

(2013) 03 MAD CK 0154
In the Madras High Court
Case No : Writ Petition No. 12636 of 2008

K. Desikan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 5 MLJ 53

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : G.R. Lakshmanan, for the Appellant; R. Ravichandran, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The petitioner has approached this Court with a prayer for issuance of a writ in the nature of certiorari, to quash the show cause notice dated 7.4.2008 issued by the Special Commissioner and Commissioner of Land Reforms, Chepauk, Chennai under Rule 11(3)(b) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965. The impugned show cause notice reads as under:

Ref. No. G3/7405/06 (L. Ref)

O/o the Special Commissioner and Commissioner of Land Reforms

Chepauk, Chennai-5

Dated: 7.4.2008

Show Cause Notice

Sub: Assignment - The Tamil Nadu Land Reforms (DSL) Rules, 1965 - Thanjavur District - Papanasam Taluk - Kabistharam Village - Assignment made under mistake of fact - initiation of action by invoking suo motu powers vested under

Rule 11(3)(b) of the Rules - Show Cause Notice - issued.

Ref: 1. A.C. (L. Ref.) Mayiladuthurai Ref. MRIV/144A/17-70/PPN/B1, dt. 17.5.2006.

2. Representation of Thiru N. Kalmuthu, dt. 11.8.2006.

3. Other connected records.

An order of assignment was passed on 23.3.1976 assigning the following lands in Kabisthalam village, Papanasam Taluk, Thanjavur District in favour of one Thiru Kalimuthu S/o Narayanan.

Necessary changes in the Taluk and village account, have also been carried out in favour of the assignee, following the execution of Deed in Form "F".

(2) The assignee has filed repeated representations before the Assistant Commissioner (L. Ref.), Mayiladuthurai and also before the Commissioner of Land Reforms requesting to handover possession of the land in Sy. No. 270/1C, by evicting the encroachment in the land.

(3) When the matter has been referred to Special Deputy Tahsildar to ascertain the factual position in the field, the Special Deputy Tahsildar, who inspected the lands on 15.11.2006 has reported that the above land in Sy. No. 270/1C is under the enjoyment of one Thiru Vadivel Moopannar and after his demise, his wife Amsammal was enjoying the land for the past 40 years. Further, he has reported that Tmt. Amsammal along with 5 others were allotted house sites (Natham) in Sy. No. 267/B which is situated on the backside of the land in question, i.e., Sy. No. 270/1C and therefore, they have used the land as pathway and thereafter by construction of houses.

(4) The order of assignment was passed without verifying the details of enjoyment over the land and marking necessary spot inspection of the land in question. Thus, the order of assignment was passed under a mistake of fact by the Assistant Commissioner (L. ref.), Mayiladuthurai. Hence, the possession of the above land could not be handed over to the assignee in view of the fact that the land is being enjoyed by a different person for above 40 years and the land cannot be put to agricultural operation as the lands are utilised by way of construction of houses.

(5) In view of the above position it is clear that the order of the assignment was passed under a mistake of fact. Therefore, in order to set right the above irregularity, the Land Commissioner under the powers vested in her under Rule 11(3)(b) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 has taken up this case on suo-motu revision for cancelling the order of assignment issued in the year 1976. Thiru. N. Kalmithu S/o. Narayanan is, therefore, directed to show cause as to why the order of assignment dated 23.3.1976 in respect of the land to an extent of 13 acre in Sy. No. 270/1C assigned in favour of Thiru Kalimuthu should not be cancelled within 15 days

from the date of receipt of this notice either in person or through an authorised representative or through counsel before the Land Commissioner, Chennai in her Chambers at Ezhilagam, Chepauk, Chennai-5

For Special Commissioner and Commissioner of Land Reforms.

2. It is submitted, that the excess land of big owners was assigned to the tenant over the land, who fell in Category-I of the allottees. However, the allottee failed to pay the installment, therefore, proprietary rights could not be transferred. The tenant died before the proprietary rights could be conferred on him. The respondents accordingly cancelled the assignment dated 23.3.1976.

3. The father of petitioner was a landless labourer, therefore fell in Category-II of the scheme for allotment of surplus land. After cancellation of the assignment in favour of the tenant, the land was assigned in favour of the father of petitioner. The father of petitioner paid all the installments and consequently was conferred with the proprietary rights. The patta of the land was also issued in favour of the father of petitioner.

4. It is admitted case of the parties, that part of the land assigned to the father of petitioner was not handed over, inspite of repeated representations and the requests. On representation of the father of petitioner, the respondents advised him to take possession of the land assigned to him, through competent Court having jurisdiction. After the death of the father of petitioner, the assigned land is inherited by the petitioner.

5. The case of the petitioner is that before steps could be taken to take possession through competent Court, the impugned show cause notice was issued under Rule 11(3)(b) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, to show cause as to why assignment in favour of allottee measuring 13 acre in S. No. 270/1C be not cancelled.

6. The impugned show cause notice has been challenged by the petitioner, on the ground, that;

(i) the impugned show cause notice is without jurisdiction, as respondent no. 2 does not have any jurisdiction to take suo motu action for cancellation of assignment after 24 years of the assignment;

(ii) the show cause notice is outcome of non application of mind, as the respondent no. 2 has issued show cause notice to cancel the assignment dated 23.3.1976, which already stood cancelled in the year 1984, and it was only after cancellation of the assignment, that the land was assigned to the father of petitioner;

7. The writ petition is opposed by the learned Additional Government Pleader, on the ground of maintainability. It is vehemently contended, by the learned Additional Government Pleader, that writ against mere show cause notice is not maintainable, as it is always open to the petitioner to file reply to the show cause

notice. It is only in case any adverse order against the petitioner is passed, that can give cause of action to invoke the writ jurisdiction or take other statutory remedies in accordance with law.

8. It is also the contention of learned Additional Government Pleader, that the petitioner cannot take any advantage of the fact, that the assignment date is mentioned as 23.3.1976, being merely a typographical error, whereas intention of the show cause notice is to cancel the assignment in favour of the father of petitioner.

9. On consideration, I find that this writ petition deserves to succeed. The defense raised by the learned Additional Government Pleader cannot be accepted.

10. The Rule 11(3)(b) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, reads as under:

The Land Commissioner may, at any time, of his own motion, within a period of five years from the date of the order of assignment or the date of the order of the appellate authority, as the case may be, set aside, cancel, revise or in any way modify the order of assignment or the order of appeal or revision or issue such directions as he may deem fit, if he is satisfied that the order was grossly inequitable. If he is satisfied that there has been a material irregularity in the procedure or that the order was passed under a mistake of fact or owing to fraud or misrepresentation or that the assignee is not eligible for assignment or that the extent assigned together with other lands, if any, held by the assignee or the members of his family other than a co-operative society excess the limits specified in sub-rule (2) of rule 5, he may exercise such powers without any limit of time. He may also issue such directions as he may deem fit even while the proceedings are in progress before the assigning authority or the appellate authority.

11. The reading of the Rule shows, that the jurisdiction to take suo motu action to cancel the assignment is within five years of assignment. Therefore, the impugned show cause notice on the face of it is without jurisdiction, thus not sustainable in law.

12. Though this Court in exercise of writ jurisdiction normally does not interfere with the show cause notice, as it does not give any cause of action to challenge the same, but there is exception to this rule, i.e. if the show cause notice itself is without jurisdiction or is on the face of it is arbitrary, in that event the writ will be competent, as no useful purpose will be served to relegate the petitioner to remedy of filing reply and then wait for an order to be passed, which on face of it, will be without jurisdiction.

13. The reading of the rules shows, that the limitation prescribed to exercise suo motu jurisdiction is only five years, whereas the show cause notice in this case has been issued after more than 22 years, therefore, is without jurisdiction and thus cannot be sustained in law.

14. There is also force in the contention of the learned counsel for the petitioner, that the show cause notice shows the non application of mind and cannot be said to be bona fide. The reading of the show cause notice itself shows, that suo motu action is proposed to be taken to quash the order of assignment dated 23.3.1976, which already stood cancelled in 1984. This cannot be said to be typographical error, but an attempt to defeat the right of petitioner to take possession after the respondents have failed to hand over the possession of the assigned land to the petitioner.

15. The impugned show cause notice therefore besides being without jurisdiction is also on the face of it is arbitrary, thus hit by Article 14 of the Constitution of India, being outcome of non application of mind.

16. Consequently, this writ petition is allowed. The impugned show cause notice is quashed. No costs. Consequently, connected MP is closed.