

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 04-04-2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.6150 OF 2011
& M.P.No.1 OF 2014

- 1.Mrs.Jothilakshmi alias Jothi
- 2.G.Balasubramanian
- 3.Mrs.Mahadevi

...Petitioners 1 to 3 represented by
their general Power of Attorney agent
Umar Rahmathullah

- 4.P.Shanmugam
- 5.O.Muthu
- 6.Mrs.M.Mary
- 7.N.Sriram
- 8.N.Sadasivam
- 9.Dharmalingam
- 10.N.Gunalan

... Petitioners

-vs-

- 1.The Government of Tamilnadu,
rep. by the Secretary to Government,
Housing and Urban Development Department,
Fort.St.George,
Chennai-600 009.

- 2.The Land Acquisition Officer and
Special Tahsildar (L.A.) Unit III,
Tamilnadu Housing Board,
Nandanam,
Chennai-600 035.

- 3.The Chairman,
Tamilnadu Housing Board,
493, Anna Salai,
Nandanam,
Chennai-600 035.

...

Respondents

Petition under Article 226 of the Constitution of India,
praying for issuance of a writ of certiorari, to call for the
records from the second respondent pertaining to Award No.1/2010
(D1/394/83), dated 8.6.2010, and to quash the same.

For petitioners 1 to 3 : Mr.D.Murugan
For petitioners 4 to 10 : Mr.B.S.Manjunath

For respondents 1 & 2 : Mr.R.Rajeswaran,
Spl.Govt.Pleader.

For respondent 3 : Mr.B.Vivekavanam

O R D E R

In this Writ Petition, there are ten petitioners. To dispose of the matter, it is necessary to list out the names of those ten petitioners. First petitioner is Jothilakshmi alias Jothi, wife of A.Ganesan; second petitioner G.Balasubramanian is the son of first petitioner and A.Ganesan; third petitioner Mahadevi is their daughter. All the above three petitioners are said to have given Power of Attorney in favour of one Umar Rahmattullah, by a Power of Attorney Deed, dated 11.04.2003. It appears, the said Power of Attorney, representing his principal, has entered into transactions with petitioners 4 to 10, namely, P.Shanmugam, O.Muthu, M.Mary, N.Sriram, N.Sadasivam, Dharmalingam and N.Gunalan. So far as petitioners 4 to 10 are concerned, they have absolutely no locus standi to challenge the land acquisition proceedings, which attained finality on issuance of Declaration under Section 6 of the Land Acquisition Act, 1894, on 19.03.1996. Therefore, the prayer sought for by petitioners 4 to 10 in this Writ Petition is dismissed. This leaves us with petitioners 1 to 3. In the interregnum, an application has been filed in M.P.No.1 of 2014, by petitioners 1 to 3 to revoke the vakalat given by them to Mr.D.Murugan and to engage M/s.M.Ravichandran and M.Ashok.

2. On the last hearing date i.e., 09.03.2016, parties appeared and another counsel represented Mr.M.Ravichandran and made submissions. This Court was of the view that the said counsel was representing the case on behalf of Mr.M.Ravichandran. Today, another counsel is representing the case, stating that the earlier counsel is not in station and, after some questioning by the Court, it is admitted that the whereabouts of M/s.M.Ravichandran and M.Ashok are not known to the present counsel, who is representing the case. That sorry state of affairs reflect very badly on the Members of the Bar. In fact, on the earlier occasion, it was brought to the notice of this Court that petitioners 1 to 3 were attempting to grab the land of the Housing Board. Therefore, the Court directed the presence of all parties and, today, all of them are present in the Court.

3. It is rather unfortunate that without knowing the whereabouts of the counsel, who filed M.P.No.1 of 2014, another counsel is making representation on his behalf. Today, Mr.M.Ravichandran is not present and, for the facts set out in the preceding paragraphs and having regard to the conduct of the parties, this Court is not inclined to entertain M.P.No.1 of 2014, which is, accordingly, dismissed.

4. Learned counsel for petitioners 4 to 10, in fact, holds vakalat for petitioners 1 to 3 also and he continues to represent the case of the petitioners, in the light of the dismissal of M.P.No.1 of 2014.

5. This Court posed a pertinent question to the learned counsel for the petitioners as to on what date the Power of Attorney was executed by petitioners 1 to 3 in favour of Umar Rahmattullah. It is stated that Power of Attorney was executed on 11.04.2003. This is admitted in paragraph 5 of the affidavit

filed in support of the Writ Petition. The Land Acquisition Proceedings having attained finality by issuance of Declaration under Section 6 of the Land Acquisition Act, petitioners 1 to 3 had absolutely no right to deal with the property on the date when the Power of Attorney was executed and also when this Writ Petition was filed.

6. One more shocking aspect is, regarding the conduct of Balasubramanian, who is second writ petitioner, and son of first writ petitioner. He had also earlier filed several writ petitions as well, for the same property. He, along with his mother-first petitioner, filed W.P.No.6008 of 2010, to take action on the illegal occupation and the constructions made in the property in question. The said Writ Petition was dismissed, as withdrawn. Subsequently, another set of persons, namely, R.Radhakrishnan, J.Sathya, J.Vidya, J.Gayathiri and J.Ajay Varman filed W.P.No.20141 of 2011, challenging the very same acquisition proceedings, namely, the Notification under Section 4 (1) and the Declaration under Section 6 of the Land Acquisition Act. The Court elaborately considered the matter and dismissed the Writ Petition, by an order, dated 01.08.2012. In the said order, there was a reference to an order passed by the Division Bench in W.A.Nos.1144 and 1145 of 1996, which were also dismissed. Not stopping with that venture, Balasubramanian also filed another writ petition in W.P.No.1476 of 2011, wherein he challenged the public notice issued by the Housing Board, inviting applications for the purchase of the proposed HIG Flats, to be constructed in the subject property. He engaged another counsel, for whom Senior Counsel had appeared. In the said case, the same contentions, which are now focussed by the learned counsel for the petitioners Mr.Murugan were focussed, stating that Jothilakshmi's father was Kalyanasundara Pather and he died intestate, and, by virtue of the decree passed in C.S.No.166 of 1989 on the file of this Court, Kalyanasundara Pather perfected title to the suit property. It was further contended that physical possession had not been taken. The Court elaborately analysed the matter and, by a detailed order, dated 06.06.2014, dismissed the said Writ Petition and vacated the interim order granted. Two other writ petitions, namely, W.P.No.12047 of 2011 was filed by V.Anandhan and two others, and W.P.No.17050 of 2012 by Sambandam Pillai and eleven others, represented by their Power of Attorney Agent M.Dharman, who was the ninth petitioner in the said writ petition, and the petitioners therein sought for quashing the order passed by the Government, dated 03.03.2010, by which the request for reconveyance was rejected and they sought for reconveying the land measuring an extent of 21 grounds, which is, in fact, the subject matter in this Writ Petition also. The Court took into consideration the dismissal of W.P.No.1476 of 2011 filed by second petitioner herein, namely, G.Balasubramanian, and dismissed the matter, by an order, dated 23.07.2014. In the said Writ Petitions, the Court observed that the petitioners therein, namely, V.Anandhan and two others and Sambandam Pillai and eleven others were not the real owners, but they were land encroachers. Balasubramanian did not stop his journey of vexatious litigation, but preferred W.A.No.1068 of 2014 before the Hon'ble Division Bench, in which the counsel, who represented him in the Writ Petition, alone appeared and there was no Senior Counsel. The

Hon'ble Division Bench, by its judgment, dated 14.10.2014, dismissed the said Writ Appeal.

7. In the light of the above facts, it is evidently clear that Balasubramanian and his mother Jothilakshmi have made clear attempts to grab the Government property. The filing of earlier writ petition in W.P.No.6008 of 2010 had not been disclosed in the present writ petition, which, itself is sufficient to impose heavy costs on petitioners 1 and 2, as they were the petitioners in the said writ petition, namely, W.P.No.6008 of 2010. Thus, it is a clear criminal attempt to grab the Government property, by venturing upon the vexatious litations.

8. In the light of the above developments, no relief can be granted in this Writ Petition, which, is, accordingly, dismissed, and exemplary costs are to be imposed on first and second petitioners, namely, Jothilakshmi @ Jothi, wife of A.Ganesan, and G.Balasubramanian, son of A.Ganesan. Having taken note of the hard facts, this Court is of the view that unless stringent action is taken against first and second petitioners, their actions will not be abated. In spite of repeated dismissal of the cases, private parties have been set up to file cases against Government, with a view to drag on the matter. Complexity of the matter is total. It is not known as to how deep it will penetrate. Furthermore, the role of the Power Agents is also to be probed. Therefore, there will be a direction to third respondent to lodge a police complaint against petitioners 1 and 2 and all concerned, and, if such a complaint is lodged, it shall be transferred and entrusted to a senior and energetic Officer of CBCID, who shall conduct a thorough probe to bring to light the perpetrators of illegality.

9. In fact, I too had an occasion to deal with one of the writ petitions filed by second petitioner Balasubramanian in W.P.No.2382 of 2016, wherein he sought for an identical prayer i.e., issuance of writ of certiorari to quash the public notice, issued on 03.01.2016, inviting applications for the proposed HIG Flats in T.S.No.16/3, Block No.38, Puliur Village, Kodambakkam Division, Egmore-Nungambakkam Taluk, Chennai District. When the earlier public notice was issued on 20.01.2011, the petitioner sought for identical relief in W.P.No.1476 of 2011, and the said writ petition was dismissed by an order, dated 06.06.2014, and confirmed by the Hon'ble Division Bench on 14.10.2014. Suppressing all these facts, second petitioner Balasubramanian had filed W.P.No.2382 of 2016. After noting the submissions of the Housing Board, this Court observed that the attempt of the petitioner Balasubramanian cannot be encouraged and it has to be nipped in the bud. This Court took into consideration the elaborate order, dated 06.06.2014, and dismissed the said Writ Petition with costs of Rs.2,000/-.

10. As such, this Writ Petition is dismissed with costs of Rs.50,000/- on first petitioner and Rs.2,00,000/- on second petitioner, to be payable to Tamil Nadu Mediation and Conciliation Centre, attached to this Court, within a period of three weeks from the date of receipt of a copy of this order. If they fail to remit the costs as stated above, the said amount shall be

recovered, by initiating appropriate proceedings for revenue recovery or such other proceedings. Though this Court issued directions to the Housing Board to file a criminal complaint before the Superintendent of Police and the matter to be referred to CBCID, this Court has not imposed any costs on third petitioner, namely, Mahadevi, so also the other petitioners viz., petitioners 4 to 10, Power Agents etc., and their complexity in the issue will also be investigated and, if the investigation reveals their culpability, they have to be proceeded in accordance with law.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

dixit

To

1.The Secretary to Government,
Government of Tamilnadu,
Housing and Urban Development Department,
Fort.St.George,
Chennai-600 009.

2.The Land Acquisition Officer and
Special Tahsildar (L.A.) Unit III,
Tamilnadu Housing Board,
Nandanam,
Chennai-600 035.

3.The Chairman,
Tamilnadu Housing Board,
493, Anna Salai,
Nandanam,
Chennai-600 035.

4. The Assistant Registrar
T.Nadu Mediation and Conciliation Centre
High Court, Madras

1 cc to Mr.D. Murugan, Advocate, Sr. 21362
1 cc to Mr.M. Ravichandran, SR. 21601
1 cc to MR.B. Vivekavanam, Sr. 21195
1 cc to Government Pleader Sr. 21773

W.P.No.6150 OF 2011

VGI (CO)
kk 26/4