

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 11/08/2014

DATED : 03/12/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.30496 of 2007

and

M.P.No.1 of 2007

M/s.T.V.Brothers
a Partnership firm
rep.by its Managing Director
Mr.Aravind
No.18/41, Big Bazaar Street
Coimbatore

... Petitioner

vs.

1.The State of Tamil Nadu
rep.by its Secretary
Revenue Department
Fort St.George, Chennai-9

2.The Collector of Coimbatore District
Coimbatore

3.The Tahsildar
Coimbatore North Taluk
Coimbatore

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus to direct the respondents to pass necessary orders assigning the land measuring 9237 sq.ft. in T.S.No.2111, Anupar Palayam Village, Coimbatore Taluk and Town, Coimbatore in favour of the petitioner.

For Petitioner : Mr.D.Muthuselvam
for Mrs.P.Indumathi

For Respondents : Mr.M.S.Ramesh, A.G.P.

O R D E R

The petitioner has submitted that he has been in continuous possession and enjoyment of the land measuring to an extent of 9237 sq.ft., in T.S.No.2111 in Coimbatore Taluk, from the year 1948. In September, 1948, the sanction of Municipal Council, Coimbatore, was obtained for relinquishing its right over the above said extent of 9237 sq.ft., in T.S.No.2111. Sanction was also accordingly ordered by resolution of the Municipal Council, dated 13.09.1948. The Council relinquished its rights over the above said 9237 sq.ft., of land in T.S.No.2111 and also recommended assessment of the same in favour of the petitioner. The proceedings of the Collector, Coimbatore, dated 12.02.1948, has also recommended assignment of the above said land to the petitioner, who had also made request for the assignment of the above said lands. The Collector of Coimbatore, in his proceedings, dated 12.02.1948, had stated that the petitioner's encroachment of the above said land was not objectionable and that the same may be leased out to the encroacher every year. In view of the proceedings of the Collector, dated 12.02.1948, the Council in its proceedings, dated 17.04.1950, had recommended the lease of the land to the petitioner.

2. The petitioner has further submitted that on 15.04.1948, he wrote a letter to the Collector, Coimbatore, informing his attention to the assignment of the land in question to him and also his readiness to pay the market value for the portion in its possession. The Revenue Divisional Officer, Coimbatore, by his proceedings, dated 03.08.1968, called upon the petitioner's willingness to pay twice the sum of Rs.3.25 per sq.ft., towards the value of the land proposed to be assigned in its favour. On 26.08.1968, the petitioner sent a reply to the Revenue Divisional Officer, pursuant to the above notice, dated 03.08.1968, for an amicable settlement towards the valuation of the land in question, which was recommended for assignment in his favour. There were several correspondences between the petitioner and the Revenue Authorities in the matter of fixation of value of the lands assigned.

3. The petitioner has further submitted that when the matter stood thus with regard to assignment and market value of the land in question, the Revenue Divisional Officer, Coimbatore, by his letter, dated 08.08.2003, called upon the petitioner to signify his consent for paying the lease amount to be determined by the Government in the land in question. Since the petitioner was very particular of the assignment of the land, he did not signify his consent either taking the land on lease or for payment of any lease amount. The Revenue Authorities though initiated proposal for assignment of the land in question in favour of the petitioner, subsequently, tried to shift their stand to make it as one of the lease of a land in

question and after the notice issued on 08.08.2003 maintained an absolute silence on the question of assignment, but entered Caveat before the Subordinate Judge's Court, Coimbatore, obviously with an intention to resist any action by the petitioner and if possible to dispossess the petitioner. Hence, the petitioner has filed the above writ petition.

4. The first respondent has filed a counter affidavit on behalf of him and on behalf of other respondents. The first respondent has submitted that the petitioner has claimed for assignment of a Government land, which is classified as drainage poramboke. It comes under the category of water course poramboke, which is classified as highly objectionable poramboke. The Hon'ble Supreme Court has already banned any assignment in water course poramboke lands. The land measuring to an extent of 8546 sq.ft., in T.S.No.2111 in Anupperpalayam Village, is classified as "Drainage Poramboke". The portion of land has been encroached by the petitioner's company by way of constructing a compound wall, Cattle shed and planted coconut trees. The encroachment was booked under B.Memo and penalty at the rate of Rs.3401.15 (B.Memo No.7584/2001) was collected every year to avoid revenue loss to Government. This encroachment was in existence for a long period. The encroacher is one of the leading businessmen, doing many businesses and the encroached portion is in the heart of the city within Corporation limits. During the course of Accountant General's Audit, during Fasli years 1393 and 1394, it was pointed out that the value of the property under occupation by the petitioner works out to Rs.2,24,96,490/-, the lease rent at 4% worked out to Rs.31,49,508/- per annum and hence, leaving the lands to the encroacher will cause revenue loss to the Government. The Accountant General has also opined that the encroachment is unobjectionable and the lands could be leased out. The land encroached by the petitioner is classified as Drainage Poramboke and vested with the Coimbatore Municipal Corporation and the Coimbatore Municipal Corporation has not come up with any resolution to lease out the land to the encroacher. Due to the delay in passing a resolution, the then Collector has addressed the Commissioner to fix up the lease or to evict the encroacher. In this contention, no reply was received. Hence, a notice was issued to the encroacher to give his consent for lease.

5. The first respondent has further submitted that since the land is situated in the heart of the city, that too within the Municipal limits, the then Collector has addressed the Corporation Commissioner, Coimbatore, Municipal Corporation to state whether the land is required for any Municipal purposes or to state whether the land in question may be leased out to the encroacher or to evict the encroacher. To this effect, the Commissioner, Coimbatore Municipal Corporation, was requested to pass a resolution so as to enable the Government to proceed further. There was no response from the

Commissioner, Coimbatore Municipal Corporation and the then Collector has instructed to lease out the land to the encroacher. In this connection, consent of the encroacher was called for. He has not given any consent letter to take the encroached portion on lease. On the other side, the Revenue Divisional Officer, Coimbatore, has initiated lease proposals and finalized the rate. It is understood that the proposal did not materialize, because the consent was not given by the encroacher. Hence, it was decided to evict the encroacher from the land, since the Government have issued a ban order to assign any land in water course areas. In order to take steps to evict the encroachments, as a precautionary measure, Caveat petition was filed in the Sub Court to avoid any problems by the encroacher. Now, the petitioner has filed a writ petition before this Court with a prayer to assign the land in favour of him.

6. The first respondent has further submitted that there is no record on the file of the Collector's Office, Coimbatore, in support of the petitioner's claim. In the absence of any such proof, the contention of the writ petitioner may be brushed aside. Even though, it is claimed that the District Collector, Coimbatore, in his order, dated 12.02.1948, has recommended for the lease for this land to the petitioner is accepted now, it cannot be enforced right now as the legal position has undergone many changes as per various High Court Judgments and Supreme Court Judgments, which have categorically banned any assignment or lease in water course porambores. If at all the contention of the petitioner is taken for grant, he could have remitted the land value and got assignment in his favour. But, the intention of the petitioner is to evade payment of land value or lease and to continually enjoy the occupation of land for a paltry sum of B-Memo penalty. The intention of the petitioner is only to enjoy the possession of the land free of cost. If the contention of the petitioner that he is willing to pay the land value is correct, he would have remitted the value as early as 1968 as stated by him. Even it is presumed that there were so many correspondences between him and the revenue authorities, mere correspondence cannot be taken as order of assignment. Only after issuing of notice to the petitioner seeking his consent for lease, the petitioner has woken to raise the contention that he had requested for assignment. If the contention of the petitioner that he was very particular of assignment is true, he would not have been silent for all these years. He did not give his consent for lease because his intention was only to enjoy the possession of land by evading payment of lease or land value but for a very paltry sum of B-memo penalty. If the petitioner is serious enough to obtain assignment, he would have remitted the land value as early as 1968.

7. The first respondent has further submitted that though the contentions that the Revenue Authorities initiated proposal for

assignment earlier and now shifted to lease is accepted, the legal position after 1968 has underwent many changes as per various High Courts and Supreme Court Judgments, which have categorically banned assignment in watercourse poramboke and in order to prevent a huge loss of revenue to Government lease proposals were initiated. Further, filing of caveat before the Lower Court is a precautionary action to prevent the petitioner from getting any ex parte orders against Government from collecting legal dues. Till a notice for consent of lease was issued to the petitioner, there was no claim from the side of the petitioner for assignment. The petitioner was only silent on the issue despite several notices for lease issued to him. The only intention of the petitioner is to possess the land at free of costs. The petitioner has now come up with the claim of assignment before this Court knowing well that his encroachment will be evicted. Hence, the contention of the petitioner is not acceptable. Hence, this writ petition is liable to be dismissed.

8. The learned counsel appearing for the petitioner has submitted that the petitioner is in possession and enjoyment of the land to an extent of 9237 sq.ft., in T.S.No.2111 in Coimbatore Taluk, from the year 1948. The Council of Municipality had recommended and passed a resolution to assign the said land in favour of the petitioner. Likewise, the District Collector had also recommended the same. Further, the petitioner is enjoying the said land without any interference. He had also expressed his willingness to pay the market value of the land to the Government. After showing his willingness and eagerness, the Revenue Divisional Officer attached to Coimbatore District, by proceedings dated 03.08.1968, called upon him to pay the land cost at the rate of Rs.3.25 per sq.ft. The petitioner had sent a reply accepting the offer made by the Revenue Divisional Officer. Thereafter, several correspondences took place between the petitioner and the Revenue Divisional Officer for fixation of the land value. Under these circumstances, the Revenue Divisional Officer had directed the petitioner to pay the lease amount to be determined by the Government and as such the Revenue Authorities took a different stand. Subsequently, the respondents remained silence on the issue of assignment of the said land in favour of the petitioner. Hence, the learned counsel sought for a direction to the respondents to assign the land in favour of the petitioner.

9. The learned Additional Government Pleader appearing for the respondents has submitted that the subject land is classified as a drainage poramboke land. The Hon'ble Supreme Court has already banned assignment in watercourse poramboke land. The petitioner had encroached the land to an extent of 8546 sq.ft., and put up a compound wall, cattle shed and planted coconut trees. For his encroachment and enjoyment, the petitioner has been remitting penal tax to the Government. He is a leading businessman and occupied the

said land, which is situated in the prime location of Coimbatore City. The Accountant General had assessed the property value at Rs.2,24,96,490/- and assessed the lease rent at Rs.31,49,508/- on 4% per annum. As such, the petitioner has caused heavy loss to the Government. The Coimbatore Municipality had not passed any resolution in favour of the petitioner to assign the said land. The District Collector had also directed the Commissioner, Coimbatore Municipality, to evict the petitioner from the encroachment area. Further, the said land is required to the Government. However, the Revenue Divisional Officer had initiated lease proposal and finalized the rate, but the encroacher had not given any consent with regard to lease amount. The Government had also issued a ban order to assign any land in watercourse areas. During 1948, the District Collector had recommended only for lease of the said land, but not for assignment. Further, the petitioner is evading and avoiding payment of the land value or lease amount, but he is paying a meagre amount to the Government as penal tax and enjoying the valuable property. Hence, the learned Additional Government Pleader has prayed to dismiss the writ petition.

10. 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 as per the revenue records, the subject land is classified as a drainage poramboke land, besides the Hon'ble Supreme Court has already banned assignment in watercourse proramboke lands and the Government has also banned such assignment. In such circumstances, this Court is not inclined to grant the relief sought for by the petitioner and hence the writ petition is liable to be dismissed.

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

सत्यमेव जयते
Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

r n s / krk

To:

- 1.The Secretary,
State of Tamil Nadu,
Revenue Department,
Fort St.George, Chennai-9.

2.The Collector of Coimbatore District,
Coimbatore.

3.The Tahsildar,
Coimbatore North Taluk,
Coimbatore.

W.P.No.30496 of 2007
and
M.P.No.1 of 2007

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