



WEB COPY



Writ Petition No.747 of 2018

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 14.03.2023**

**PRONOUNCED ON : 13.04.2023**

**Coram:**

**THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN**

**Writ Petition No.747 of 2018**  
**and WMP No.904 of 2018**

S.Muniammal

.... Petitioner

Vs.

1. The District Collector,  
Villupuram District.

2. The Executive Officer,  
Gingee Panchayat Union,  
Gingee, Villupuram District.

3. P.Syed Ameen

.... Respondents

[R3 impleaded as per the order of this Court [TKRJ] dated .04.2023 made in WMP No.515 of 2023 in WP No.747 of 2018]

**Prayer:** This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order made in Na.Ka.No.A1/349/2015 dated 20.09.2016 passed by the 2<sup>nd</sup> respondent quash the same and consequently direct the respondents to pay compensation with interest to the petitioner in respect of her land comprised in S.No.140/2/R2 situated at Sirukadambur Village, Gingee Taluk, Villupuram District.



*Writ Petition No.747 of 2018*

WEB COPY

For Petitioner: : Mr.G.Ethirajulu  
For Respondents : Mrs.R.Anitha (For R1)  
Special Government Pleader  
Mr.L.S.M.Hasan Faizal (for R2)  
Standing Counsel  
Mr.S.Gunasekaran (for R3)

### **ORDER**

The above writ petition was filed by the petitioner to call for the records of the 1<sup>st</sup> respondent dated 20.09.2016 and to set aside the same and consequently, direct the official respondents to pay the compensation in respect of the petitioner's land comprised in S.No.140/2/R2 situated at Sirkadambur Village, Gingee Taluk, Villupuram District.

2. The brief facts leading to this writ petition, are as under:

(i) For the purpose of the general public, Government of Tamil Nadu constructed a water tank in the Old Survey No.140/2, New Survey No.140/2R2 in Sirukadambur Village, Gingee, Villupuram District during 2009. Aggrieved against that one Syed Ameen, Muthawalli of Sirukadambur mosque Wakf approached this Court in W.P.No.8049 of 2009. The writ petition was disposed based on compromise between the parties that compensation should be given for the land where the water tank was constructed. Thereafter, for non compliance of the above mentioned order, the said Syed Ameen, filed a



WEB COPY

Contempt Petition in Cont.P.No.1037 of 2011 before this Court. Thereafter, the 1<sup>st</sup> respondent i.e. District Collector filed a review application in R.A.No.138 of 2012 to review the order in W.P.No.8049 of 2009. The above said Review Application was allowed by this Court, and the operative portion reads as follows:

“In the result, the Review Application is allowed; the order dated 15.10.2009 made in W.P.No.8049 of 2009 by this Court is hereby recalled and accordingly, the Writ Petition is dismissed, however it is open for the respondent to work out his remedy in the manner known to law elsewhere before the competent civil forum or before the Wakf Tribunal as the case may be.”

(ii) The writ petitioner made a representation stating that the over head tank has been constructed in her land and requested for compensation. Through proceedings in Na.Ka.A1/349/2015 dated 20.09.2016, the second respondent sent a communication to the petitioner stating that the petitioner need to approach the proper Civil Court or Wakf Tribunal, since the said land was notified as Wakf .

(iii) The impugned order was passed by the 2<sup>nd</sup> respondent was on 20.09.2016 and writ petition was filed in the year 2017.



WEB COPY

(iv) The impugned order Na.Ka.No.A1.349/ 2015 dated 20.09.2016 by Executive Officer, Gingee Panchayat Union, the 2<sup>nd</sup> respondent herein is to the effect that, pursuant to the order passed in WA SR No.75404 of 2013, in respect of payment of compensation of the alleged land belonging to the petitioner Muniammal, can be decided only after the establishment of the right of the petitioner over the petitioned property, since there exists a rival claim of title between the petitioner and the Wakf Board and hence, the 2<sup>nd</sup> respondent- Executive Officer has called upon to get the remedy from the Civil court and after the civil decree, the representation for compensation of the land by the petitioner can be considered.

3. (a) Documents of patta and revenue documents have been filed by the petitioner. The 2<sup>nd</sup> respondent filed the counter and also the typed set of papers, showing the revenue records of the year 1876 and the Gazette notification dated 06.05.1959 and the letter from the Chief Executive Officer, Tamil Nadu Wakf Board to the various sub registrars notifying the petition property as Wakf property and not to make any registration of any document in connection with Survey Numbers contained therein.



*Writ Petition No.747 of 2018*

WEB COPY

(b) In the gazette notification referred above, dated 06.05.1959, the petition mentioned property along with other properties are notified as Wakf property and hence, this Court by an order dated 08.12.2022, directed the Revenue Thasildar to conduct a field inspection and to measure the land and to file a report as to whether the water tank was constructed within the petition land, where the patta was granted in favour of the petitioner.

(c) Pursuant to the said order passed by this Court, suitable enquiry summons were sent to the petitioner and also to the Mutawalli of the Wakf and the parties have submitted their replies and after perusing the documents submitted by both the parties, the Thasildar has filed the report.

4. The sum and substance of the report of the Thasildar is that,

(a) It is clear at present that S.No.140/2R1 to an extent of 6 cents is a road and in S.No.140/2R2 to an extent of 14  $\frac{1}{4}$  cents over head tank is situated in nearly 3  $\frac{1}{2}$  cents and Muslim Cemetery is situated to an extent of 11 cents. The writ petitioner is possessing and enjoying land in S.No.140/2Q to an extent of 1  $\frac{1}{4}$  cents.



WEB COPY

(b) On perusing the records filed after inspection, the petitioner is possessing and enjoying only 1 ¼ cents in S.No.140/2Q. In S.Nos.140/2R1 to an extent of 6 cents and S.No.140/2R2 to an extent of 14 ¼ cent is not in the possession and enjoyment of the petitioner.

(c) S.No.140/2R1 to an extent of 6 cents is fully utilized as road and in S.No.140/2R2, the over tank was constructed utilizing 3 ½ cents and the remaining 11 cents was utilized as Muslim burial ground from 1973 onwards.

5. The Tahsildar in the inspection report, concluded that the S.No.140/2Q to an extent of 1 ¼ cents is only possessed by the petitioner and the land in S.Nos.140/2R1, 140/2R2 is used as burial ground and road. To clearly demonstrate the classification, sub divisions and assignments, the below mentioned Tabular column explains the same.

| <i>S.No.</i> | <i>Survey No.</i> | <i>Total Extent</i> | <i>At present</i>                     | <i>At present extent</i> |
|--------------|-------------------|---------------------|---------------------------------------|--------------------------|
| 1            | 140/2R1           | 240 sq.mt(6 cent)   | Road                                  | 6 cent                   |
| 2            | 140/2R2           | 570 sq.mt(14¼ cent) | Over Tank                             | 3 ¼ cent                 |
|              |                   |                     | Muslim burial ground                  | 11 cent                  |
| 3            | 140/2Q            | 050 sq.mt (1½ cent) | Thogupu Veedu (Enjoyed by petitioner) | 1 ¼ cent                 |



Writ Petition No.747 of 2018

WEB COPY

6. Based upon the said field report filed by the Thasildar, the learned Standing counsel for the 2<sup>nd</sup> respondent would contend that the petitioner cannot claim any right based on her own wrongs. 6 cents in S.No.140/2R1 is used as road and 3 ¼ cent in 140/2R2 is used as over head tank, which was later put to use for the entire public including the petitioner. The petitioner is in occupation of only 1 ¼ cent from time immemorial.

7. After perusing the Revenue Record of the year 1876; Government notification issued by the Government of the then Tamil Nadu Government dated 06.05.1959 wherein the lands in Survey No.140/2 was notified as Wakf even during the year 1959, it is shocking to note that the petitioner and the few others have managed to obtain UDR patta during the year 1983.

8. In this regard, the report of the Thasildar, filed in pursuance to the direction issued by this Court on 08.12.2022 throws more light.

கிராம கணக்குகள் பரிசீலனை செய்யப்பட்டதில், மேற்படி  
புலன்கள் மறு நில அளவைக்கு முன்பு (Before UDR) கீழ்க்கண்டவாறு  
கிராம கணக்குகளில் தாக்கலாகியுள்ளது



Writ Petition No.747 of 2018

| வ.எண் | புல எண் | வகைபாடு          | பரப்பு      | குறிப்பு                                  |
|-------|---------|------------------|-------------|-------------------------------------------|
| 1     | 140/1   | அரசு நஞ்சை       | 1.49 ஏக்கர் | --                                        |
| 2     | 140/2   | இனாம் புஞ்சை     | 6.20 ஏக்கர் | நத்ததிற்கு 50<br>கெஜத்திற்கு<br>உட்பட்டது |
| 3     | 140/3   | அரசு புறம்போக்கு | 0.94 சென்ட் | மசூதி                                     |

மறு நில அளவைக்கு பின் கிராம அ-பதிவேடு (After UDR)

| வ.எண் | புல எண் /<br>உட்பிரிவு | வகைபாடு | பரப்பு              | பட்டா எண் மற்றும்<br>உரிமையாளர் பெயர் |
|-------|------------------------|---------|---------------------|---------------------------------------|
| 1     | 140/2Q                 | ர.மனை   | 0050 (1 1/4 சென்ட்) | 477. சா.முனியம்மாள்                   |
| 2     | 140/2R1                | ர.மனை   | 0240 (6 சென்ட்)     | 477. சா.முனியம்மாள்                   |
| 3     | 140/2R2                | ர.மனை   | 0570 (14 சென்ட்)    | 477. சா.முனியம்மாள்                   |

Hence, I find that before UDR, it was mentioned as a Government Porombokke and subsequently, UDR names of the petitioner Muniammal was incorporated.

9. Yet another point that is to be noted is that after the field inspection, the report of the Thasildar is to the effect as under.

477 பட்டா எண் சா.முனியம்மாள் பெயரில் 860 சமீ (21 1/2 செண்ட்)

இடம் தாக்கலாகியுள்ளது. அதில் தற்போது கீழ்க்கண்டவாறு உள்ளது

| வ.எண் | புல எண் | பரப்பு                     | தற்போதைய நிலை                            | தற்போதைய நிலையில் பரப்பு  |
|-------|---------|----------------------------|------------------------------------------|---------------------------|
| 1     | 140/2R1 | 240 சமீ<br>(6 சென்ட்)      | சாலை                                     | 240 சமீ<br>(6 சென்ட்)     |
| 2     | 140/2R2 | 570 சமீ<br>(14 1/4 சென்ட்) | மேல்நிலை<br>நீர்தேக்கத் தொட்டி           | 130 சமீ<br>(3 1/4 சென்ட்) |
|       |         |                            | முஸ்லீம் மயானம்<br>மற்றும் சுற்றுச்சுவர் | 440 சமீ<br>(11 சென்ட்)    |
| 3     | 140/2Q  | 050 சமீ<br>(1 1/4 சென்ட்)  |                                          | 050 சமீ<br>(1 1/4 சென்ட்) |



Writ Petition No.747 of 2018

WEB COPY

10. Further, the Thasildar had given a categorical finding as to the State of affairs on ground that the above Survey No.140/2Q measuring 1 ¼ cent alone, is within the enjoyment of the Muniammal, wife of Sambamurthy, the petitioner herein and in respect of the other land Muniammal is not in possession and the same is extracted as hereunder

“மீதம் உள்ள புல எண்.140/2R1-00240 சமீ மற்றும் புல எண்.140/2R2-00510 ச.மீட்டர் ஆகிய புலன்கள் முனியம்மாள் அனுபவத்தில் இல்லை. மாறாக எண்.140/2R1-00240 சமீ (0.06 செண்ட்) கிராம கணக்குகளில் முனியம்மாள் என்பவர் பெயரிலேயே தாக்கலாகி, புல எண்.140/2R1-00240 சமீ 0.06 செண்ட் முழுவதும் சாலையாக உள்ளது. புல எண்.140/2R2-00570 சமீ (0.14 1/4 செண்ட்)-ல் சுமார் 0.03 1/4 செண்ட் அளவில் 2009 ஆண்டில் மேல்நிலை நீர்தேக்க தொட்டி கட்டப்பட்டுள்ளது. மீதமுள்ள இடம் (11 செண்ட்) முஸ்லீம் மயானமாக உள்ளது. மேற்படி இடத்தில் 1973ம் ஆண்டுமுதல் கட்டப்பட்ட கல்லறைகள் உள்ளன. அதனை சுற்றி மதில்கவர் அமைக்கப்பட்டு வக்பு வாரிய கட்டுப்பாட்டில் உள்ளது என்பதையும் பணிவுடன் தெரிவித்துக்கொள்கிறேன்.”

11. In view of the position as demonstrated by the revenue records, referred above, I find that all is not well after the UDR updation patta. However, as per the impugned order passed by the 2<sup>nd</sup> respondent, I find that in view of the existence of the rival claim of title between the Wakf and the petitioner, the 2<sup>nd</sup> respondent has clearly and categorically, infact, rightly advised the petitioner to approach the civil Court to get her title to be confirmed



by civil Court and to thereafter make a claim, appears to be just and reasonable.

The disputed question of facts cannot be gone into in the writ proceedings and the petitioner without establishing any right over the property has approached this Court.

12. As observed earlier, the disputed property was notified as a Wakf property as early as in the year 1959. However, it appears that the UDR patta to a larger extent of 2 acres 21 cents was given in favour of the petitioner since her husband was working in the very same Panchayat and hence, I am not expressing any opinion as to how the petitioner has obtained the patta in their favour after UDR and the writ petition is devoid of merits. The impugned order passed by the 2<sup>nd</sup> respondent is in consonance with law and that mixed question of fact cannot be gone into especially when there is a rival claim of title and ownership to the property.

13. As stated supra, the petitioner is claiming ownership to the property pursuant to the UDR Patta whereas, the Wakf Board is fighting for the land on the ground of notification issued in the year 1959. The patta was given under the Natham settlement scheme and the S.No.140/2 was already notified as a Wakf property and hence, it is for the Civil Court to decide the title.



*Writ Petition No.747 of 2018*

WEB COPY

14. Accordingly, I find that the impugned order passed by the 2<sup>nd</sup> respondent does not suffer from any irregularity or illegality warranting interference, in exercise of the powers conferred upon this Court under Article 226 of the Constitution of India and thus, this writ petition is rejected. It is open to the petitioner to establish her right and title over the property and thereafter to make the claim for compensation.

15. With liberty as observed above and taking into note of the scope of the Article 226 of the Constitution of India and nature of the dispute between the petitioner on one hand and the claim of the Wakf board on the other hand, it is for the petitioner to work out her remedy before the civil forum. With these observations, the writ petition stands dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

13.04.2023

Index : Yes/No  
Speaking order / Non-speaking order  
Neutral Citation: Yes/No.  
ars



WEB COPY



*Writ Petition No.747 of 2018*

**RMT.TEEKAA RAMAN,J**

ars

To

1. The District Collector,  
Villupuram District.

2. The Executive Officer,  
Gingee Panchayat Union,  
Gingee, Villupuram District.

Pre-delivery order in  
Writ Petition No.747 of 2018

13.04.2023