



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE V. BHARATHIDASAN

WEB COPY

Writ Petition (MD) No.7891 of 2013

and

M.P(MD)Nos.1 and 2 of 2013

Antil Pappa

... Petitioner

Vs.

1.The Government of Tamil Nadu,
represented by the District Collector
of Kanyakumari District,
at Nagercoil, Kanyakumari District.

2.The District Revenue Officer,
Kanyakumari District,
at Nagercoil,
Kanyakumari District.

3.The Tahsildar,
Vilavancode,
at Kuzhithurai
Kanyakumari District 629163

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to forbear from constructing the building for the Village Office for the Midalam-a Village Vilavancode Taluk Kanyakumari District in Re-Survey Nos.411/2 and 411/5 of Midalam Village of the said Taluk and District and to construct the same in Re-Survey No.308/6 of the said Midalam Village.

For Petitioner
For Respondents

: Mr.K.N.Thampi
: Mr.R.Anandaraj,
Government Advocate.

ORDER

The petitioner has come up with this writ petition seeking for the issuance of a writ of mandamus to forbear the respondents from constructing a building for the village office for the Midalam-A village, Vilavancode Taluk, Kanyakumari District in Re-survey Nos.411/2 and 411/5 of Midalam Village of the said Taluk and District and to construct the same in Re-survey No.308/6 of the said Midalam Village.



2. Heard Mr.K.N.Thampi, learned counsel appearing for the petitioner and Mr.R.Anandaraj, learned Government Advocate appearing for the respondents.

3.The case of the petitioner, in brief, is as follows:-

The petitioner was the owner of 29 cents of land in Re-survey No.308/6 of Midalam Village, Vilavancode Taluk, Kanyakumari District. According to the petitioner, the respondents decided to trifurcate the Midalam revenue village into Midalam, Midalam A and Midalam B villages. Therefore, the respondents requested the petitioner to gift a portion of land for the purpose of constructing a village office in Midalam-A village. Pursuant to their request, she executed a registered sale deed dated 14.03.2014 in favour of the Government. But the respondents started constructing office in S.R.No.411/2 and 411/5, other than the land gifted by the petitioner to the respondents. According to the petitioner, the said property in Re-survey Nos.411/2 and 411/5 was gifted by two persons who have no title over the same. According to the petitioner, now the respondents started constructing the office in the above said property. It is further stated that the action of the respondents is arbitrary and unsustainable and also against public interest. Hence, the petitioner has approached this Court by filing this writ petition.

4.The third respondent has filed a counter affidavit inter alia contending that after inspecting the land gifted by the petitioner, it was found that the site offered by the petitioner is not having public transport facilities and it is located in a remote area. In the meanwhile, the land owners of Re-survey Nos.411/2 and 411/5 of Midalam Village have executed a gift deed in favour of the Government by transferring an extent of 3.5 cents of land owned by them. The site was selected and formally handed over to the Public Works Department for constructing the village office building and the construction was also completed at the cost of Rs.5 lakhs. It is further stated that the respondents did not compel the petitioner to execute gift deed but the petitioner alone has voluntarily gifted 3 cents of land with an intention of developing the area and so that the value of her land would be escalated. It is therefore stated that the Government is not in a position to shift the building or to construct a new building in any other site. It is further stated that the petitioner is at liberty to revoke the gift deed and therefore, no prejudice would be caused to the petitioner. In the above circumstances, the respondents sought for dismissal of the writ petition.

5.The petitioner has filed a reply affidavit stating that there is an interim order passed by this Court in M.P(MD)No.1 of 2013, dated 03.06.2013 restraining the respondents from constructing the building. However, the respondents with a mala fide intention wilfully disobeyed the said order of this Court and therefore, the



petitioner filed a contempt petition in Cont.P(MD)No.779 of 2013 before this Court and thereafter, the construction was stopped.

6.Learned counsel appearing for the petitioner would contend that the construction of the building in the property Re-survey Nos.411/2 and 411/5 is not suitable for the village office and is in a remote locality. He would further contend that while entertaining this writ petition, this Court by an order dated 03.06.2013, in M.P(MD)No.1 of 2013, granted interim injunction restraining the respondents from constructing further and the said order is still in force.

7.Per contra, learned Government Advocate appearing for the respondents would submit that the respondents did not compel the petitioner to execute gift deed but the petitioner alone has voluntarily gifted 3 cents of land. He would further submit that the site offered by the petitioner is not having public transport facilities and it is located in a remote area. In the meanwhile, the land owners of Re-survey Nos.411/2 and 411/5 of Midalam Village have executed a gift deed in favour of the Government by transferring an extent of 3.5 cents of land owned by them. He would further contend that now the respondents are not in a position to shift the building or to construct a new building in any other site.

8.I have considered the submissions made on either side and perused the materials available on record.

9.In order to find out whether the site offered by the petitioner is suitable for construction of the office, this Court directed the District Revenue Officer, Kanyakumari District to inspect the site and file a report indicating whether the place offered by the petitioner is suitable for construction of the village office and also the stage of construction of the building in the new site along with photographs. Pursuant to the said direction, the District Revenue Officer has filed a report stating that the land offered by the petitioner in R.S.No.308/6B is located in the hamlet named Mangalakuntu, which is about 418 mts away from the highways running from Palur to Midalam. The road access from the main road to the site in question is classified as patta land as per the revenue records and it is a 4m width road, no public transportation is available there and general public have to walk for about ½ km to reach the spot and therefore, the place offered by the petitioner is not suitable for construction of village office. It is further stated in the report that the present site where the building is put up is 20m away from the highway running from Palur to Midalam. It is accessible from the main road, an anganwadi centre and a newly constructed fair price shop are located in the area. It is further stated the construction of village office for Midalam A village has reached roof level which is stopped pursuant to the orders passed by this Court in this writ petition.



10. Considering the above report that the construction is almost over in the site offered by the third parties and as per the report filed by the District Revenue Officer, Kanyakumari District, the site offered by the petitioner is also not suitable for construction of the village office, the prayer sought for by the petitioner cannot be granted at this stage. Hence, the writ petition stands dismissed and the order of interim injunction granted by this Court on 03.06.2013 stands vacated. No costs. Consequently, M.P (MD) Nos.1 and 2 of 2013 are closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector
Kanyakumari District,
at Nagercoil, Kanyakumari District.

2. The District Revenue Officer,
Kanyakumari District,
at Nagercoil,
Kanyakumari District.

3. The Tahsildar,
Vilavancode,
at Kuzhithurai
Kanyakumari District 629163

+1 cc to Mr.K.N.Thampi, Advocate, Sr.No:73360

Order made in
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and
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28.11.2016

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