



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) No.9690 of 2017

and

WMP. (MD) No.7438 of 2017

S.Thavamani

...Petitioner

Vs.

1. The Deputy Director of Town and Country Planning
Ramnad and Pudukottai Region,
Sivagangai.

2. The Commissioner,
Paramakudi Municipality,
Paramakudi,
Ramanathapuram District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from forcibly taking over the possession or interfering with the petitioner's possession of land situated in S.No.39/1A/1A1-20, Kattu Paramakudi Village, Paramakudi Taluk, Ramanathapuram District, from the petitioner except following under due process of law by invoking the provisions of Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner

: Mr.H.Arumugam

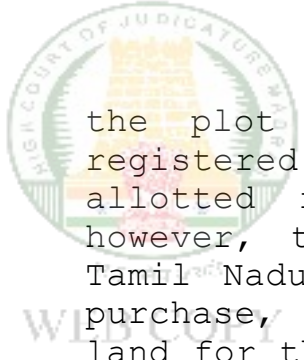
For Respondents

: Mr.A.Muthukaruppan,
Additional Government Pleader.

O R D E R

This Writ petition has been filed for issuance of a Writ of Mandamus, forbearing the respondents from forcibly taking over the possession or interfering with the petitioner's possession of land situated in S.No.39/1A/1A1-20, Kattu Paramakudi Village, Paramakudi Taluk, Ramanathapuram District, from the petitioner except following under due process of law by invoking the provisions of Tamil Nadu Town and Country Planning Act, 1971.

2.The case of petitioner is that she has purchased the property in S.No.39/1A/1A1-20 to an extent of 2000 sq. ft under a registered sale deed dated 20-04-1989. The remaining portion of



the plot has been purchased by one Pottu Pillai through a registered sale deed on the same day. Originally, the plot was allotted for Nursery school with play ground in the layout however, the same was not acquired invoking the provisions of Tamil Nadu Town and Country Planning Act, 1971. As such, after purchase, the petitioner is in peaceful possession of the said land for the past 28 years and all the revenue records i.e. patta, Chitta, after sub-division stands in the name of the petitioner. Even in the year of 2003 the peaceful possession of the other purchaser, namely, Pottu Pillai was disturbed by the 2nd respondent and she filed a suit for permanent injunction in O.S No 282/2003 on the file of District Munsif Court, Paramakudi and the same was decreed with a specific finding that the area earmarked for the purpose play school was never vested with the 2nd respondent and also it was not acquired by the Government. The said decree became final and it confirms that unless the land is acquired or possession was taken in a manner known to law the possession cannot be disturbed. However, the 2nd respondent is interfering and attempting to forcibly take possession relying upon the order of this Court in W.P(MD)No.10398/2013, but the same is not related to the petitioner and she is not party. The petitioner submits that the said writ was filed by one Jhon Peter Raj for mandamus forbearing one Saravanan from converting the land in S.No.92/1, Kattu Paramakudi village, which is earmarked as a Park and water channel to any other purpose and consequently, direct the respondents to maintain the said land as park and water channel. This Court passed an order directing the respondent herein to initiate proceedings to restore the land earmarked for park and water channel after conducting enquiry, by giving opportunity to the petitioner therein and 6th respondent therein. But the 2nd respondent erected a board into the property of the petitioner mentioning the order passed in the above writ petition.

3.It is the further case of petitioner that the above writ is not relating to her land and no direction issued therein against the petitioner or her land but by misinterpreting the order the 2nd respondent simply erected a board stating that the property belongs to the 2nd respondent as per the order in the above writ. It is her further case that the 2nd respondent himself has admitted in his reply under RTI Act stating that the possession of the land was not surrendered by the owner and he further admitted in the proceedings dated 02-02-2017, given as reply to the lawyer notice, stating that the land owner without surrendering the land alienated the same, which is not valid. Thus, when the possession of the land was neither surrendered by the owner and title was also not conveyed by any gift nor the possession was taken from the petitioner invoking the provisions of the Act the 2nd respondent simply disturbs the possession illegally without following due process of law and therefore, the writ petition is filed seeking the above relief.

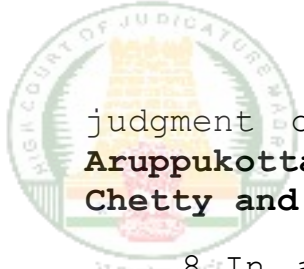


4. Heard Mr.H.Arumugam, learned counsel appearing for petitioner and Mr.A.Muthukaruppan, learned Additional Government Pleader appearing for the respondents.

5. Considering the narrow scope of issue as to whether the land in dispute was surrendered or taken over by following the procedure contemplated under law and whether the reply given under RTI Act and the proceeding of the 2nd respondent dated 02-20-2017 confirming that the possession of the land was not surrendered, is found correct, by consent the writ petition itself taken up for hearing and this Court on 24-05-2017 directed the Additional Government Pleader to verify the position and also confirm the above reply and posted the case on 25-05-2017. The learned Additional Government Pleader, on instructions, submitted that the owner of the land did not execute any gift deed regarding the disputed property and did not surrender the possession also and further no proceedings initiated to acquire the land and it is for the owner to gift the property and handover possession. The 2nd respondent has acted against the property of the petitioner as per the order passed in W.P(MD)No.10398 of 2013 and the same is correct.

6. Mr.H.Arumugam, learned counsel appearing for the petitioner contented that the petitioner has purchased the property and enjoying the same for the past 27 years and all the revenue records stands in the name of the petitioner. She has been issued patta and his property is also sub-divided long back but the 2nd respondent without any authority by misusing the order passed by this court against some other person disturbs the possession of petitioner unlawfully. Further he contended that, even though the land of the petitioner was ear marked for Nursery School and play ground, the possession of the land was neither surrendered nor acquired by the respondent and it has been categorically admitted by the 2nd respondent in his reply to the RTI Act and reply letter dated 02-02-2017. Therefore, the possession cannot be disturbed without following due process of law for acquisition of land.

7. Further, the learned counsel appearing for the petitioner has contended that even assuming that the land is reserved for public purpose, the same has to be acquired as per section 36 and 37 of The Tamil Nadu Town and Country Planning Act 1971 within 3 years by agreement, failing which, it shall be deemed to be released from such reservation as provided under section 38 of the Act. The learned counsel for the petitioner has relied upon the judgments of the Apex Court in **Raju.S.Jethmalani and others Vs State of Maharastra and others** reported in 2005(11)SCC 222, **Pillayar P.K.V.K.N Trust through Ramanathan Vs Karpaga N.N.U.S represented by secretary and others** reported in 2010(9)SCC344, **BalaKrishna H.Sawanth and others Vs Sagli,Miraj&Kupward City Municipal Corporation and others** reported in 2005 (3) SCC 61 and



judgment of the Division Bench of this Court in **Commissioner, Aruppukottai Municipality, Virudhunagar District Vs K.S.Kamakshi Chetty and others** reported in 2011(8)MLJ 437.

8. In all these judgments, it is categorically held that the land allotted for public purpose has to be acquired within 3 years, failing which, it shall be deemed to be released from said reservation. Since it is admitted by the 2nd respondent through the reply under RTI Act and as well as by his proceedings dated 02-02-2017 that the land of the petitioner was neither acquired nor surrendered the 2nd respondent has no right to interfere with the peaceful possession of the petitioner without following due process of law.

9. In **Raju.S.Jethmalani and others Vs State of Maharashtra and others** reported in 2005(11)SCC 222, the Hon'ble Supreme Court has held as follows:-

"Therefore, the question is whether the Government can prepare a development plan and deprive the owner of the land from using that land? There is no prohibition of including private land in a development plan but no development can be made on that land unless that private land is acquired for development. The Government cannot deprive the persons from using their private property. We quite appreciate the interest of the residents of that area that for the benefit of the ecology, certain areas should be earmarked for garden and park so as to provide fresh air to the residents of that locality. In order to provide such amenities to the residents of the area private land can be acquired in order to effectuate their public purpose but without acquiring the private land the Government cannot deprive the owner of the land from using that land for residential purpose."

10. In **Pillayar P.K.V.K.N Trust through Ramanathan Vs Karpaga N.N.U.S represented by secretary and others** reported in 2010 (9) SCC344, the Hon'ble Supreme Court has held that if the land earmarked for any public purpose was not acquired within 3 years from the date of reservation shall be deemed to be released under Section 38 of the Act, 1971 and thus taking over of possession is mandatory even if the land is reserved for any public purpose. The relevant portion of the said judgment is extracted as follows:-

"25. The High Court then referred to the argument made that admittedly 40 plots were private land and, therefore, even if it is presumed that it was included under the plan of 1992, yet since the land was not acquired either by agreement or by acquisition, they would be deemed to have been released from reservation. The High Court has undoubtedly posed this question up



to para 16 but has chosen not to answer it till last. We, therefore, put the same question to the counsel for the respondent as also to the counsel for the Government and both the counsel fairly conceded that the land is still not acquired.

26. Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 runs as under:

"38. Release of land.—If within three years from the date of the publication of the notice in the Tamil Nadu Government Gazette under Section 26 or Section 27—

(a) no declaration as provided in sub-section (2) of Section 37 is published in respect of any land reserved, allotted or designated for any purpose specified in a regional plan, master plan, detailed development plan or new town development plan covered by such notice; or

(b) such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation."

27. In view of the admitted position that the land is not acquired by agreement till the date of the judgment of the High Court, the deeming clause would certainly come into force and, therefore, the land concerned would certainly be deemed to have been released.

28. The High Court has also referred to the decision in *Raju S. Jethmalani v. State of Maharashtra*¹ where this Court has clearly held that the owner of the special land cannot be prohibited from using it since it is the private property and the Government cannot deprive the persons from using their private property and, therefore, the acquisition of the property is a must before any such person is restrained from using the land.

11. In **Commissioner, Aruppukottai Municipality, Virudhunagar District Vs K.S.Kamakshi Chetty and others** reported in **2011 (8) MLJ 437**, the Division Bench of this Court has held that where no steps have been taken for completing the acquisition within three years period and when the property earmarked for the purpose has not been utilized as per the notification, the property would be deemed to have been released from reservation, allotment or designation as per Section 38 of the Act, 1971.

12. In **BalaKrishna H.Sawanth and others Vs Sagli, Miraj & Kupward City Municipal Corporation and others** reported in **2005 (3) SCC 61**, the Hon'ble Supreme Court has considered the issue



relating to allotment of property for the public purpose of school and playground and held that the same has to be acquired within stipulated period otherwise the purpose shall be deemed to be released. The case in hand is also similar one as the area earmarked was for nursery school and play ground and admittedly the same is not acquired by the Government.

13. In the present case also admittedly the possession of the land was not surrendered or acquired by the Government and therefore, as rightly contended by the counsel for the petitioner without acquiring the land, invoking Section 36 and 37 of Tamil Nadu Town and Country Planning Act, 1971 the constitutional right to property as guaranteed under Article 300-A of Constitution of India cannot be taken away. Therefore, it is for the Government to acquire the land in a manner known to law but without acquiring the land, the petitioner cannot be deprived from enjoying her property. As a matter of fact the writ petition relied upon by the 2nd respondent mentioned above has no connection with the property of the petitioner and the petitioner is not a party to the same. The bare reading of order clearly shows that the same is in respect of the land possessed by the 6th respondent therein and direction also issued to initiate proceedings for preserving the land allotted for public purpose by issuing notice to the petitioner therein and the 6th respondent therein. Therefore, the 2nd respondent cannot rely upon the order passed in the above writ petition to justify his act. Hence, this Court is of the view, that the possession of the petitioner cannot be disturbed without acquiring the land by following due process of law as mentioned above and thus, she is entitled to get the protection of her right to property.

14. Accordingly this writ petition is allowed and the respondents are restrained from forcibly taking over the possession or interfering with the petitioner's possession of land without following under due process of law by invoking the provisions of the Tamil Nadu Town and Country Planning Act, 1971. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Vacation Officer (CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Deputy Director of Town and Country Planning
Ramnad and Pudukottai Region, Sivagangai.



2. The Commissioner, Paramakudi Municipality,
Paramakudi,
Ramanathapuram District.

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+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No. 57943
+1 CC to M/s.H.ARUMUGAM, Advocate, SR No. 57589

SKN

PSM/MR/SAR4/09.06.2017/7P/5C

ORDER MADE IN
W.P. (MD) No. 9690 of 2017
and
WMP. (MD) No. 7438 of 2017
25.05.2017