

(1997) 02 MAD CK 0167

In the Madras High Court

Case No : Writ Petition No. 11558 of 1987

M.N.C. David

APPELLANT

Vs

The Commissioner, Land Administration, Chepauk, Madras -
600 005, The District Revenue Officer, Chengalpattu District
at Kancheepuram and The Revenue Divisional Officer,
Kancheepuram

RESPONDENT

Date of Decision : 11-02-1997

Acts Referred:

Citation : (1997) 02 MAD CK 0167

Hon'ble Judges : T. Jayarama Chouta, J

Bench : Single Bench

Advocate : R.N. Kothandaraman, for the Appellant; V. Rangarajan, Additional Government Pleader, for the Respondent

Judgement

T. Jayarama Chouta, J.—The Prayer in this Writ Petition is to issue a writ of certiorari or any other appropriate writ, order or direction in the nature of a Writ, calling for the records relating to the 1st respondent's order in his Ref. No. Pa. Mu (E) 24802/82 (R.P. 16/82), dated 25.6.1987. which confirmed the 2nd respondent's order in R.C. No. 21407/82, dated 29.1.1982 and the respondent's order in R.C. No. 7810/80-K, dated 25.6.1980 and quash the same. The necessary facts for the purpose of disposal of this writ petition could be gathered from the affidavit of the petitioner. He has stated that he was serving in Indian Armed Forces for about 28 years. He was a Subhedar, a non-gazetted rank and in the year 1969 stationed at Nepal Liason Group at Katmandu. He retired from service on 6.1.1970. He was conferred an honorary rank of Captain at the time of his retirement without any pecuniary benefit. Under the policy of Central and State Government free assignment of Government land was granted in favour of the Army personnel, both serving men and Ex-Service men according to their eligibility. Under the said scheme the personnel were granted free assignments of an extent of 5 acres dry and 2 1/2 acres of wet land. The petitioner while he was in service in the Indian Army applied for the free assignment of land in his

favour. The State Government was pleased to assign in his favour poramboke dry land of an extent of 5 acres in S. No. 564/1 in Dichivakka, village in Sriperumbudur Taluk, Chengalpattu District in and by an order P.C No. 479, dated 1.11.1969 by the Tahsildar, Sriperumbudur Taluk. The Form "D" Patta was also issued in favour of the petitioner by the Tahsildar on 1.12.1969.

2. The petitioner has taken possession of the land assigned to him immediately. He has spent about Rs. 50,000/- to bring the land under cultivation. He toiled in the land to make it for irrigation and cultivation. He dug well, installed pump set and devoted his own life and energy and spent all the resources and benefits he received on his retirement from the Indian Army. The petitioner has been doing personal cultivation in the lands besides engaging casual labourers to assist him. The petitioner also had availed of the various loan facilities to improve the fertility of the land and to reclaim it fully.

3. On the basis of the report submitted by the Tahsildar the 3rd respondent passed an order in his Reference R.C. No. 7810/80-K, dated 25.8.1980 purporting to cancel the order of assignment in favour of the petitioner. The reasons for such consideration were that the petitioner is a non-resident of the village where the assigned land is situated; that the petitioner is getting an income from his pension as Ex-Service men; and therefore the petitioner is not eligible to get a free assignment of land. Against the said order of cancellation of assignment, the petitioner preferred an appeal before the second respondent: District Revenue Officer, Chengalpattu District and pointed out that there is no condition either in the scheme of the G.O. or the order of assignment requiring the assignee to be the resident of village or to compel a personal cultivation. Further the pension received by the petitioner as an Ex-Serviceman is not an income concerned for the free assignment of land in favour of the petitioner. He has also brought to the notice of the authority that the free assignment was made not to an Ex-Serviceman after his retirement, but in favour of a serving personnel, while he was in service in the army. However, the second respondent overlooking all these aspects, in his order Ref. R.C. No. 214087/80-B3, dated 29.1.1982 dismissed the petitioners' appeal and confirmed the third respondent's cancellation order. The reasons given by the second respondent for dismissing the appeals was that the petitioner is not eligible for free assignment under S.O. 15(3)(2)(ii) as he was not landless poor at the time of assignment by reason of his getting pension of Rs. 198/- per month.

4. Against that order, the petitioner has filed the revision petition before the first respondent and the first respondent by his order in Ref. No. pa. Mu (E) 24802/82 (R.P. 16/82), dated 25.6.1967, has concurred with the decisions of the other respondents and dismissed the revision petition. However, the third respondent in his order has observed that the assignment of the same land to the petitioner may be granted on agreeing to pay the market value for the land. He has given very same reason, which has been given by the two respondents, while dismissing the revision petition, The said order has been challenged in this writ

petition.

5. On behalf of the respondents, the Joint Commissioner (Land) has filed a counter affidavit, denying all the allegations contained in the affidavit of the petitioner, except the are specifically admitted by him. He has stated that an extent of 5 acres in S. No. 564/1 Pichivakkam Village of Sriperumpudur Taluk assigned to the petitioner on Ex-Serviceman free of land value in Tahsildar D.C. 4/79 dated 1.11.1969. While reviewing the past assignment cases, the Revenue Divisional Officer, Kancheepuram in his R.C. 7810/80-K dated 25.8.80 cancelled the assignment order on the following grounds:

(i) The assignee is a non-resident.

(ii) The assignee was getting reasonable income at the time of assignment.

(iii) He is not eligible for assignment free of land value.

According to him, the petitioner is not eligible for free of assignment, since he has got reasonable income at the time of assignment. He has further submitted mat the petitioner is reported to be residing at Madras and he is the relative to one Premkumar, who is carrying on cultivation work. Further the petitioner, who was earning more than the amount fixed for free of assignment at the time of assignment and as such he is not eligible to get the assignment free of land value. The petitioner has himself admitted that he is a non-resident of the village where he got the land assigned in his favour, and also admitted that he was getting monthly pension of Rs. 198/- at the time of assignment According to B.S.0.15(3X2)(iii) he was not a landless poor. Further there are no instructions to assign the land to the serving persons free of land value without considering his income. No serving or Ex-Serviceman can claim assignment of land as a matter of right nor can any serving or Ex-Serviceman be granted land unless he requires it for bona fide rehabilitation purposes. Further the respondent, namely the Special Commissioner and Commissioner of Land Administration had considered his past service rendered in the Army and ordered to assign the land to the petitioner if he is willing to pay the present market value of the land. On these grounds he has submitted that there is no merit in the writ petition and hence, it is liable to be dismissed.

6. I heard that learned advocate for the petitioner and the learned Government Advocate appearing on behalf of the respondents, perused the affidavit, counter affidavit and relevant records. The main attack on behalf of the petitioner is that the authorities below, were not justified in cancelling the assignment on the ground that the petitioner is not a resident of the village, where the land was assigned to him and also non mentioning of income is not a matter for cancelling the assignment He has also further submitted that the land has been assigned to the petitioner during his service in the army and that being so, there is no question of the land being allotted to him in the place where he is residing and he has further pointed out that there is no question of petitioner himself personally cultivating the said land, since he was in service, at the time or

assignment of land in his favour. He has further submitted that after his retirement, he himself with the assistance of other labourers, used to cultivate the land and there is no question of the land being cultivated by others. On these grounds, the learned advocate submitted that is a fit case, where Court should interfere and set aside the orders passed by the respondents.

7. On the other hand, learned Govt. Advocate appearing on behalf of the respondents submitted that since the petitioner is a non-resident and he did not disclose the income at the time of assignment, the assignment has been cancelled and such cancellation of such assignment cannot be said to be illegal. He has further contended that even though the assignment was made, when the petitioner was in service, after his retirement the petitioner must cultivate that land personally without assistance. In this case, it is found that the said land was cultivated by some hired labourers. On grounds, he has pointed out the orders passed by the respondents do not call for interference and the writ petition is liable to be rejected.

8. Now let me consider the rival submissions of the learned advocates on either side. As per G.O. No. 1750, Land Revenue dated 13.5.1963 in the matter of assignment of land, following priority should be adopted:

- 1) Persons in active Military service
- 2) Ex-Servicemen and
- 3) Other landless and poor persons.

As far as personal cultivation is concerned in respect of the persons in active service, the Government accept the recommendation and direct that in the case of persons actually serving in the Army Forces even cultivation by lease of the lands assigned to them be permitted and that they be allowed to resume the lands from the lessees after their return from service. There is no dispute that the land has been assigned to the petitioner, when he was in service and order of assignment in favour of the petitioner dated 1.11.1969 reads as follows:

An extent of 5.00 acres dry land comprised in S. No. 564/1 of 153, Pichivakkam Village of Sriperumbudur Taluk is assigned on Thiru Subedar M.N.C. David a serving personnel, Nepal free of market value subject to usual conditions specified in the D. Form Patta.

The petitioner has also produced the D Form Patta. The said Form D, docs not say that the petitioner himself, being in service, should cultivate the land. Under those circumstances, it is hard to believe that the person, who is in service, should cultivate the land personally. The submission of the learned Government Advocate that after his retirement, the person, to whom the land has been assigned should personally cultivate, cannot be accepted. The land has been assigned, when he was serving and there is no clause in the assignment order, that, he should personally cultivate the land, after his retirement. Further the grounds assigned by the respondents for cancellation of the assignment that the

petitioner is not a resident of the village and he has not mentioned the income, are not the grounds for cancellation of the assignment. The authorities below have proceeded on the basis that the land has been assigned to the petitioner, as an Ex-Serviceman and not as a person, who was in service. Under those circumstances, the respondents were not justified in cancelling the assignment, which was granted in the year 1969, after a lapse of more than 20 years. Hence for the reasons stated above, I allow this writ petition and quash the order passed by the respondents. There will be no order as to costs.