

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2017

CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.No.10392 of 2016

Dr.M.G.R.Educational and Research
Institute (Deemed to be University)
sponsored by Tmt.Kannammal Educational Trust
Periyar EVR High Road, NH 4 Highway
Maduravoyal, Chennai-600 095 and
having Adm.Office at No.22, G.N.Chetty Road,
T.Nagar, Chennai-600 017 rep. By its
Managing Trustee Mrs. Lalitha Lakshmi.

... Petitioner

Versus

1. The Executive Engineer
P.W.D.Kosathaliyar Basin Division-WRO
Thiruvallur-602 001.
2. The Collector,
Thiruvallur District.
3. The Commissioner,
Ambattur Municipality,
Ambattur, Chennai.
4. The Tahsildar
Ambattur Taluk
Thiruvallur Distriict.
5. State of Tamil Nadu
rep. By Secretary to Government,
Public Works Department,
Fort St. George, Chennai-600 009.
6. State of Tamil Nadu
rep. By Secretary to Government,
Revenue Department,
Fort St. George, Chennai-600 009.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records comprised in the proceedings of the fifth respondent/Principal Secretary, Public Works Department,

Secretariat, Chennai in Reference No.14276/R1/2013 dated 01.12.2014 and the consequential letters in Reference Nos. Letter No.A1/F-Court Case/2014-15 dated 19.01.2015 and Letter No.DB/ID04/F Court Case/2015 dated 09.03.2016 of the first respondent - Executive Engineer, P.W.D. Kosathaliyar Basin Division - WRO, Thiruvallur - 602 001, and to quash the same as illegal and directing the first respondent to pay the claim made by the petitioner in its Appeal dated 14.12.2006 and dated -01-2015 after deducting the reasonable undisputable amount spent by the first respondent for the demolition work done.

For Petitioner : Mr. Ar.L. Sundaresan, Senior Advocate
for Mr. S. Rathinasabapathy

For respondents : Mr.K. Venkataraman
Additional Advocate General
assisted by Mr. Sanjay Gandhi
Additional Government Pleader

ORDER

Heard the submissions made by Mr.Ar.L.Sundaresan, learned Senior counsel for Mr.S.Ratnasabapathy, learned counsel appearing for the petitioner and Mr.K.Venkataraman, learned Additional Advocate General assisted by Mr. Sanjay Gandhi, learned Additional Government Pleader appearing on behalf of the respondents.

2. The petitioner is a Deemed to be University established under Sec. 3 of University Grants Commission Act, 1956, sponsored by Tmt. Kannammal Educational Trust. The Trust had established several Medical Colleges and Polytechnic Institutions. The institutions had constructed several buildings in the patta land owned by the Trust as well as poromboke lands, river beds of Coovum in Government land, which were purchased from private parties who were in possession and enjoyment of such lands for more than 40 years. However, the petitioner made applications to the Government for assignment of those lands in the year 2005 and such application was pending. While so, during the month of December 2005, there was unprecedented down pour due which had submerted the adjacent government buildings. There was also a writ petition No. 20186 of 2000 filed before the Division Bench of this Court and by order dated 27.06.2005, the Division Bench directed the authorities to evict the encroachments in coovum river. On the basis of the directions issued by this Court, notice was served by Ambattur Municipality on 19.11.2005 to the petitioner directing to demolish the constructions put up without permission. Thereafter, the municipal officials demolished the constructions without following the due procedure of law. The

petitioner also filed WP No. 39759 of 2005 in which an interim order was granted on 11.12.2005. Subsequently, the writ petition was dismissed on 13.12.2005, but while dismissing the writ petition the petitioner was given time to take back their belongings such as library books, computers and other accessories.

3. While the facts are so as stated above, the first respondent, issued a notice dated 28.11.2016 informing the petitioner that they have incurred a sum of Rs.1,45,49,700/- for removal of the encroachments made by the petitioner and directed the petitioner to pay the amount within ten days. On receipt of the same, the petitioner preferred an appeal on 14.12.2006 before the respondents 5 and 6 and claimed compensation for the damaged caused to their properties inter alia contending that they are not liable to pay compensation of Rs.1,45,49,700/-. Pending appeal, the first respondent by letter dated 28.11.2006 demanded the sum of Rs.1,45,49,700/- within seven days towards compensation for the emergent demolition work carried out by them and also invoked the provisions of Revenue Recovery Act to recover the sum of Rs.1,45,49,700/-. Further, by another communication dated 10.01.2007, the first respondent indicated that Revenue Recovery proceedings will be initiated immediately as there was no instructions received from the Government. Aggrieved by the same, the petitioner filed WP No. 3944 of 2009 before this Court to quash the letter dated 28.11.2006 and 10.01.2007 of the first respondent and to consequently direct the first respondent to determine the liability payable to the petitioner for payment of compensation in accordance with law. Pending writ petition, this Court granted interim stay and it was subsequently extended till 06.03.2007. Subsequently, on the application filed by the respondents to vacate the interim stay, this Court, by order dated 11.06.2009 modified the interim order with a direction to the petitioner to pay 25% of the total compensation amount claimed by the respondents without prejudice to the right of the petitioner. Accordingly, the petitioner paid Rs.36,37,425/- by way of demand draft. Ultimately, when the writ petition was taken up for hearing on 23.08.2013, this Court passed the following order:-

"14. In view of all the above, this Writ Petition is disposed of in the following terms:-

- i. The impugned order of demand made by the first respondent/Executive Engineer, Public Works Department, Thiruvallur, for a sum of Rs.1,45,49,700/-, from the petitioner, dated 10.01.2007, is hereby set aside and the matter is remanded back to the Government.
- ii. The fifth respondent/Secretary to Government, Public Works Department, Government of Tamil Nadu, is directed to consider the appeal filed by the petitioner on 14.12.2006, after

affording opportunity to the petitioner including personal hearing and to lead evidence, both oral and documentary and affording opportunity to the first respondent/Executive Engineer, Public Works Department, consider all the records meticulously and to pass a final order objectively and strictly in accordance with law.

- iii. It is further directed that on such objective assessment, if the Government finds that the petitioner is liable to pay any amount as compensation, the Government shall determine the amount and make a fresh demand from the petitioner.
- iv. On the contrary, if the Government finds that the Government is liable to pay any amount as compensation to the petitioner, the Government shall determine the amount in the appeal and pay the same to the petitioner, within a reasonable time.
- v. At any rate, the Government shall dispose of the appeal as directed herein, within a period of six months from the date of receipt of a copy of this order."

4. Pursuant to the above order, the fifth respondent conducted an enquiry in which the petitioner participated on 30.05.2014 and on the subsequent dates. Finally, the first respondent passed the impugned order on 01.12.2014 directing the first respondent to take steps to recover the sum of Rs.1,05,12,225/- from the petitioner institution. Challenging the same, the present writ petition is filed.

5. Mr. Ar.L. Sundaresan, learned Senior counsel for the petitioner would contend that even though personal hearing was given to the petitioner to file proof of their claim, the petitioner was not given an opportunity to cross examine the officials of the Public Works Department. It is further contended that the fifth respondent simply relied on the news paper reports to contradict the claim of the petitioner. Thus, according to the learned counsel for the petitioner, the fifth respondent has failed to ascertain the actual loss caused to the petitioner despite production of documents to substantiate the claim made by the petitioner. On the other hand, without any basis, the fifth respondent has confirmed the earlier demand made by the respondents which was questioned in the appeal. The fifth respondent has failed to look into the damages caused to the petitioner's articles such as books, computers, building materials and other accessories stored in the building due to heavy rain. On the contrary, the fifth respondent has concluded that all the materials were taken away by the employees employed by the University and therefore, there was no loss caused to

them. However, the fifth respondent failed to consider that only 24 hours was granted to the University to remove the articles within which time, the University could not salvage all the material articles from the building. The University also was not given adequate time to collect the articles and to take an inventory thereof. Thus, it is contended that the impugned order passed by the fifth respondent is in contravention of principles of natural justice and the petitioner was not given adequate opportunity to substantiate their claim. Therefore, the learned Senior counsel for the petitioner prayed for allowing the writ petition.

6. On the contrary, the learned Additional Advocate General, relying on the counter affidavit, would only contend that the petitioner has infact removed all the articles from the building by engaging their employees within the given time before demolition of the building. Even before the fifth respondent, adequate opportunity was given to the petitioner to substantiate their claim. The fifth respondent, having considered the materials putforth by both sides, has come to a definite conclusion that the petitioner did not suffer any loss as alleged and consequently upheld the claim made by the Public Works Department for damages. The fifth respondent relied on newspaper reports only as a supplementary evidence and the conclusion arrived at by the fifth respondent is not on the basis of the newspaper report alone. If really the petitioner sustained any loss due to damages caused to their properties, they ought to have either approached the respondents or this Court claiming damages. However, the petitioner has come up with a claim for damages only after the Public Works Department made claim for damages. Therefore, the learned Additional Advocate General would pray for dismissal of the writ petition.

7. I heard the learned Senior counsel for the petitioner and the learned Additional Advocate General appearing for the respondents. Before dealing with the rival contentions, it is just and necessary to look into the order which is impugned in this writ petition, which reads as follows:-

" 27.After going through the submissions of the Counsel for the University and the Executive Engineer, it is concluded as follows:

"After going through the arguments of the Learned Counsel of the Dr.MGR Deemed University and the documents produced by them and after hearing the view of the Water Resources Department Officials, I have come to the following conclusions:

That there is no merit in the contention of Dr.MGR Deemed University for claiming damages from the Government of Tamil Nadu. It is seen from the Records that sufficient Notice had been given as per the Orders, dated 13.12.2005 of the Hon'ble Division Bench

of the Madras High Court (in W.P.No.39759/2005 and 42692/2005) before carrying out the eviction. The Counsel for the Dr.MGR Deemed University could not convincingly prove that they had suffered loss of material to an extent of Rs.14,96,05,610/- as claimed by them. The case of the Water Resources Department officials is that all the materials were taken away by the University by employing the labourers. In fact, according to the Water Resources Department Officials, the claim of the University is an afterthought. They have laid their claim only when a demand for the expenditure incurred by the Public Works Department was raised by the Water Resources Department officials. I therefore, conclude that there is no merit in the claim of the Dr.MGR Deemed University.

The claim of the Executive Engineer, Kosasthalaiyar Basin Division, Tiruvallur, was also examined in detail. In as much as the Government had actually incurred the expenditure for carrying out the eviction in public interest, the claim of the Executive Engineer, Kosasthalaiyar Basin Division, is reasonable. Accordingly, Dr.MGR Deemed University is directed to pay a sum of Rs.1,09,12,225/-, being the balance amount out of the demand raised by the Executive Engineer, Kosasthalaiyar Basin Division, Tiruvallur, without any delay."

8. It is evident that the fifth respondent has relied upon the statement of Executive Engineer of the Public Works Department for demanding the damages payable by the petitioner. However, even though the officials were examined in their presence, the petitioner was not given an opportunity to cross examine nor the documents produced by the petitioner were considered. In the statement of the Public Works Department officials, it was claimed that they have demolished 11 pucca buildings. Contra, in the order it was stated that the materials have been taken away by the University employees within the given time before demolishing 11 buildings. When the 11 buildings have been razed to ground, what was the time given to the University for salvaging whatever materials available was not known. This is more so that at that point of time, the entire area was controlled by police and during the demolition the materials could not be immediately retrieved by the employees of the University. These material evidences require examination and cross-examination of the official witness. Infact, in the earlier round of writ petition also, this Court set aside the order of demand made by the respondent only on the ground of non-compliance of principle of natural justice. Further, the fifth respondent has relied on news paper reports rather than the contentions putforward by the petitioner.

9. Further, it is seen from the order of the fifth respondent that the statement of the Executive Engineer was considered for arriving at the loss of expenses incurred by the respondents. However, it is not known whether the report of the Executive Engineer was furnished to the petitioner. According to the learned Senior counsel for the petitioner, neither such a report was served on the petitioner nor the officer was examined in the presence of the petitioner so as to enable them to cross examine the officer. This is one of the factors which is weighing against the department especially in view of the earlier order of this court wherein it is clearly stated that petitioner should be given all due opportunity before passing final orders.

10. In the counter filed by the first respondent, in Paragraph 28, it was stated that "(3) Had the Books, Computers, other items of articles etc., in the buildings not been removed by the petitioner before demolition of the entire structures of the building, it would have been reported in the newspapers and media." Thus, it is evident that the first respondent, to substantiate their claim, relied on newspaper reports which was also affirmed by the fifth respondent while passing the impugned order. In any event, this Court finds that the petitioner was not given adequate opportunity to cross-examine the officials and to substantiate their claim for losses and damages. Therefore, the impugned orders are liable to be set aside for non-adherence to the principles of natural justice.

11. Accordingly, the impugned orders are set aside and the matter is remanded back to the fifth respondent for fresh consideration. The fifth respondent is directed to give adequate opportunity to the petitioner to put forth all their claims, furnish all the documentary evidence relied on by the department to the petitioner and also permit the petitioner to examine and cross-examine the official witnesses. Similarly, the department is also permitted to produce necessary records to substantiate their claim and to cross-examine the witnesses of the petitioner. Thereafter, the first respondent shall pass orders on merits and in accordance with law as expeditiously as possible. The petitioner is directed to extend his cooperation for expeditious completion of the enquiry proceedings by the fifth respondent.

12. Subject to the above observations, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Executive Engineer
P.W.D.Kosathaliyar Basin Division-WRO
Thiruvallur-602 001.
2. The Collector,
Thiruvallur District.
3. The Commissioner,
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Ambattur, Chennai.
4. The Tahsildar
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Revenue Department,
Fort St. George, Chennai-600 009

+2 CC to The Govt. Pleader sr 19231,19473
+1 CC to Mr. S. Rathinasabapathy, Advocate sr 18750

W.P.No. 10392 of 2016

PA(CO)
sp/18/4