment of the first appellate Court in A.S.No.23 of 2012 which arose from the judgment and decree in O.S.No.87 of 2007 referred to above. The first appellate Court has granted declaration, but only after excluding a portion of the land assigned on the ground that the same constitutes a water tank. It is not known as to whether it continues to be a water tank till date, but there is a decree of the civil Court, and this Court necessarily cannot ignore the same.

9. Taking into account the totality of the circumstances attending this case, this Court merely modifies the order of the learned Single Judge and requires the Sub-Collector concerned to re-examine the order of cancellation, after taking into account as to (a) whether any portion of the property assigned has a water tank; and (b) whether the assignees of the land could not construct a house within one year from the date of assignment owing to their poverty.



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10. If the Sub-Collector finds that if water tank of the local body is there in any portion of the property assigned, then he needs to assess as to whether the remaining portion of the land assigned could be conveniently enjoyed by the assignees. And if he finds that the remaining property could not be conveniently enjoyed, then the Sub-Collector may contemplate the assignees some other property, provided the present assignees satisfy the conditions necessary for assignment. And if the Sub-Collector finds that the land excluding the portion where a water tank is situated can be conveniently enjoyed, but owing to the poverty of the assignees, they could not construct a house, then the Sub-Collector is required to consider the case of the assignees under any of the welfare schemes available and currently in force including Pradhan Mantri Awas Yojana (PMAY). The entire exercise is directed to be completed within a period of three months from the date of a receipt of a copy of this judgment. This Writ Appeal is accordingly disposed of.

11. This Court is informed that one of the heirs of deceased Maruthu had sold a portion of the property assigned to a third party named Gunasekaran. This



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sale deed obviously is incompetent, as it had taken place during the pendency of this appeal. How far it must be led to impact the decision of the Sub-Collector is left to his sense of justice and discretion. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.) (L.V.G., J.)
24.06.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

ABR

To

1.The Sub Collector,
RDO Office,
Paramakudi,
Ramanathapuram District.

2.The Tahsildar,
Paramakudi,
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