

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

The Hon'ble MR.JUSTICE R.MAHADEVAN
W.P. No.14976 of 2015

V.Kittu,
District Deputy Secretary,
Viduthalai Chiruthaikal Katchi,
No.80, Annal Ambedkar Street,
Mamallapuram Town,
Thirukazhukundram Taluk,
Kancheepuram District. .. Petitioner

-vs-

1.India Tourism Development Corporation Limited,
rep. by its Managing Director,
Scope Complex, Core 8,
6th Floor, No.7, Lodi Road,
New Delhi-3.

2.The Secretary to Government,
Government of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai-9.

3.The District Collector,
Kancheepuram District.

4.The Revenue Divisional Officer,
Chengalpattu,
Kancheepuram District.

5.The Tahsildar,
Thirukazhukundram Taluk,
Kancheepuram District.

6.The Executive Officer,
Mamallapuram Town Panchayat (Spl. Grade),

Mamallapuram,
Thirukazhukundram Taluk,
Kancheepuram District.

7.The Member/Secretary,
Mamallapuram Pudhu Nagar Development Committee,
Mamallapuram,
Thirukazhukundram Taluk,
Kancheepuram District.

8.GRT Hotels and Resorts (P) Ltd.,
No.136, Usman Road,
T.Nagar, Chennai-17.

9 The HDFC Bank,
rep.by its Chief Manager,No.748, Anna Salai, Chennai-2
(R9 Deleted as per order dt.14.7.2016 by CJ & RMDJ in
WP.No.14976/2015) ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the respondents 3 to 5, to conduct a thorough enquiry in pursuance of enquiry notices of the third respondent in Na.Ka.2529/2012, Aa, dated 14.08.2012 and dated -10.2012, within a reasonable time limit fixed by this Hon'ble Court and to take appropriate legal action against the 8th respondent to remove encroachment from the land comprised in S.Nos.94, 95, 96/1, 102, 103, 99/2, 99/1, 99/4, 99/5, 97, 106/1 and 105/2, in all measuring about Acre 9.99 Cents, situated in Mamallapuram village, Thirukzhukundram Taluk, Kancheepuram District.

For Petitioner : Mr.A.Ramalingam
For Respondents : Mr.Su.Srinivasan
Asst. Solicitor General for R1
Mr.T.N.Rajagopalan
Spl. G.P. for R2 to R5
Mr.R.Ravichandran for R6
Mr.Sathish Parasaran
Senior Counsel for
Mr.S.Parthasarathy for R8
No Appearance for R7

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner is a political activist and claims to be the District Deputy Secretary of Viduthalai Chiruthaikal Katchi, Kancheepuram District. He has filed this public interest

litigation seeking a writ of mandamus directing the respondent State authorities to conduct an enquiry in a time bound manner against respondent No.8/GRT Hotels and Resorts (P) Limited, Chennai-17 in respect of the alleged encroachments in the land comprised in S.Nos.94, 95, 96/1, 102, 103, 99/2, 99/1, 99/4, 99/5, 97, 106/1 and 105/2, in all measuring about 9.99 Acres, situated in Mamallapuram Village, Thirukzhukundram Taluk, Kancheepuram District and to remove the same.

2. It is averred in the petition that the land used by the general public of Mamallapuram Town is encroached by respondent No.8 extensively claiming rights to the property in pursuance to the Share Purchase Agreement entered on 01.02.2002 with the India Tourism Development Corporation Limited/respondent No.1. It is alleged that the hotel building was constructed in violation of the rules and regulations and bogus pattas have been obtained by respondent No.8, which were also utilized to avail the loans. The petitioner alleges that respondent No.1 executed the Share Purchase Agreement only with regard to S.Nos.99/3 and 100, measuring approximately 50 Acres, but respondent No.8 has encroached the burial grounds of different communities comprised in S.Nos.99/2, 99/4, 99/5 and 99/1, apart from encroaching public roads. It is alleged that on RTI enquiry, it was found that no such patta proceedings were available in the records. An enquiry was also conducted in 2012. On non-culmination of the same, representations were sent by the petitioner in the year 2013 and the petitioner also made a detailed complaint to the Hon'ble Chief Minister on 16.11.2014.

3. The petitioner claims that on account of the non-response of the Government, the members of his political party proposed to conduct a peaceful procession towards respondent No.8/GRT Hotel after garlanding and paying tribute to the statue of Dr.Ambedkar on his anniversary day. The permission was however denied by the police authorities, but on approaching the High Court, permission was granted.

4. The petitioner claims that the Executive Officer of Mamallapuram Town Panchayat/respondent No.6 proposed to effect transfer in the property tax records in the name of respondent No.8 in respect of the alleged encroached land. It is in these circumstances, the present petition has been filed.

5. The counter-affidavit filed by respondent No.1 shows that the site was originally owned by the said respondent and forms subject matter of dis-investment in terms of the Scheme of Arrangement under Section 391 read with Section 394 of the Companies Act, 1956, where under the undertaking of Hotel Temple

Bay Ashok Beach Resort was to be transferred to M/s.Mamallapuram Hotels Private Limited. The de-merger was sanctioned by the Department of Company Affairs, Government India and title to the property was passed on.

6. A comprehensive counter-affidavit has been filed by the Revenue Divisional Officer, Chengalpattu/respondent No.4 after inspection of the site conducted on 21.09.2016 with the Assistant Director (Survey), Kancheepuram, Inspector of Survey, Tahsildar and Sub Inspector of Survey, Thirukalukundram and the respective subordinates. It transpires that the survey numbers indicated by the petitioner encompassed not only the survey numbers in the area of respondent No.8, but beyond it also. The details of the same are as under:-

(i) Survey Number mentioned in the affidavit by petitioner which is located outside of GRT campus:

No.	SF No.	Extent (Hect)	Classification	Present stage	Remarks
1.	95	0.50.0	Salai (Road)	Used as "Kovalam Road"	
2.	96/1	0.08.0	Salai (Road)	There are three encroachment s i.e. 1.M.R.Marria ge hall 2.Hut and 3.Hut shop	Notice 7 has been served on 29.09.2016 to the encroachers as per the Tamil Nadu Encroachment Act, 1905
3.	102	0.40.5	Salai (Road)	Used as "Othavadai Street"	
4.	103	0.16.0	Salai (Road)	Used as "Madha Kovil to West Raja Street"	
5.	97	0.14.5	Pathai (Road)	Used as "Madha Kovil Street"	
6.	106/1	0.11.5	Kuttai	No encroachment	

No.	SF No.	Extent (Hect)	Classification	Present stage	Remarks
7.	105/2	0.21.5	Vanchi Kuttai	No encroachment	

(ii) Survey Number mentioned in the affidavit by petitioner which is located Inside the GRT campus:

No.	SF. No.	Extent (Hect)	Classification	Present Stage
1.	99/1	0.08.0	Burial Ground	S.F.No.99/1, 99/4 fully, 99/2 partially used by GRT Hotels as per the Sub Collector, Chengalpattu RC.No.12684/77/B
2.	99/2	0.73.0	Burial Ground	
3.	99/4	0.14.5	Burial Ground	
4.	99/5	0.43.5	Burial Ground	It is a patta land which wrongly mentioned as "burial ground" in the 'A' Register during UDR Scheme. This land was acquired by Government from Patilivana (Award No.10/860 dated 23.09.1986) and handed over to ITDC vide Sub Collector, Chengalpattu proceedings RC No.12684/77/C dated 04.07.1990.
5.	94	1.03.5	Salai (Road)	It is a patta land which is in the name of Mamallapuram Hotel Pvt. Limited (Patta No.1211)

The affidavit affirms that in respect of the survey numbers mentioned in the affidavit of the petitioner located outside the GRT campus, there are no encroachments in S.Nos.95, 102, 103, 97, 106/1 and 105/2, which are used by public. There are encroachments only in S.No.96/1, which has been identified and notices have been issued to the encroachers under Section 7 of the Tamil Nadu Encroachment Act, 1905 on 29.09.2016.

7. The position regarding the survey numbers inside the GRT campus have been explained in the context, as also how they came to be vested with respondent No.8 in pursuance to the dis-investment proposal approved.

8. We do not see any necessity of going into this aspect any further. But suffice to say that respondent No.1 had acquired the lands together with buildings free from all encumbrances and has been the absolute owner of the said lands with clear title over the properties. Respondent No.5, after perusing all the documents of respondent No.8 had issued patta No.1211 in favour of respondent No.8 and directed the subordinate revenue authorities - Village Administrative Officer to make necessary entries of changes in the revenue records, vide letter dated 23.01.2003. But apparently, no changes were carried out in the village accounts.

9. The issue of alleged encroachments upon burial grounds has been specifically dealt with, as it has been pointed out that the burial grounds were scattered around the land in the survey numbers and a Peace Committee Meeting was held on 25.03.1998, when ITDC owned the hotel. A consensus was arrived that the burial grounds would be arranged by setting aside 0.93.0 Hectares for Hindus; 0.10.0 Hectares for Brahmin community; 0.10.0 Hectares for Kattunaicker community and 0.14.5 Hectares for Fishermen community, along with access road, with 10 metre width, connecting all burial grounds to the sea, common to all communities from Kovalam Road to Beach. Further in S.No.100/4, an extent of 0.40.5 Hectares was decided to be left for the fishermen community for dwelling purposes.

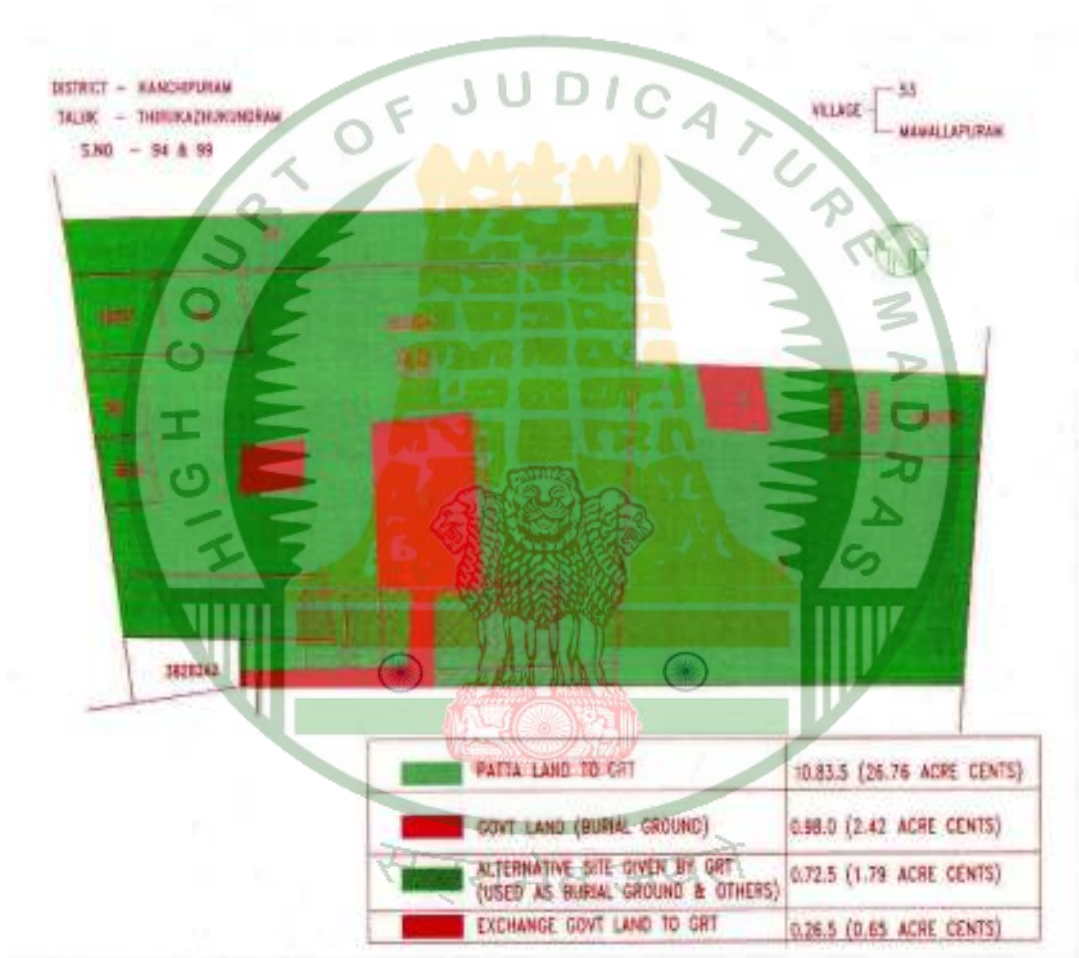
10. In view of the aforesaid, respondent No.1 represented before the then Sub Collector, Chengalpattu to arrange for shifting of two of the burial grounds and the same was done with consent of the communities. The area has been re-arranged and a separate access road has also been provided to the burial grounds, which is maintained by the Town Panchayat. But once again, apparently no changes were carried out in the village accounts. There has been no loss of land to the Government in the exchange process and that too, prior to respondent No.8 coming into the picture.

11. In order to fully understand the controversy of the area, plans have also been filed by the said respondent No.4. The plan showing the area falling within the campus of respondent No.8 and outside the said campus is as under:-

Government land, it shows as under:-

The aforesaid would show that separate burial grounds have been established and photographs have also been filed to show how from the very entrance onwards, different burial grounds are well developed and enclosed.

13. The position which emerged in the aforesaid resulting the exchanges and where these exchanges are located and how they were exchanged are also clear from the following plan:-



14. The aforesaid affidavit, in our view, leaves no manner of doubt as to either the title of respondent No.8 acquired from respondent No.1 or re-arrangement of certain land areas for adjustment and consolidation of the burial grounds and that too, for different communities, without loss of land. This in fact occurred much prior to the dis-investment and the burial grounds are developed.

15. We may note that in the counter-affidavit filed by respondent No.8, it has been alleged that the said respondent has faced harassment at the hands of the petitioner, as a local politician, by threatening to hold dharnas in front of the property of the said respondent and even suit proceedings are stated to be filed, including qua the alleged defamation, where interim orders have been passed. It is thus stated that the public interest litigation jurisdiction is sought to be misused by the petitioner. The claim of de-merger and how respondent No.8 acquired the property has been set out and the Minutes of Peace Committee Meeting held on 25.03.1998 prior to the creation of the interest in favour of respondent No.8 have also been filed. In fact, on the previous dates of hearing, the learned Senior Counsel appearing for respondent No.8 submitted that though the allegations are in the nature of civil disputes, respondent No.8 would invite an inspection so that the matter could be put to rest once and for all.

16. The claim of the petitioner of encroachment on the road which is stated to be in S.No.94 also is belied by the chart filed by respondent No.4, which shows exchange of the land and how pattas have vested. We may however observe that considerable complication could have been avoided if the Village Administrative Officer had acted in pursuance to the direction issued to ensure that the revenue records are corrected, and that is the inaction which is certainly required to be corrected expeditiously.

17. In view of the conspectus of the aforesaid facts and circumstances of the case, we do not find any force in the allegations of the petitioner and that too styled as a public interest litigation. The affidavit of the Government authorities clarifies the position so far as the land records are concerned and show that what respondent No.1 owned has been passed on to respondent No.8, which they must be allowed to enjoy, utilize and unhindered by any obstructions.

18. The writ petition is dismissed, leaving the parties to bear their own costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Managing Director,
India Tourism Development Corporation Limited,
Scope Complex, Core 8,
6th Floor, No.7, Lodi Road,
New Delhi-3.
- 2.The Secretary to Government,
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Thirukazhukundram Taluk,
Kancheepuram District.

- +1 CC to M/s. Su. Srinivasan, Advocate Sr.NO.58910
+1 CC to S. Ramalingam, Advocate Sr.No.59104
+1 CC to M/s. Satish Parasaran, Advocate Sr.No.59024
+1 CC to R. Ravi Chandran, Advocate Sr.No.58685
+1 CC to Govt., Pleader, Sr.No.58858

W.P.No.14976 of 2015

CTR (CO)
MD : 2/11/2016