

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.07.2015

Delivered on : 20.07.2015

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.29374 of 2014

and

M.P.Nos.1 to 4 of 2014 and 1 of 2015

Karthikeya Ancillaries Pvt. Ltd.,
Rep by its Managing Director,
Anjana Vasanthkumar,
6/256, Avinashi Road,
Coimbatore-641 018.

...Petitioner

Vs.

1. The Special Commissioner &
Commissioner for Land Administration,
Chepauk, Chennai-600 005.
2. The District Collector of Coimbatore,
Coimbatore, Coimbatore District.
3. The Tahsildar, Coimbatore (South) Taluk,
Coimbatore District.
4. The Commissioner,
The Corporation of Coimbatore,
Coimbatore.
5. The Commissioner of Police,
Office of the Commissioner of Police,
Gopalapuram,
Coimbatore-641018.

...Respondents

Prayer: Writ Petition 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 order F.3/22707/04 dated 2.9.2005 passed by the first respondent and all consequential orders including Na.Ka.10625/2004/P8 passed by the 3rd respondent dated 03.11.2005 and to quash the same, and for a direction to the respondents to unconditionally assign in favour of the petitioner herein an extent of 62 cents of land situate in S.No.472/2 of

Sowripalayam Village in Coimbatore (South), in exchange of 62 cents of land already given to the State by the petitioner herein.

For Petitioner : Mr.Sathish Parasaran

For Respondents : Mr.R.Vijayakumar
Additional Government Pleader
for R1 to R3 and R5

Mr.R.Sivakumar
for Coimbatore Corporation

O R D E R

The petitioner would state that it is a private limited company and was engaged in the manufacture of automobile components and it has ceased its operations from the year 2001. The petitioner company owns the following lands:

- a. 3.44 Acres situate in SF.No.484 in Vilankurichi Village;
- b. 0.91 Acres situate in SF.No.472/1 in Sowripalayam Village;
- c. 0.37 Acres situate in SF.No.472/3 in Sowripalayam Village; and
- d. 1.10 Acres situate in SF.No.471/2 in Sowripalayam Village, all situate in Coimbatore (South), Coimbatore.

The petitioner would further state that they and their predecessors in title have been in continuous and uninterrupted possession to an extent of 67 cents out of a large parcel of land in SF.No.472/2 of Sowripalayam Village adjoining the above mentioned lands on the south-eastern side ever since the year 1921. The lands adjoining the above said lands in SF.No.472/2 were used as a burial ground by the inhabitants of nearby villages. According to the petitioner, the lands in SF.No.472/2 was land locked by the patta lands of the petitioner and he did not go out of its way to secure or possess the said lands in SF.No.472/2. The petitioner would further state that the residents of the nearby villagers despite resistance had encroached nearly 22 cents of the patta lands and in order to quell the unrest, the Coimbatore Corporation has passed a resolution No.136 dated 10.05.1985, requesting the second respondent herein to negotiate with the petitioner company for use of its 62 cents as burial ground and accordingly the second respondent has visited the property and identified the lands of the petitioner lying in three different survey numbers as under:

- a. 0.25 Acres in S.No.484/3B situate in Vilankurichi Village;
- b. 0.05 Acres in S.No.472/1B situate in Sowripalayam Village; and
- c. 0.30 Acres in S.No.472/3B situate in Sowripalayam Village.

2. The petitioner was under the bonafide impression that the respondents 2 to 4 would accede to the promise and agreed to surrender the above said identified lands in return for assignment in its favour equal extent of 62 cents of lands in SF.No.472/2. The third respondent has also made a positive recommendation dated 06.04.1985 and the petitioner was under the bonafide impression that the exchange would take place as promised and permitted the general public to use his patta lands as burial ground, pending formal clearance/approval by the concerned authority. It is stated by the petitioner that on 11.04.1991, the jurisdictional Revenue Divisional Officer and Tahsildar made a spot enquiry in Sowripalayam Village and on coming to know that it is in connection with acquiring of 59 cents in SF.No.472/2 for erecting a Treasury Building, had submitted a representation dated 08.05.1991, bringing to the notice of the Revenue Divisional Officer, the facts pertaining to exchange of lands. The petitioner apprehending imminent threat of dispossession, filed W.P.No.16463/1991 on the file of this Court praying for issuance of a Writ of Mandamus directing the respondents to complete the exchange by execution of formal deed and this Court, while entertaining the writ petition, has granted interim orders and thereafter, finally disposed of the matter, vide order dated 10.06.1999, by directing the respondents to take necessary steps in that regard within the stipulated time frame.

3. The first respondent, in compliance of the said order, has asked the petitioner to appear for enquiry on 21.09.1999 and accordingly, representatives of the company appeared and thereafter, nothing had happened. Once again during the month of April/May 2007, the third respondent/jurisdictional Revenue Divisional Office and the Village Administrative Officer started surveying the lands in SF.No.472/2 and on enquiry, it was informed that it was for the purpose of taking over possession of the lands for the reason that the petitioner is an encroacher and also threatened to demolish the compound wall put up in the said lands. The petitioner once again approached this Court by filing W.P.No.26441/2007 and it was dismissed on 21.03.2012 observing that the lands in SF.No.472/2 belong to the Government and it was put to challenge in W.A.No.1119/2012 and in spite of pendency of the appeal, the compound wall put up by the petitioner in SF.No.472/2 was partly demolished.

4. The petitioner would further state that the second respondent, vide proceedings dated 11.07.2012, granted permission

to the fifth respondent to take possession of the lands in SF.No.472/2. The writ appeal was taken up for final disposal and at that juncture, it was informed to the Court about the order dated 02.09.2005 and the consequential order dated 03.11.2005 passed by the third respondent going back from their promise on the exchange of lands on the ground that the factory of the petitioner Company is no longer functioning and further that the petitioner is an encroacher. This Court, taking note of the said development, dismissed the writ appeal with liberty to the petitioner to challenge the same and hence, this writ petition.

5. Mr.Sathish Parasaran, learned counsel appearing for the petitioner has drawn the attention of this Court to the letters of the third respondent and would submit that the said letters would clearly disclose the fact that the second respondent was agreeable for the exchange of lands and acting on the promise only, the petitioner permitted the villagers of the neighbouring villages to use his patta lands as burial ground and contrary to the promise/undertaking, the petitioner was declared as an encroacher solely for the reason that it's factory is no longer functioning. The learned counsel appearing for the petitioner has also invited the attention of this Court to the order dated 08.06.1999 made in W.P.No.16463 of 1991 and would submit that a positive observation was made in the above cited order in favour of the petitioner with a direction to consider and dispose of the claim of the petitioner within a stipulated time and though the petitioner fully cooperated with the authorities, they did not pass any orders and on the contrary, went on to demolish the compound wall put up by the petitioner in SF.No.472/2 and adding salt to the wound, also declared him as an encroacher and the same is wholly unsustainable. Lastly, it is submitted by the learned counsel appearing for the petitioner that acting on the promise/undertaking, the petitioner permitted use of his own patta lands as burial ground and by taking into consideration its long and uninterrupted possession of the lands in SF.No.472/2, it should be given to them and prays for appropriate orders.

सत्यमेव जयते

6. Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents has invited the attention of this Court to the counter affidavit of the Collector of Coimbatore District/second respondent and would submit that even at the earliest point of time, it is the stand of the Government that the exchange of lands has not attained its finality and the petitioner appear to have handed over the patta lands to the Commissioner, Corporation of Coimbatore/fourth respondent and the said process is no way concerned with the Revenue Department, who is the owner of all the poromboke lands which includes lands in SF.No.472/2 of Sowripalayam Village. Insofar as the stand taken by the

petitioner that their predecessors and them are in continuous and uninterrupted possession of the said lands for very many decades, it is contended that the occupation of Government lands unauthorizedly for decades together will not confer any right to the petitioner to claim the land as their own. The learned Additional Government Pleader further invited the attention of this Court to the counter affidavit of the fifth respondent, namely the Commissioner of Police, Coimbatore City and would submit that in MPF 2011-2012, the Government accorded sanction for the construction of 28 Rural and 10 Urban Police Stations including construction of B-6, Peelamedu Police Station in Coimbatore City and the fifth respondent, vide letter dated 12.06.2012, has requested the second respondent to part with the possession of 62 cents of lands in SF.No.472/2 of Sowripalayam Village for construction of the said police station and acceding to the said request, the second respondent, in its order dated 11.07.2012 allotted the said land to the Police Department and also directed the third respondent to take up further action and the third respondent, vide proceedings dated 13.07.2012 directed the Revenue Inspector, Singanallur to handover the possession of the land to the Inspector of Police (L&O), B6 Peelamedu Police Station on 19.11.2012 under a possession certificate. It is further stated by the fifth respondent in the counter affidavit that an amount of Rs.55 lakhs was sanctioned by the Government for construction of B-6, Peelamedu Police Station, Coimbatore city vide G.O.Ms.No.343, Home (Modern) Department dated 10.05.2012 and the land was handed over and taken over by the Tamil Nadu Police Housing Corporation Limited on 03.10.2014 and it commenced construction and nearly 50% of the construction work has been completed and at this juncture, the petitioner has approached this Court by filing this writ petition and obtained an interim order of Status Quo and hence, construction is in midway and could not be completed. It is the submission of the learned Additional Government Pleader that admittedly no written orders were passed by the Government as to the alleged exchange of lands completed by the petitioner and after handing over possession of the lands in question, construction of police station, which is purely for a public purpose, is in midway and further pleaded that the petitioner is admittedly an encroacher and that the encroached land in SF.No.472/2 lies very close to National Highways between Coimbatore and Avinashi and its value is more when compared to the patta lands of the petitioner which lies at a reasonable distance in an interior area and made a recommendation to retrieve the encroachment. Therefore, the learned Additional Government Pleader prays for dismissal of the writ petition with exemplary costs.

7. This Court has carefully considered the rival submissions and also perused the materials placed before it.

8. A perusal of the materials placed before this Court would indicate that there were talks with regard to the exchange of patta lands in SF.No.472/2 encroached by the petitioner and his predecessors in title. The petitioner, in para 6 of the affidavit, would admit that nearly 22 cents of the patta lands were being encroached by the residents of nearby villages despite resistance by the petitioner. Therefore, it is not as if the concerned authorities has granted permission to the villagers to use the patta lands of the petitioner as burial ground and admittedly, the petitioner did not take any step to prevent the encroachment or to evict the encroachers and to reclaim the land. The petitioner would admit that though they and their predecessor in title have been in continuous and uninterrupted possession to an extent of 67 cents out of a large parcel of land in SF.No.472/2 of Sowripalayam Village and the said encroachment is land locked and surrounded by patta lands of the petitioner and merely because lands in SF.No.472/2 is surrounded by patta lands of the petitioner, would not confer them with any right to annex the said land and put up the compound wall.

9. It is pertinent to point out at this juncture that the land in SF.No.472/2 is classified as "Vari" and admittedly belongs to the Government and in the absence of any written order by the Government permitting exchange of lands, the petitioner cannot claim any right and on his own volition has permitted the fourth respondent to use part of his patta lands for burial ground. The fourth respondent is not the owner of the land in SF.No.472/2 and unless and until the Government transfers the land in its favour, cannot have any right over the said land. The land in question was also inspected by the third respondent as well as by the jurisdictional District Revenue Officer and they observed that the land encroached by the petitioner in SF.No.472/2 is situated in close proximity to National Highways between Coimbatore and Avinashi and the land which is proposed to be given by the petitioner by way of exchange, is far way at a reasonable distance. The said official also taken note of the fact that the factory of the company is no longer functioning and thereby implying that it cannot claim any right in respect of the Government lands.

10. There is an overwhelming public interest involved in respect of the usage of land in SF.No.472/2 for the reason that the Government has accorded sanction for construction of 28 rural and 10 urban police stations including construction of B-6, Peelamedu Police Station, Coimbatore City and if the fifth respondent also made a request to the second respondent for parting with the Government land in SF.No.472/2 and the second respondent has acceded to the said request, vide order dated 11.07.2012 and has allotted land for the construction of B-6, Peelamedu Police Station, Coimbatore City and possession was also handed over on 19.11.2012. The Government of Tamil Nadu has also accorded sanction of Rs.55

lakhs for the said purpose and the Tamil Nadu Police Housing Corporation Limited also started construction of the police station on 03.10.2014 and the photographs produced before would disclose that nearly 50% of the construction work has been completed and in pursuant to the interim order of Status Quo passed by this Court on 12.11.2014, construction has been stopped.

11. Maintenance of law and order is always a topmost priority of any Government and construction of Police Station is an important step in that direction and therefore, the decision of the Government to part with the lands for that public purpose cannot be faulted. The Government, being owner of the lands in SF.No.472/2, is having every right to stipulate for what purpose the said land is to be used and admittedly, it is used for public purpose for construction of a police station, which is the guardian/enforcement agency to maintain law and order in that area and therefore, it cannot be faulted with. It is also considered that the petitioner company is no longer functioning and simply because some of its patta lands were encroached by the neighbouring villagers for the use of burial ground, cannot confer with any right to encroach upon the Government lands. In the considered opinion of the Court, the acts of the official respondents are purely in public interest and viewing the case from that angle, the petitioner is neither having legal right nor equitable right in respect of the said land.

12. In the result, this Writ Petition is dismissed. No costs. Interim order already granted shall stand vacated and consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Special Commissioner & Commissioner for Land Administration, Chepauk, Chennai-600 005.
2. The District Collector of Coimbatore, Coimbatore, Coimbatore District.

3. The Tahsildar, Coimbatore (South) Taluk,
Coimbatore District.

4. The Commissioner,
The Corporation of Coimbatore,
Coimbatore.

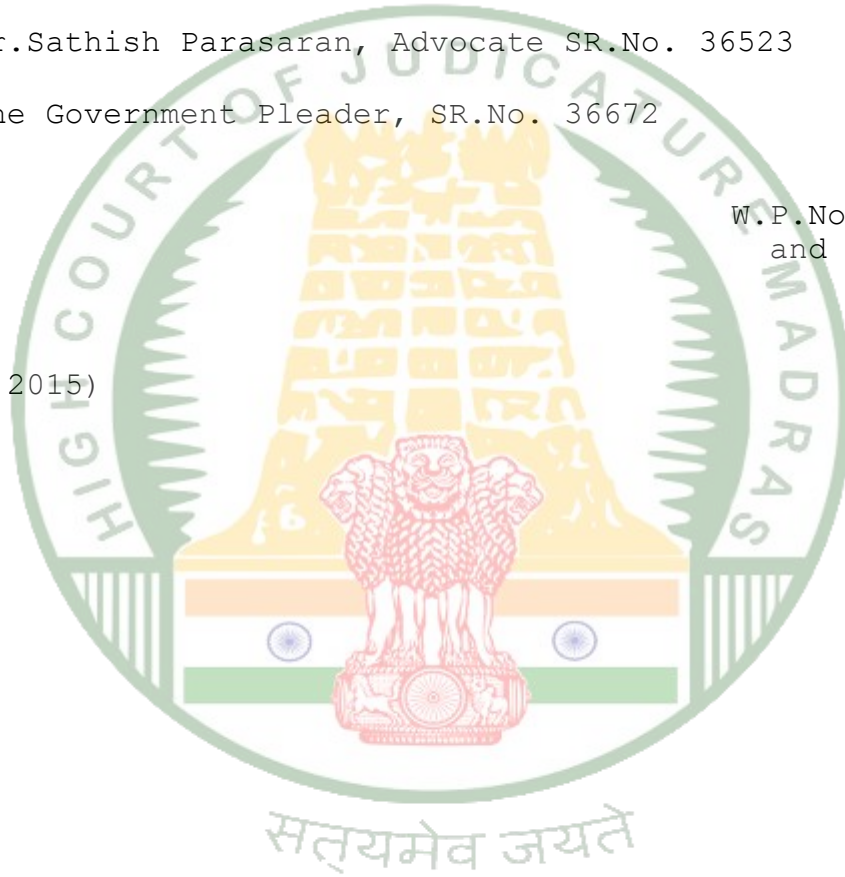
5. The Commissioner of Police,
Office of the Commissioner of Police,
Gopalapuram,
Coimbatore-641018.

1 CC to Mr.Sathish Parasaran, Advocate SR.No. 36523

1 CC to the Government Pleader, SR.No. 36672

W.P.No.29374 of 2014
and connected MPs.

SR (CO)
SI (31.07.2015)



WEB COPY