

(2011) 08 MAD CK 0278

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 1974 of 2007

S.M. Balasubramanian

APPELLANT

Vs

The Tahsildar, The Revenue
Divisional Office, The District
Revenue Officer and The
Assistant Director

RESPONDENT

Date of Decision: Aug. 2, 2011

Acts Referred:

- Tamil Nadu Ancient and Historical Monuments and Archaeo Special Sites and Remains Act - Section 3

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Advocate: R. Thangasamy, for the Appellant; D. Muruganandam, Addl.Govt.Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Vinod K. Sharma, J.

The Petitioner seeks a writ in the nature of Certiorari to challenge the order passed by the third Respondent, dated 11.02.2006, cancelling the deed of allotment in favour of the Petitioner.

2. The Petitioner was a contract labourer with the Tamil Nadu Electricity Board drawing Rs. 350/- per month. The Petitioner applied to Tahsildar, Madurai North Taluk, Madurai, for assignment of patta in S. No. 129/1 at Madurai North Taluk, Arumbanur Revenue Village, where the Petitioner along with his family members were living in a thatched roof. The Petitioner being a landless labourer was granted the patta for the land measuring 38 fts north, 39 fts south, 33 fts west and 34 fts east in S. No. E6/12671/9, seven other persons were also issued patta along with the

Petitioner.

3. The service of the Petitioner were regularised as Field Helper with effect from 04.03.1998 vide order, dated 04.03.1998.

4. In pursuance of the allotment of patta, the Petitioner raised constructions on the plot allotted to the Petitioner. The case of the Petitioner is that the Assistant Director of Tamil Nadu Archaeological Department objected to the raising of construction of first floor by the Petitioner.

5. The reason for restraining the Petitioner from raising construction was that the area falling under S. No. 129/1 was included in the Official Gazette as protected area, wherein, the historical monument of Laden Koil is situated.

6. It is the case of the Petitioner that at the instance of the fourth Respondent, the second Respondent i.e., Revenue Divisional Officer, Madurai, initiated action to cancel the patta issued by the first Respondent on 24.11.1992 after a lapse of 10 years.

7. The patta allotted to the Petitioner has been cancelled on the following grounds:

1. that the Petitioner was earning Rs. 3,500/- p.m. and that he suppressed this fact, when the free land assignment was made to him.

2. that the area assigned to the Petitioner was assigned to archaeological department being near the protected monument of Laden Koil.

8. The Petitioner challenged the impugned order on the ground, that the order is totally arbitrary and outcome of non-application of mind.

9. The contention of the learned Counsel for the Petitioner is that on the date of allotment, the Petitioner was only working as Daily Wages employee with the Tamil Nadu Electricity Board at Rs. 350/- p.m. Therefore, his income was less than the one stipulated under the Scheme, i.e., Rs. 10,000/- p.a. therefore, the assignment could not be cancelled on account of subsequent regularisation of service.

10. It is also the contention of the learned Counsel for the Petitioner that the second ground for cancellation also cannot be sustained as the notification u/s 3 of Tamil Nadu Ancient and Historical Monuments and Archaeo Special Sites and Remains Act issued after the assignment to the Petitioner, therefore, it can not be said that the land allotted to the Petitioner was earlier assigned to the Archaeological Department, as mentioned in the impugned order.

11. It is also the contention of the learned Counsel for the Petitioner that in any case, under the Archaeological Department, there is No. bar to assignment, as the construction etc thereon can be regulated by the authorities under the Act, but this cannot be a ground to cancel the assignment after a lapse of ten years. In any case, once the Petitioner was not at fault the Respondent cannot be allowed to take

benefit of their own wrong.

12. The order is challenged on the ground of jurisdiction of the Revenue Divisional Officer to cancel the assignment under scheme. The Revenue Divisional Officer has No. power under the Scheme to cancel the assignment made in favour of the allottee. The assignment could be cancelled only by Tahsildar, if there was any violation of scheme and nor otherwise, on the principle that the authority which can do something can undo also.

13. The learned Additional Government Pleader, on the other hand, defended the order, on the plea that the Respondent No. 2 being the superior Officer has the right to cancel the assignment, specially, when it was outcome of misrepresentation by the Petitioner, in not disclosing his employment.

14. It is also the contention of the learned Counsel for the State that the notification showing the intention to cover the area under the Tamil Nadu Ancient and Historical Monuments and Archaeo Special Sites and Remains Act was issued prior to the allotment of plot to the Petitioner, therefore, the impugned order deserves to be upheld. It is also the contention of the learned Counsel for the State that the Writ Petition is not competent, as the Petitioner had filed a suit for injunction which was dismissed, and the appeal against the judgment and decree of the trial court was also dismissed.

15. On consideration, I find force in the contentions raised by the learned Counsel for the Petitioner.

16. Admittedly, the suit filed by the Petitioner was for injunction and that too against the demolition of the building. At that time, the impugned order had not been passed. The Petitioner therefore did not have any cause of action to challenge the impugned order in the civil suit. The dismissal of the suit for injunction cannot be a bar to maintain a writ petition on a subsequent cause of action.

17. The contention of the learned Counsel for the State that the Petitioner was guilty of concealing the facts also deserves to be noticed to be rejected, as admittedly, on the date of allotment of site, the Petitioner fell within the category of landless person under the Scheme, as his income was admittedly less than Rs. 10,000/- p.a. The subsequent increase in salary cannot be a ground to cancel the allotment.

18. A reading of the Tamil Nadu Ancient and Historical Monuments and Archaeo Special Sites and Remains Act does not bar the allotment of site, but, its construction can be regulated. It is within the jurisdiction of the authorities under the said Act to regulate the construction of the building in the area notified. They even have the authority to acquire as per law; if so desired. But, certainly do not have any jurisdiction to ask the Respondent No. 2 to cancel the assignment validly made about ten years prior to the date of cancellation.

19. The contentions of the learned Counsel for the Petitioner on the other hand deserve to be accepted.

20. The impugned order is *prima facie* without jurisdiction, as under the Scheme, Respondent No. 2 does not have any right to cancel the assignment granted to the Petitioner, nor under the Scheme he has any *suo-motu* revisional power to interfere with the assignment. The assignment could be cancelled only for violation of the terms of the assignment. As already observed above, the ground that the Petitioner was guilty of concealment and suppression of facts is found to be misconceived, as the Petitioner was only a daily wage employee on the date of assignment and getting the salary much less than Rs. 10,000/- p.a.

21. The contention of the Petitioner that there was No. notification in force under the Tamil Nadu Ancient and Historical Monuments and Archaeo Special Sites and Remains Act at the time of allotment, and in any case, the Act does not bar assignment of land and it had only regulates the assignment, also deserves to be accepted as the authorities under an Act, can regulate the use of land, but, it certainly cannot ask Respondent No. 2 to cancel the allotment after a lapse of ten years.

22. For the reasons stated, the Writ Petition is allowed and the impugned order is set aside. No. costs.