



W.P.(MD)No.22739 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2024

CORAM

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.(MD)No.22739 of 2018

and

W.M.P(MD)Nos.20634 and 20635 of 2018

V. Thangavel

... Petitioner

Vs.

1.The District Collector,
Dindigul District,
Dindigul.

2.The Sub Collector,
Palani,
Dindigul District.

3.The Tahsildar,
Ottanchathiram Taluk,
Dindigul District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order passed by the second respondent vide his proceeding in Na.Ka.No. 7588/2018/A6, dated and quash the same in so far as the petitioner concerned.

For Petitioner : Mr.N.Sathish Babu

For Respondents : Mr.M.Muthumanikkam
Government Advocate



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ORDER

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The writ petition has been filed challenging the order passed by the second respondent vide his proceeding, dated 23.10.2018.

2. In the year 1988, assignment orders were issued to the landless poor on terms and conditions stipulated therein. From the date of assignment, they were in possession and enjoyment of the assignments. Long after the lapse of the statutory period, some of the assignees decided to sell the lands. The petitioner's father (Late) K. Velsamy along with one Rajamani purchased the property from the original assignees, namely, Krishnan, Murugan and Tharmaraj, who were the assignees of the land in S.No.228/89B, S.No.241/30B, S.No.228/87, S.No.228/85, S.No.241/29 and S.No.228/86 under the sale deed, dated 20.03.2001. In pursuance of the sale, the petitioner was in continuous enjoyment and possession of the lands by paying necessary charges and kist to the authorities and by getting the revenue records mutated in his name. While so, the second respondent issued the communication, dated 23.10.2018, calling upon the petitioner to show cause on the violation of the terms and conditions of the assignment order. The petitioner aggrieved by the order, dated 23.10.2018 has filed the above writ petition for the aforesaid relief.



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3. The respondents after referring to the back ground of facts and the categories of assignment orders issued by the Government submitted that the assigned lands for which the notices were issued related to Category No.5, (i.e) general category. According to the respondents, as per the instructions in G.O.Ms.2485 Revenue, dated 09.11.1979, the purchasers had to obtain prior permission either from Tashildar or Revenue Divisional Officer before alienating the assignment lands. The respondents in their counter though admitted that the petitioner had purchased the lands after lapse of 10 years nevertheless stated that the petitioner was bound to show cause if any other condition of the assignment order was violated. The respondents submitted that though the impugned order was only a show cause notice, on the apprehension that the assignment order would be cancelled the petitioner filed the writ petition. The respondents therefore submitted that as the writ petition was filed on mere apprehension, the writ petition deserved to be dismissed.

4. The learned counsel for the petitioner submitted that the impugned order was non-speaking and cryptic and absolutely no grounds of violation of the terms and conditions of the assignment order were made out. The learned counsel for the petitioner further submitted that the second respondent had no jurisdiction to issue the show cause notice as the powers vested only with the



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Land Commissioner. The learned counsel for the petitioner further submitted that the respondents having admitted that the petitioner had purchased the property beyond the period of 10 years stipulated under the assignment order had no jurisdiction to issue the show cause notice. The learned counsel for the petitioner therefore submitted that the impugned order was not sustainable and the same deserved to be set aside.

5. The learned Government Advocate for the respondents on the other hand submitted that even if the assigned property was sold after the period of 10 years, the assignee, was bound to get the permission from the authorities for alienation of lands, as no permission was sought, the impugned order could not be faulted. The learned Government Advocate for the respondents submitted that, in any event, the impugned order was only a show cause notice and hence the writ petition should not be entertained.

6. I heard both sides and perused the materials placed on record.

7. The impugned order passed by the second respondent reads as follows:

ஒட்டன்சத்திரம் வட்டம், எல்லப்பட்டி கிராமம், புல எண்.
228/34ஏ,34பி,36ஏ,54ஏ,64,66,72,73,74,76,77,78,79,80,82,83,85,86,87,88,89,
240/17ஏ,17பி, 241/5ஏ,5பி,29,30 ஆகியவற்றில் நில ஒப்படை
வழங்கப்பட்ட இனங்களில் நபந்தனை மீறல் கண்டறியப்பட்டது



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தொடர்பாக விசாரணை மேற்கொள்ள வேண்டியுள்ளதால் தங்கள் கைவசமுள்ள அசல் ஆவணங்களுடன் 02.11.2018 அன்று பழனி சார் ஆட்சியர் அலுவலகத்தில் சார் ஆட்சியரின் முன்பாக ஆஜராகும்படி கேட்டுக்கொள்ளப்படுகிறது.

From a reading of the impugned order, it is seen that the respondents have not cited any grounds of violation. The respondents having stated that violations of the assignment order were found, ought to have specifically stated the specific violation/ violations. Therefore, the learned counsel for the petitioner is justified in stating that the impugned order is cryptic and non-speaking. It is further seen that though the impugned order is only a show cause notice, in the absence of any grounds of violations, the petitioner cannot be expected to reply to the same.

8. The learned counsel for the petitioner relied on the judgment of the Division Bench of this Court in ***T.Tirumalai Gounder and others Vs The Secretary to Government, Land Administration, Fort St.George, Chennai*** report in ***2010-5-L.W.289*** in support of his case. The Hon'ble Division Bench of this Court in the said case held as follows:

"13. There is no dispute that the property could be transferred with the permission of the revenue authorities. When the Revenue authorities on their own motion and by accepting the sale deed dt. 16.5.1967 endorsed the ownership of the first appellant and mutated the revenue entries in his name, such transfer should be considered to be an act of permission for assigning the land. The revenue authorities having passed orders



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for mutation of revenue records, cannot be permitted subsequently to cancel the very assignment on the ground that there was no prior permission from the revenue authorities for transfer of assignment. Therefore, the Revenue Divisional Officer Virudhachalam was not justified in cancelling the assignment in favour of the first appellant."

9. In the present case, the assignment is of the year 1988. As per the terms and conditions of the assignment deed, the assignees were barred from alienating the property within 10 years of the assignment. The father of the petitioner in the writ petition purchased the property on 20.03.2001 vide Document Nos. 199/2001, 200/2001 and 201/2001. Therefore, there is no violation of the said term of the assignment order.

10. The learned Government Advocate for the respondents submitted that even if the assigned land was sold after 10 years, it was incumbent on the assignees to get permission from the authorities. The said contention of the learned Government Advocate for the respondents cannot be accepted for the simple reason that in the terms and conditions of the assignment order, no such condition was imposed. Therefore, in my view, in the absence of any condition in the assignment order, the submission has no merit. It is also pertinent to note here that the respondents issued the show cause notice for the first time after lapse of several years. Absolutely no reasons are sated for the delay. In my view



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on this ground also, the impugned order cannot be sustained. I therefore set aside the impugned order.

11. Though the learned Government Advocate for the respondents prayed that the matter may be remitted to the respondents for fresh consideration, I am not inclined to accede to the request as even in the counter affidavit, the respondents has not referred to any violation of the terms and conditions of the assignment. Even otherwise, it is trite that the respondents cannot improve the case in the counter.

12. In view of the above facts, the writ petition is allowed. However, liberty is given to the respondents to take action for cancellation of assignment, only if credible materials and grounds are established for cancellation of the same. It is needless to say that in such event, the respondents shall put the petitioner on notice and pass orders on merits and in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

26.11.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
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N.MALA, J.

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