

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2015

Date of Reserving the Order	Date of Pronouncing the Order
23.04.2015	28.04.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.794 of 2015 &
Cont. P.No.476 of 2015

T.K.Vasudevan Petitioner in W.P and Contempt Petition

Vs

1.The District Collector of Chennai,
Office of the Collectorate,
Chennai - 600 001.

2.The District Revenue Officer,
Office of the Collectorate,
Chennai - 600 001.

3.The Tahsildar,
Velacherry Taluk,
Chennai.

4.The Registrar,
Indian Institute of Technology,
Chennai - 600 036.

... Respondents in W.P.No.794 of 2015

Ms.V.G.Bhooma

The Registrar,

Indian Institute of Technology,

Chennai - 600 036.

... Respondents in Cont. P.No.476 of 2015

Prayer in W.P.No.794 of 2015 :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records pertaining to the order of the second respondent in J2/22106/2006, dated 22.12.2014 and quash the same and further direct the third respondent to grant patta to the petitioner in respect of the property, measuring an extent of 97.56 cents comprised in Paimash Nos.804, 816A, 817, 818 & 828A in Block

No.8, T.S.No.2/3, Door No.4A Tharamani Road of Thiruvanniyur Village No.140, Chennai within the Sub Registration District of Saidapet and Registration District of Chennai South.

Prayer in Cont.P.No.476 of 2015 :-Petition filed under Section 11 of Contempt of Court Act, 1971, to punish the respondent for willful disobedience of the order of interim injunction dated 13.01.2015 in M.P.No.1 of 2015 in W.P.No.794 of 2015 passed by this Court.

For petitioner .. Mr.AR.L.Sundaresan Sr. Counsel for
Mr.S.Suresh in both WP.and Court petition
For Respondents .. Mr.R.Vijayakumar AGP for RR1to3

Mrs.Chitra Sampath Sr. Counsel for
M/s.Menon, Karthik, Mukundan and
Neelakandan for R4 and the respondent
in court petition No.794/15

C O M M O N O R D E R

The Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the District Revenue Officer, Chennai, by which the appeal petition filed by the petitioner challenging the order passed by the Tahsildar, Mylapore-Triplicane Taluk, dated 20.09.2006 was dismissed.

2. The Tahsildar by the said order rejected the petitioner's request made through his power agent for grant of patta in respect of the property comprised in T.S.No.2/1, Block No.8, Thiruvanniyur village on the ground that in the permanent land records, the land has been classified as 'Government Poromboke'. The Writ Petition was admitted on 13.01.2015 and an order of interim injunction was granted on 13.01.2015. Alleging disobedience of the interim order, the petitioner filed Cont. P.No.476 of 2015 and when the Contempt Petition was heard on 25.03.2015 the learned counsel on either side requested the Contempt Petition to be listed along with Writ Petition in which the respondents have filed petition to vacate the order of interim injunction., This is how the Contempt Petition has been tagged along with the Writ Petition and with the consent of either side, the matters are disposed of finally.

3. Heard Mr.A.R.L.Sundaresan, learned Senior counsel assisted by Mr.S.Suresh, learned counsel for the petitioner, Mr.R.Vijayakumar, additional Government Pleader for the respondents 1 to 3, and Mrs.Chitra Sampath learned Senior counsel for M/s.Menon, Karthick Mugunthan and Neelakandan, learned counsels for the fourth respondent.

4. The petitioner states that his father Kalyanasundaram inherited an extent of 6.61 acres of land comprised in paimash numbers 804, 814B, 816A, 817, 818, 828A, 837A, 838A, 837B, 839A, 836, 810, 811 and 812B from his parents Annamalai Gramani and Kanniyammal along with his father's brothers and sisters. It is further stated that the petitioner and his three brothers became joint owners of an extent of 2.56 acres in Paimash Nos. 804, 816A, 817, 818 and 828A pursuant to two registered partition deed dated 27.03.1961, 21.06.1961, registered as document No.717 of 1961 and 1616 of 61 and a deed of exchange dated 13.06.1962, registered as document No.1510 of 1962. It is further stated that during the time of partition the properties were assigned Paimash Numbers and no survey numbers were assigned which was done subsequently and vide proceedings dated 07.07.2006, the correlated survey number is S.No.17/4, covering all 14 Paimash numbers measuring a total extent of 6 acres and 61 cents. The petitioner would state that the lands covered in the 14 Paimash Numbers though covered in a notification issued under Land Acquisition Act, acquiring lands for Indian Institute Technology, Madras (IIT), the declaration made under Section 6 of the Act and published in the Government Gazettee, dated 21.03.1961, mentioned only the extent of 3.98 acres out of total extent of 6.61 acres under acquisition. It is further stated that the names of the person in enjoyment of the property has been mentioned in the Section 6 declaration and it contains the names of the petitioner's father his brother and sister, namely Kalyanasunadra Gramani, Thirugnanam and Mariyammal.

5. It is further stated that while passing Award No.2 of 1963, it has been stated that survey No.17/4 correspondence to 6 Paimash Numbers, namely, 810, 811, 812, 814, 836 & 837 measuring an extent of 3.98 acres. Therefore, the petitioner claims that no award was passed with respect to the remaining extent of 2.63 acres out of 6.61 acres and in the said 2.63 acres an extent of 97.56 cents is in the possession and enjoyment of the petitioner and his three brothers. After about 43 years, the petitioner through his power of attorney agent one Mr.Jaffarulla is said to have submitted an application on 17.04.2006, to the Tahsildar, Mylapore-Triplicane Taluk, for grant of patta. Though in the affidavit filed in support of the Writ Petition in paragraph 5 therein the petitioner states that he applied for transfer of patta, the petitioner has not made any reference to any patta granted in favour of his predecessor in title to term his application as an application for transfer of patta. Therefore, the application dated 17.04.2006, filed about 43 years after the award was passed in the land Acquisition proceedings on 04.03.1963, is in effect an application for grant of patta and not for transfer of patta. By order dated 20.09.2006, the application was rejected on the ground that the land in question namely T.S.No.2/1, Block No.8, Thiruvanmiyur village is classified as Government Poromboke land. The petitioner filed an appeal to the District Revenue Officer, Chennai, which was rejected by order dated 19.04.2007. Pursuant to

which, a notice was issued by the Tahsildar, dated 08.05.2007, under Section 7 of the Tamil Nadu Land Encroachment Act. This notice was challenged by the petitioner's brothers Mr.T.K.Kabali, Mr.T.K.Sathyamoorthi, and Mr.T.K.Raghu by filing W.P.No.27670 of 2007. It is to be noted that the order impugned in W.P.No.27670 of 2007, filed by the petitioner's brothers is a notice issued under the Land Encroachment Act, dated 08.05.2007, said to have been served on the petitioners on 31.07.2007. The present Writ Petitioner was not a party in the said Writ Petition and the order passed by the District Revenue Officer, dated 19.04.2007, was not challenged in the said Writ Petition.

6. The petitioner filed a revision petition before the Special Commissioner and Commissioner of Land Administration dated 06.08.2007, challenging the order of the District Revenue Officer, dated 19.04.2007. The petitioner's brothers Mr.T.K.Kabali and two others filed separate revision petitions dated 02.05.2007, before the same authority challenging the order dated 19.04.2007. Since revision petitions were not disposed of, the petitioner filed W.P.No.9982 of 2008 and a direction was issued by this Court on 23.04.2008, to the Special Commissioner to pass appropriate orders within a period of either weeks. Pursuant to such direction, the Revisional Authority (Special Commissioner) by order dated 21.07.2008, remanded the matter back to the District Revenue Officer, Chennai, for fresh enquiry and to pass orders after affording reasonable opportunity to all interested persons, to verify the documents submitted by the revision petitioners, its correlation to the lands under reference and the connected records related to land acquisition. Since the matter was pending before the District Revenue Officer, the petitioner filed W.P.No.26121 of 2013, to direct the District Revenue Officer to conduct enquiry to dispose of the appeal pending on his file. The said Writ Petition was disposed of by order dated 04.10.2013, with a direction to the District Revenue Officer to dispose of the matter as expeditiously as possible and in any case, within a period of three months from the date of receipt of a copy of the order. Pursuant to such direction issued and in the light of the remand order passed by the revisional authority, the second respondent passed the order dated 22.12.2014, rejecting the appeal petition. The said order is impugned in this Writ Petition.

7. The submission of the learned Senior counsel rests on the declaration made under Section 6 of the Land Acquisition Land as published in the Government Gazette dated 21.03.1962, and the award passed by the Special Tahsildar (Land Acquisition), dated 04.03.1963. The petitioner does not dispute the acquisition of the land for IIT, Madras. Equally it is not disputed that though the 14 paimash numbers were covered in the declaration issued under Section 6. Therefore, it is the plea of the petitioner that the remaining extent not mentioned in the declaration issued under Section 6 of the Act does not form part of the acquired lands. To substantiate such

contention reliance has been placed on the findings recorded by the Special Tahsildar in the award dated 04.03.1963 and by referring to paragraph 4 therein, it is stated that survey No.17/4, corresponds to 6 paimash numbers measuring 2.6.0 Kanis as per the Section 6 declaration and the extent is only 3.98 acres and does not include the remaining extent of 2.63 acres in which the petitioner and his brothers claim to be in possession and enjoyment of 97.56 cents. The third limb of the submission is based on a report submitted by the Assistant Director of Survey and Land Records dated 08.11.2010. By referring to the observations contained therein, it is submitted that the second respondent failed to take into consideration the findings recorded by the said Assistant Director in spite of the Revisional Authority specifically directing to refer to the connected records. Further, it is submitted that the Tahsildar, Velachery by report dated 24.02.2014, has addressed the second respondent with specific reference to the extent of 2 acres and 53 cents and this report also has not been taken into consideration.

8. Elaborating on the said contentions, it is submitted that the second respondent has failed to refer to the reports dated 04.06.2010 and 08.11.2010, which are very relevant as they deal with correlation of paimash numbers with Town Survey numbers. Therefore, it is the endeavour of the petitioner to convince this Court that if a proper correlation is done, then it will be evident that the petitioner and his brothers are the absolute owner of the property in question and eligible for grant of patta.

9. The learned Additional Government Pleader sought to sustain the impugned order by referring to the factual details and to substantiate his contention, placed the original records for the consideration of this Court.

10. The reliance placed on the inter-departmental communications is of little avail to substantiate the case of the petitioner. The entire case of the petitioner rests upon the interpretation they seek to give in the process of correlation of the paimash numbers with that of the Town Survey numbers. As noticed above, the petitioners do not dispute the acquisition of the land for the fourth respondent. It is their specific case that all 14 paimash numbers found place in the declaration issued under Section 6, but the extent was lesser and out of the remaining extent, they claimed to be in possession of about 95 cents stating that the said lands were never acquired. In my view the claim made by the petitioner is far-fetched. The reason as to why petitioner nor his three brothers did not take any steps to enforce their alleged rights by securing patta for over 43 years remains unanswered. On the date when the petitioner sought for grant of patta i.e., in 2006, the land stood

classified as 'Government Poromboke Land'. Therefore, such revenue entry cannot be dislodged in the manner sought to be done by the petitioner in the absence of any documents to the effect that despite all 14 paimash numbers were acquired yet there was a portion of the land free from acquisition. Prima facie it appears to be a clear case where the petitioner seeks to take advantage of correlation proceedings correlating the old paimash numbers with town survey numbers.

11. As pointed out by the learned Senior counsel for the fourth respondent that the land occupied by the fourth respondent is comprised in Old survey No.4/1 part and 7/7 part comprised in T.s.No.2/1 of Block No.8, Thiruvanniyur village. The lands in survey No.4/1 and 7/7, were acquired by the Government from Elumalai Gramani and Rajammal. Survey No.4/1, corresponds to paimash numbers 703A, 703A1, 704A1 and 705/A, measuring 58 cents and survey No.7/1 correlates to paimash numbers 702/A, 705/C, 706/C, 707/C, 708/C, 709/C, 710/C, 711/C measuring 77 cents as per the revenue records which were acquired and handed over to the fourth respondent.

12. The petitioner and his brothers in 2006 represented by their power of attorney sought for grant of patta for an extent of 93 cents in Old Survey No.17/4, T.S.No.2/3 in Block No.8 of Thiruvanniyur village. This aspect is clear from the application dated 17.04.2006. It is not in dispute that land in survey No.17/4, measuring 3.98 acres had been acquired and handed over to the fourth respondent and since there was a dispute regarding claim for compensation, pursuant to the award dated 04.03.1963, the amount has been deposited into the Civil Court. The petitioner now seeks to claim that survey No.17/4, correlates to paimash numbers 804, 816A, 817, 818 & 828A. From the facts as stated by himself, it is clear that these paimash numbers do not correlate to survey No.4/1, or survey No.7/7.

13. The fourth respondent has pointed out that the village map of Thiruvanniyur village, shows that survey numbers surrounding S.No.17 or Survey Numbers 5, 6, 16, 18, 19, 20, 31, 36 and survey Number 4 and 7 are located far north from survey No.17. It cannot be disputed that the survey and land register and settlement A register shows the extent in survey No.4/1, as 0.58 acres and survey No.7/7, as 0.97 acres totally 1.55 acres and the names of the pattathar being Elumalai Gramani and Rajammal and if the same is the record found it is less than 2.5 acres now claimed by the petitioner as left out in those paimash numbers and included in old Survey No.4/1 and 7/7.

14. Perusal of the award dated 04.03.1963 does not show that the petitioner's father Kalyanasundra Gramani raised any objection with regard to the acquisition or the extent of the lands and present

attempt of the petitioner appears to be a new stand which was never raised at any earlier point of time. The Tahsildar has made a sweeping statement stating that an extent of 2 acres and 53 cents has not been acquired and has not been included in any other survey number. In any event, the reports of the Tahsildar and the Assistant Director being internal communications its for the second respondent to take note of the same. Likewise certain observations made by the Assistant Director in his report dated 21.02.2014, remains unsubstantiated. Therefore, this Court has no hesitation to hold that the reports submitted by the two officers is without any reference to any documents and it is clearly contrary to the survey and land register, A Register and permanent land register maintained by the Revenue Department. Further more, there is no order or entry in any record produced by the petitioner to show that the paimash numbers claimed by the petitioner correlates to survey No.4/1 and 7/7. Therefore, the second respondent while passing the impugned order rightly ignored those reports. Thus, this Court has no hesitation to hold that the contention raised by the petitioner that paimash numbers 804, 816A, 817, 818 and 828A are correlated to survey No.4/1 part and 7/7 part and T.S.No.2/3 in Block No.8 has not been substantiated. Thus, the petitioner's attempt to create some confusion without any valid proof of their claim. Therefore, the petitioner was treated as an encroacher of the land acquired for the fourth respondent.

15. The learned Senior counsel for the petitioner referring to the decision of the Hon'ble Supreme Court in the case of Smt.Gunwant Kaur & Ors., vs. Municipal Committee, Bhatinda & Ors., reported in (1969) 3 SCC 769 and Abl International Ltd., & Anr., vs. Export Credit Guarantee Corporation of India Ltd., & Ors., reported in (2004) 3 SCC 553 submitted that in appropriate cases the Writ Court has jurisdiction to entertain a Writ Petition involving disputed questions of fact.

16. Per contra the learned Senior counsel for the fourth respondent reliance was placed on the decisions of this Court in the cases of C.Sabesan Chettiar & Ors., vs. The District Revenue Officer reported in 2011 (5) CTC 241 and T.R.Dinakaran vs. The Revenue Divisional Officer, reported in 2012 (3) CTC 828. There can be no quarrel over the legal position that in all cases where facts are disputed would be cases which should not be entertained in a Writ Petition while applying the said legal principle, facts of each case is germane. However, if the disputed questions of fact are serious and requires consideration of evidence which is normally not recorded in a proceedings under Article 226 of the Constitution, the Hon'ble Supreme Court has pointed out that Writ Petition is not the proper remedy.

17. In the preceding paragraph the factual position has been elaborately set out and the petitioner rests his case on correlation of paimash numbers with town survey numbers while not disputing the land acquisition proceedings. From the records placed before this Court, it has been found that the basis of the petitioner's claim is not substantiated by documents. Any further exercise to be done to examine this dispute would clearly fall outside the realm and scope of the Writ jurisdiction as it would amount to adjudicating the disputed questions of fact and a rowing enquiry to be conducted more particularly in the light of the fact that the petitioner or his predecessors have not disputed the land acquisition proceedings which attained finality in 1963 when the award was passed.

18. In the light of the above discussion, this Court has no hesitation to hold that the petitioner has not made any case for interference and accordingly, the Writ Petition fails and the same is dismissed. Consequently, the order of interim injunction granted in M.P.No.1 of 2015, is vacated, the Miscellaneous Petition is dismissed and M.P.No.2 of 2015 is closed. In the light of the order passed in the Writ Petition, Cont P.No.476 of 2015, is closed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

pbn
To

- 1.The District Collector of Chennai,
Office of the Collectorate, Chennai - 600 001.
- 2.The District Revenue Officer,
Office of the Collectorate, Chennai - 600 001.
- 3.The Tahsildar, Velacherry Taluk, Chennai.
- 4.The Registrar, Indian Institute of Technology,
Chennai - 600 036.

+ 1 cc to Mr.S.Suresh, Advocate SR.23646
+ 1 cc to M/s. Menon, Advocate SR.23884

BVR(CO)
EU 13.05.2015

W.P.No.794 of 2015 &
Cont. P.No.476 of 2015