

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 05/08/2014

DATED: 07/12/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.36256 of 2007

and

M.P.No.1 of 2007

R.Rathi

... Petitioner

Vs.

1.The Secretary, Housing &
Urban Development Department,
Fort St. George,
Chennai-600 009.

2.Tamil Nadu Housing Board,
Nandanam, Chennai - 600 006.
Rep. by its Chairman.

3.The Director,
Town & Country Planning,
Anna Salai, Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus to forbear the respondents in any manner dealing with the 13 cents of land in T.S.No.32/2 in Periyeri Village, Salem Taluk, either by interfering with the petitioner's possession or by affecting the petitioner's ingress and egress or by subjecting the property to any lay out approval

procedures of the second respondent as the said lands do not form part of the land acquisition proceedings initiated by the state of Tamil Nadu in G.O.Ms.No.715/80, dated 03.06.1980 (6 declaration) or by any other proceedings.

For Petitioner : Mr.K.Muralikumaran
For M/s.McGan Law Firm

For Respondents : Mr.M.S.Ramesh
Addl. Govt. Pleader for R1 and R3

Mr.V.Anandhamoorthy for R2

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ORDER

The petitioner has submitted that the issue involved in this writ petition relates to 13 cents of land in Survey No.32/2 in Periyeri Village, Salem Taluk. The said 13 cents of land falls besides the extent of 2 Acres and 33 cents in Survey Number.2/11, which is covered by the Land Acquisition Proceedings initiated by the State of Tamil Nadu, but unfortunately the respondents are also trying to meddle with the 13 cents in Survey No.32/2 which does not form part of the Land Acquisition Proceedings in G.O.Ms.No.715/80, dated 03.06.1980 (6 declaration) or any other proceedings. Originally, the grandfather of the petitioner Late Ramasamy Chettiar purchased the agricultural lands in Alagapuram Village, measuring an extent of 1/3rd of 23 cents S.No.199/3, 1 acre and 70 cents in S.No.1/3

and in Alagapuram Village 42 cents in S.No.1/4, 2638 sq.ft. in S.No.2/10A, 0.6 cents in S.No.2/11A, 0.31 cents in S.No.2/10, 0.23 cents in S.No.2/13, 1796 sq.ft. in S.No.2/11 totalling an extent of 2 Acre and 88 cents, in his name and also in the name of his wife, Pappammal and his daughter-in-law, Kala Rani, agricultural lands. The said Ramasamy Chettiar died on 27.11.1993. His wife, Papammal also died. The petitioner, along with his brother Suresh and his deceased brother R.T.Rajesh inherited the said properties together with their mother Kalai Rani. R.T.Rajesh, husband of the petitioner also died on 07.03.1999.

2. The petitioner has further submitted that the State of Tamil Nadu by G.O.Ms.No.1058 (Housing & Urban Development Department), dated 06.07.1978 came out with 4(1) Notification under the Land Acquisition Act proposing to acquire the lands of the petitioner along with similar lands. The said acquisition proceedings were objected to. In spite of the objection by the petitioner, the State of Tamil Nadu by G.O.Ms.No.715/80, dated 03.06.1980 issued declaration under Section 6 for acquiring the said land. The same was challenged by way of writ petition in W.P.No.7490 of 2002. This Court, dismissed the above writ petition and thereafter, the petitioner preferred appeals in W.A.Nos.1631 and 1632 of 1999. The said writ appeals were also dismissed with a direction to the Government and the concerned authority to

consider the representation of the petitioner under Section 48(B) of the Land Acquisition Act to get back the property not utilized by the authorities. Thereafter, the petitioner along with his brothers made a representation to the respondents 1 and 2 on 06.11.2004. Since the representation of the petitioner had not been disposed of by the respondents 1 and 2, the petitioner along with her brothers-in-laws was forced to file a writ petition in W.P.No.389 of 2005 seeking a writ of mandamus, directing the respondents 1 and 2 pass appropriate orders on the representation of the petitioners dated 06.11.2004 and by order dated 19.04.2007, this Court was pleased to direct the respondents 1 and 2 dispose of the representation of the petitioner dated 06.11.2004 in accordance with law. During the pendency of the writ petition, the respondents 1 and 2 attempted to encroach 13 cents of land in S.No.32/2, Periyeri Village, Salem and put up a compound wall including 13 cents of land and the same was objected by the petitioner. The third respondent is trying to grant its planning approval for the land to the respondents 1 and 2 including the 13 cents of land which is not the subject matter of the Land Acquisition Proceedings. The respondents 1 and 2 also have not taken possession of the above said 13 cents of land.

3. The petitioner has further submitted that the 13 cents of land in S.No.32/2 Periyeri Village, Salem Taluk, is not the subject matter of the

Land Acquisition Proceedings and the said lands were not taken possession by the respondents 1 and 2. A patta has been issued in favour of the petitioner in respect of the above 13 cents of land. Even as of today, the petitioner is paying the kist to the land in question. Further, there is an electricity service connection in the name of the petitioner in the above said land. The petitioner also preferred a complaint before the Sub Inspector of Police, B-9, Fairlands Police Station, Salem City on 22.03.2007 and since the respondents are Government Officials, the Police Authorities have refused to take any action against the respondents for their illegal activities. Hence, the petitioner has filed the above writ petition.

4. The learned counsel appearing for the petitioner has submitted that the respondents had initiated acquisition proceedings to acquire the land measuring about 2 Acres 88 Cents in various survey numbers at Alagapuram Pudur Village, Salem Taluk. The said land was originally belonging to the petitioner's grandfather, who had purchased the same in his name, his wife and his daughter-in-law. After the demise of the petitioner's grandfather and grandmother, she and her brothers had succeeded the said land. As per G.O.Ms.No.715/80, an extent of 13 Cents, in Survey No.32/2 of Periyeri Village does not cover the land acquisition proceedings. The respondents initially published a notification, under Section 4(1) of the Land Acquisition

Act, on 06.07.1978 and published a declaration, on 03.06.1980, under Section 6 of the Act. The same were challenged before this Court by way of filing writ petition and writ appeal. Both were dismissed with a direction to the respondents to consider the petitioner's representation. Since the petitioner's representation was kept pending, she had filed another writ petition to direct the respondents 1 and 2 to dispose of the same at an early date and this Court, by Order dated 19.04.2007, had directed them to dispose of the petitioner's representation in accordance with law. When the writ petition for direction to the respondents 1 and 2 was pending, the respondents 1 and 2 had trespassed into the petitioner's land, in Survey No.32/2 of Periyeri Village, measuring about 13 Cents, and put up a compound Wall. The petitioner had objected the same. In such circumstances, the third respondent has intended to grant plan approval for the respondents 1 and 2 in respect of the said land. The said land had not been acquired by the respondents 1 and 2. The possession is also vested with the petitioner and she has also obtained Patta in his name.

5. Further, the learned counsel has submitted that aggrieved by the illegal activities of the respondents 1 and 2, the petitioner had levelled a criminal complaint before the Fairlands Police Station, Salem City. Hence, the learned counsel has prayed this Court to prevent the respondents in any

manner dealing with the 13 Cents of land in Survey No.32/2 of Periyeri Village, since the same had not been acquired by the Government.

6. The learned Additional Government Pleader appearing for the respondents 1 and 3 has submitted that the respondents had acquired the said land during 1980. The same was challenged by the petitioner before this Court by way of writ petition and the same was dismissed by this Court. The writ appeal was also dismissed by this Court. As per G.O.Ms.No.715/80, dated 03.06.1980, the subject land had been acquired for the neighborhood scheme. After a lapse of around 25 years, the petitioner has filed this writ petition and the same is therefore liable to be dismissed.

7. The learned counsel appearing for the second respondent has submitted that as per the Government Order issued by the first respondent, the Land Acquisition Officer had acquired the entire lands including the subject land measuring about 13 Cents, in Survey No.32/2 of Periyeri Village and handed over the same to the second respondent. Therefore, the respondents 1 and 2 put up a compound wall in order to protect the Government property.

8. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that in order to determine the veracity of the physical possession of the subject land and its enjoyment, a comprehensive enquiry is required. Therefore, the Writ Court cannot arrive at a decision in the absence of the entire title deeds of the petitioner. Further, according to the petitioner, she has obtained Patta from the Revenue Authorities in his name, but the same is not available in the typed set of papers. In such circumstances, the writ petition is liable to be dismissed.

9. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07/12/2015
(3/3)

Index : Yes/No.
Internet : Yes/No.

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To

- 1.The Secretary, Housing &
Urban Development Department,
Fort St. George,
Chennai-600 009.
- 2.The Chairman.
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 006.
- 3.The Director,
Town & Country Planning,
Anna Salai, Chennai.

C.S.KARNAN, J.

r n s / krk

Pre Delivery Order made in
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and
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(3/3)