

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2017

CORAM

The HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.1184 of 2010
and M.P.No.1 of 2010 & M.P.No.1 of 2013

Melvisharam Muslim Educational Society,
Regd.No.S.3 of 1926-27,
represented by its General Secretary
S.Ziauddin Ahmed,
Hakeem Nagar,
Melvisharam-632 509,
Vellore District. .. Petitioner

vs.

- 1.The Government of Tamil Nadu,
rep. by its Principal Secretary,
Revenue Department,
Chennai - 600 009.
- 2.The Special Commissioner and
Commissioner of Local Administration,
Chepauk, Chennai - 600 005.
- 3.The District Collector,
Vellore.
- 4.The District Revenue Officer,
Vellore.
- 5.The Revenue Divisional Officer,
Ranipet,
Vellore District.
- 6.The Tahsildar,
Wallajapet,
Vellore District. .. Respondents

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India for issuance of a writ of
certiorarified mandamus calling for the records of the
respondents relating to the orders of the Revenue
Divisional Officer, Ranipet in Rc.A4/10055/2003 dated

08.01.2010 and of the Tahsildar, Wallajah in (B1)8197/02 dated 22.12.2009 and Rc.B1/8197/2002 dated 12.01.2010 and quash the same and directing the respondents to forthwith consider the request of the petitioner for assignment of land in Survey Nos.75/2A and 74/3 of Hirasathpuram Village, Mel Visharam, Wallajah Taluk, Vellore District in favour of the petitioner Society.

For Petitioner : No Appearance

For Respondents : Mr.P.Sanjay Gandhi
Addl. Government Pleader

ORDER

This writ petition has been filed by the petitioner society seeking to quash the impugned orders passed by respondent Nos.5 & 6 dated 08.1.2010, 22.12.2009 & 12.01.2010 respectively and to direct the respondents to consider the request of the petitioner for assignment of the land in Survey Nos.75/2A and 74/3 situated at Hirasathpuram Village, Mel Visharam, Wallajah Taluk, Vellore District.

2. The subject matter of this writ petition is a Government land admeasuring 3.15 Acres (mentioned as 3.51 Acres (1.42.0 Hectares) in the impugned order dated 08.01.2010) comprised in two survey numbers viz., S.No.75/2A and 74/3 in Hirasathpuram Village, Wallajah Taluk, Vellore District. This 3.15 Acres (S.No.74/4 - 2.03 acres & S.No.75/2A - 1.12 acres) of Government land is hereinafter referred to as "said land" for the sake of brevity, convenience and clarity.

3. There is no dispute (even according to the affidavit of the writ petitioner) that the said land is Government land.

4. It is the case of the petitioner that it is a society registered under the provisions of Societies Registration Act and its registration number is S.3 of 1926-27 (not mentioned in the affidavit of writ petitioner as to whether it is under the Central Act or 1975 State Act).

5. The petitioner society would contend that it is a charitable society and is running several educational institutions.

6. The petitioner society would aver in the writ affidavit that it is in occupation of the said land from 1965 and would state that it is using the said land for the purpose of running educational institutions. It is also the further case of the petitioner society that the said land is essential for gaining access to the State Highway for two of its Colleges viz.,

C.Abdul Hakeem Collge and MMES Women's Arts and Science College run by the petitioner society.

7. It is the further say of the petitioner society that it had purchased patta land bearing Survey No.66 in Hirasathpuram Village, Wallajah Taluk, Vellore District on 15.6.1965 under a registered sale deed registered as Document No.1841 of 1965 in the jurisdictional Sub Registrar's Office. It is the case of the petitioner society that this patta land purchased by it lies adjacent to the said land.

8. The petitioner society states that it has been requesting the authorities of the Revenue department to assign the said land to it for college purposes. Several exchange of communications and letters have been set out in detail in this regard.

9. With regard to revenue classification and character of possession of said land by petitioner society, it may not be necessary to advert to all that in great detail in the light of the specific averment of the petitioner society in paragraph 2 of the writ affidavit, which reads as under:-

"23. It is respectfully submitted that the petitioner is in occupation of the poramboke land from the year 1965. It is only uncultivable waste land full of pits. The land is used by the petitioner for the purpose of educational institutions and also for gaining access to the State Highway. By no stretch of imagination the use of the land can be treated as commercial." (Underlining made by this Court to supply emphasis)

10. Therefore, it is the admitted/conceded case of the petitioner society that it is in occupation of the said land, which is a poramboke land, which vest in Government.

11. To be noted that the classification of the said land is 'Assessed Dry Waste'.

12. Today when the matter is taken up for hearing, there is no representation on behalf of the petitioner. However, Mr.P.Sanjay Gandhi, learned Additional Government Pleader is present on behalf of all the six respondents and he would vehemently oppose the prayer in the writ petition.

13. A counter-affidavit affirmed on 13.06.2013 has been filed by the fifth respondent, who has passed the order dated 08.01.2010 bearing reference Rc.A4/10055/2003, which has been called in question in the instant writ petition. To be noted, the order passed by respondent N.6 i.e., the jurisdictional

Tahsildar dated 22.12.2009 bearing reference Na.Ka.(Aa1) 8197/02 and the notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 (hereinafter referred to as "said Act" for brevity) bearing reference Na.Ka.Aa1/8197/2002, dated 12.01.2010 issued by respondent No.6/Tahsildar, Wallajah have also been called in question. Therefore, effectively, there are three impugned orders. All the three are collectively referred to as the 'impugned orders' in plural for the sake of brevity, convenience and clarity. When referred to independently, the three impugned orders being orders dated 08.01.2010 issued by respondent No.5; dated 22.12.2009 issued by respondent No.6 and dated 12.10.2010 issued by respondent No.6 are referred to as first impugned order, second impugned order respectively and third impugned order for the sake of absolute clarity.

14. Mr.P.Sanjay Gandhi, learned Additional Government Pleader, opposing the prayer, would rely heavily on the counter-affidavit of respondent No.5 and state that respondent No.5/Revenue Divisional Officer, Ranipet, Vellore District in his letter dated 03.11.1973 has stated by relying on the communication of the fourth respondent/District Revenue Officer that as per the policy decision of the Government, the said land cannot be alienated in favour of the petitioner society.

15. Most importantly, it has been averred that the said land can however be utilised by the petitioner society on lease basis. To my mind, this appears to be a very fair and equity driven stand. Relevant paragraph in the counter-affidavit of respondent No.5 in this regard reads as under:-

"It is submitted that, even though the Revenue Divisional Officer, Ranipet vide his letter No.K.Dis.2754/73, dated 03.11.1973 have recommended the proposal, as per the policy decision of the Government the 4th respondent (i.e.) District Revenue Officer, Vellore has not in a position to alienate the land in S.No.74/3 and 75/2A of Rasathupuram Village in favour of the petitioner society. This was informed to the Tahsildar, Wallajah. However, the said land can be utilised by the petitioner on lease basis." (Underlining done by this Court to supply emphasis)

16. Notwithstanding the above, the averments made in the affidavit would show that the petitioner society is insisting on assignment of the said land, which is undoubtedly Government land.

17. When the writ petition was taken up for admission on 27.01.2010, this Court granted an interim injunction qua the said land.

18. The interim order was extended from time to time. Thereafter, writ petition was admitted vide a order dated 19.03.2010 and the interim order was extended until further orders. The said interim order is now operating.

19. The counter-affidavit dated 13.06.2013 filed by respondent No.5 referred to supra has in fact been pressed into service for supporting a vacate interim order petition (M.P.No.1 of 2013) dated 13.06.2013, which has also been pending in this Court for nearly four years now.

20. In a nutshell, the following undisputed points emerge:-

- (i) Petitioner society is admittedly in occupation of the Government land from 1965.
- (ii) Government land in occupation of the petitioner society is 3.15 Acres in S.No.75/2A & 74/3 situated at Hirasathupuram Village, Wallajah Taluk, Vellore District.
- (iii) Petitioner society is seeking assignment of the said land in its favour.
- (iv) Government has been consistently not acceding to the request of the petitioner society for assignment of the said land stating that the Government land cannot be assigned to a private society.
- (v) However, the Government has taken a fair stand that the said land can be given on lease to the petitioner society (apparently, considering the fact that the petitioner society is running educational institutions).
- (vi) As is evident from page No.63 of the typed set of papers, the petitioner society has deposited/remitted a sum of Rs.1,44,216/- on 18.01.2010 which according to petitioner society is lease amount fixed by respondents for said land.
- (vii) Notwithstanding, such a fair stand on the part of the Revenue department, the petitioner society has been insisting that it should assign the said land.

21. Now, it is seen from the third impugned order being reference Na.Ka.Aa1/8197/2002 dated 12.01.2010 issued by respondent No.6 is the notice under Section 7 of the said Act.

The petitioner society is continuing to be in possession by virtue of the interim order of this Court wherein both the demand for lease amount as well as proceedings to take possession have been stalled.

22. Owing to all that have been stated supra, I am of the considered opinion/view that the Government land that too an extent of 3.15 Acres cannot be assigned in favour of the petitioner society which admittedly occupied the said land merely because the said society is running educational institutions.

23. I am of the further considered opinion that the stand of the Government that the petitioner society can always utilise the said land on lease basis appears to be very fair and equity driven.

24. This Court has also noticed that the third impugned order which was issued under Section 7 of the said Act, is in the nature of a show cause notice.

25. It is always open to the petitioner society to respond the third impugned order and request the Government to lease the said land. If the petitioner society does so, it is for the respondent authorities to consider the same on merits. This Court expresses no opinion on that.

26. Occupying the Government land and resisting proceedings for possession is unacceptable.

27. I also find that no valid reason has been given in the writ affidavit as to why the petitioner society was not inclined to take the said land on lease when the Government made such an offer.

28. It is not for the private society to insist that the land should necessarily be assigned. No legal right entitling the petitioner society to make such a request has been pointed out in the writ affidavit.

29. The learned Additional Government Pleader, in the opinion of this Court, is right in pointing out that the petitioner society has no legal right or basis for insisting that the said land should be assigned.

30. As stated supra, the third impugned order is only a show cause notice and it is always open to the petitioner society to respond to the show cause notice issued under Section 7 of the said Act which is dated 12.01.2010 and cannot be stalled.

31. Owing to all that have been stated supra, the writ petition fails and accordingly, the same is dismissed. No costs. Consequently, the interim order granted by this Court stands vacated and M.P.Nos.1 of 2010 and 1 of 2013 are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

bbr

To:

1. The Principal Secretary,
Government of Tamil Nadu,
Revenue Department,
Chennai - 600 009.
2. The Special Commissioner and
Commissioner of Local Administration,
Chepauk, Chennai - 600 005.
3. The District Collector, Vellore.
4. The District Revenue Officer, Vellore.
5. The Revenue Divisional Officer,
Ranipet,
Vellore District.
6. The Tahsildar,
Wallajapet, Vellore District.

W.P.No.1184 of 2010

NMI (CO)
NR 25/07/2017

WEB COPY