

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
And
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.A.No.526 of 2012
M.P.No.1 of 2012

- 1.The District Collector,
Kanyakumari District.
- 2.The Special Tahsildar (ADW),
Land Acquisition Officer,
Nagercoil. ... Appellants/Respondents

vs.

R.M.Sivathanupillai ... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 13.06.2006 made in W.P.No.4033 of 1998.

Prayer in W.P.No.4033 of 1998:

Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records on the file of the 1st Respondent in Proc 0/3.81962/97 dated 10.02.1998 published in the Kanyakumari District Gazette and quash the same.

For Appellants : Mr.A.N.Thambidurai,
Special Government Pleader

For Respondent : Mr.V.Lakshminarayanan

J U D G M E N T

(Judgment of the Court was made by M.SATHYANARAYANAN, J.)

The official respondents in W.P.No.4033 of 1998, aggrieved by the order dated 13.06.2006 made in W.P.No.4033 of 1998 filed by the writ petitioner/respondent herein, came forward with this Writ Appeal.

2. Facts briefly narrated necessary for the disposal of this Writ Appeal are as follows:

2.1. The appellants/respondents in the writ petition considered the request for providing Crematorium/burial ground to the residents of Adi Dravidar Colony, Rajakkamangalam of

Neendakarai 'B' Village of Agateeswaram Taluk and accordingly a decision was taken to acquire 0.02.0 hectare in S.No.753/4. The said land is situated in the name of Muthiah Pillai, S/o.Vithyalingam Pillai and after his demise, his legal heirs, namely Tmt.Panchali, Thiru,Vithiyalingam, Thiru.Sivathanu/respondent herein, Tmt.Thankammal and Tmt.Sornam succeeded to the said estate. Land Acquisition proceedings were initiated under Act 31/1978 [Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978] and one of the legal heirs of Thiru.Muthiah Pillai, namely Thiru.Vaithiyalingam alone attended Section 4(2) enquiry and he filed written objections to drop the acquisition proceedings and further stated that insofar as the land in question in S.No.753/4 admeasuring to an extent of 0.08.0 hectare belonged to his younger brother Thiru.Sivathanu, who obtained the same by way of oral partition and however, the appellants have overruled the objections on the ground that no document has been produced to that effect and therefore, proceeded further. The respondent herein made a challenge to the said proceedings by filing W.P.No.4033/1998 and it was entertained and on behalf of the respondents therein, counter affidavit has been filed.

2.2. The learned Judge, on going through the materials, found that despite the fact that one Thiru.Vaithiyalingam stated that the land in question belongs to his younger brother/respondent herein/writ petitioner, he has not been issued with any notice and the impugned order has been passed mechanically under Section 4(1) of the Act and accordingly, quashed the impugned proceedings and also granted liberty to the appellants/official respondents to initiate proceedings afresh, if they are so advised. The official respondents, challenging the order of the learned Single Judge, had filed this Writ Appeal.

3. Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the appellants would contend that though one of the legal heirs of the deceased landowner, had given a statement that the land in question was allotted in favour of the first respondent/writ petitioner by way of oral partition, no document has been produced evidencing the said fact and therefore, the impugned order is per se unsustainable and prays for allowing of the Writ Appeal.

4. Per contra, Mr.V.Lakshminarayanan, learned counsel appearing for the respondent would submit that despite the fact that one of the legal heirs has given statement in the enquiry conducted under Section 4(2) of the Act as to the ownership of the land in favour of the writ petitioner, no notice whatsoever has been issued to him and therefore, the learned Judge has rightly allowed the writ petition and though an opportunity was given to the official respondents to proceed afresh, it was not done so and hence, prays for dismissal of this Writ Appeal.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. The counter affidavit filed on behalf of the official respondents in the writ petition would also disclose that one of the legal heirs of the deceased landowner, namely Thiru.Vaithiyalingam appeared before the second respondent in response to the notice and gave a statement that the land admeasuring to an extent of 0.08.0 hectares in S.No.753/4 was allotted in favour of the writ petitioner by way of oral partition and despite the said fact, he has not been issued with any notice. It is pertinent to point out at this juncture that the other legal heirs did not dispute the same and in all fairness, the appellants ought to have put the writ petitioner on notice and admittedly, they did not do so and the learned Judge has rightly taken note of the said fact and allowed the writ petition and though granted liberty to the official respondents to proceed afresh, they did not do so.

7. This Court, on an independent application of mind to the entire materials placed before it, is of the view that there is no error apparent or infirmity in the reason assigned in the impugned order allowing the writ petition.

8. In the result, this Writ Appeal is dismissed, confirming the order dated 13.06.2006 made in W.P.No.4033 of 1998. No costs. Interim order is vacated and consequently, connected miscellaneous petition is dismissed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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To

1.The District Collector,
Kanyakumari District.

2.The Special Tahsildar (ADW),
Land Acquisition Officer,
Nagercoil.

+1 CC to Mr.V. Raghavachari, Advocate sr 59233.

W.A.No.526 of 2012

SR(CO)

sp(11/09/2017)