

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	16/03/2018
Delivered on	19/03/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.7037 of 2017 &
W.M.P.No.7669 of 2017

P.Selvaraj

.. Petitioner

Vs.

- 1.The Commissioner of Land Reforms,
Chepauk, Chennai - 5.
 - 2.The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
MAWS (M5) Department, Secretariat,
Chennai - 9.
 - 3.The District Collector,
Thiruppur District.
 - 4.The Director of Municipal Administration,
Ezhilagam 6th Floor,
Chepauk, Chennai - 5.
 - 5.The Commissioner,
Palladam Municipality,
Palladam, Thiruppur District.
- .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 4 and 5 to consider positively and pass orders in favour of the petitioner on the basis of the agreement dated 20.11.2014 entered into between the petitioner and the respondent / The Commissioner, Palladam Municipality, Palladam, Thiruppur District.

For Petitioner : Mr.M.Gnanasekar

For M/s.S.P.Mullai

For Respondents : Mr.B.Anand

Government Advocate for R1 to R4

Mr.A.S.Thambusamy for R5

O R D E R

Heard Mr.M.Gnanasekar, learned counsel for the petitioner; Mr.B.Anand, learned Government Advocate for the respondents 1 to 4 and Mr.A.S.Thambusami, learned counsel for the fifth respondent and perused the records.

2. The petitioner has come forward with this Writ Petition for issuance of Writ of Mandamus, directing the respondents 4 and 5 to consider positively and pass orders in favour of the petitioner on the basis of the agreement dated 20.11.2014.

3. The case of the petitioner is that he is the absolute owner of the property measuring to an extent of 10.70 acres in Survey No.406/1 of P.Vadugampalayam by virtue of a sale deed dated 18.08.2011. The further case of the petitioner is that the fifth respondent had approached him for sale of his land for constructing a composite yard and underground sewage for a sale consideration of Rs.1 Crore 5 Lakhs. An agreement to that effect was entered into on 20.11.2014. The agreement stipulates one month time for completion of sale process, however even after lapse of 2 1/2 years, there was no progress. Hence, the petitioner filed W.P.No.15669 of 2016 for issuance of Writ of Mandamus and the Writ Petition was disposed on 27.04.2016 to consider the representation of the petitioner. As no action was taken pursuant to the order in the Writ Petition, a Contempt Petition in Cont.Petition.No.415 of 2017 was filed. After receiving notice in the Contempt Petition, a revised proposal was submitted on 16.03.2017. Hence, the present Writ Petition.

4. The fifth respondent has filed a counter admitting execution of the agreement by the predecessor of the fifth respondent with the petitioner on 20.11.2014, however fulfilment of the agreement is subject to the accord of financial sanction by the Government and administrative sanction from the several authorities. It is further stated that pursuant to the order passed in W.P.No.15669 of 2016, the Government considered the representation of the petitioner and the District Collector, Thiruppur has suggested availability of alternative Government poramboke land for the purpose of utilization for the proposed project and the proposal of the Commissioner, Palladam Municipality to purchase 25.07 acres in Survey Nos.406/1, 407/1 and 408/1 of Vadugampalayam Village was rejected by the second respondent by his letter dated 21.03.2017.

5. The learned counsel for the petitioner submitted that the predecessor of the fifth respondent taking note of the welfare of the general public had decided to construct a composite yard and underground sewage. The land was agreed to purchase as per the guideline value, however due to change of Office of the

fifth respondent, the welfare activities is now stalled by the incumbent of the fifth respondent. It is a contention of the learned counsel for the petitioner that this writ Petition need not be treated as a suit for specific performance and it has to be considered in the larger interest of the general public. Even at the time of entering into an agreement of sale on 20.11.2014, the then District Collector and the Officials of the Palladam Municipality had searched for a suitable place and after confirming non availability of Government land, decided to purchase the land of the petitioner. Therefore, they cannot now be permitted to contend that the Government land is available for that project.

6. On the other hand, the learned counsel for the fifth respondent submitted that the fifth respondent was not able to understand under what circumstances the sale agreement was entered into agreeing to complete the sale within a period of one month. It is further submitted that as cost of the land exceeds Rs.1 Crore, without the administrative and financial sanction from the Government, the sale could not be completed and that the order passed in the earlier Writ Petition and the Contempt Petition have nothing to do with the decision of the Government to cancel the proposal to purchase the land of the petitioner.

7. The learned Government Advocate has placed before this Court the order of the Government dated 21.03.2017, in and by which the second respondent has cancelled the proposal to purchase the lands in question.

8. Perusal of the averments in the affidavit filed in support of the Writ Petition, it is evident that this Writ Petition has been filed to enforce the agreement of sale dated 20.11.2014. The fifth respondent has not disputed the agreement of sale entered into between the predecessor of the fifth respondent and the petitioner. But, the stand of the fifth respondent is that without financial and administrative sanction of the Government, the respondent cannot complete the sale process. The letter of the second respondent issued in Lr.No.17718/N.Na.Ne.5 of 2016-4, dated 21.03.2017 would show that the proposal to purchase the land of the petitioner was rejected by the Government. It is further stated that the Government has already taken a decision to allot the Government poramboke land to the fifth respondent free of cost for the proposed project.

9. It is settled law that the disputed question of facts and enforcement of an agreement of sale cannot be decided in a Writ Petition filed under Article 226 of the Constitution of India, especially, when the fifth respondent has taken a stand that the

agreement was subject to sanction by the Government. The Delhi High Court in W.P.(C)No.77 of 2016 (Airports Authority Of India vs Delhi Development Authority) dated 11.01.2016, in similar facts has held as follows:-

14. Moreover, in the opinion of this Court, a writ petition normally cannot be filed to seek possession of land. Even if possession is sought in pursuance to a minutes of meeting, the petitioner must file a suit as relief of specific performance cannot be granted in a writ petition. Just because a court in an earlier writ petition directed Committee of secretaries to examine the petitioner's request for land, does not mean that present writ petition is maintainable, especially when disputed questions of fact are involved. For instance, in the present case, parties are not at ad-idem with regard to identity, boundary of the land, extent of land to be transferred, as well as its cost.

15. In the present case, as the effect of Minutes of Meeting dated 24th December, 2001 would have to be examined in the context of subsequent minutes of meeting, this Court is of the view that present writ petition is not maintainable. Accordingly, present writ petition and applications are dismissed with liberty to petitioner to avail alternate remedy as may be available to it in accordance with law. The rights and contentions of both parties are left open.

10. Taking note of the above facts, in the considered opinion of this Court, it is not the fit case for issuance of Writ of Mandamus. I find no merits in this Writ Petition.

11. In such view of the matter, the Writ Petition fails and the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

r n s

To

1. The Commissioner of Land Reforms,
Chepauk, Chennai - 5.

2.The Principal Secretary to Government,
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Chennai - 9.

3.The District Collector,
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4.The Director of Municipal Administration,
Ezhilagam 6th Floor,
Chepauk, Chennai - 5.

+1cc to Mr.M.Gnanasekar, Advocate, S.R.No.21468

+1cc to the Government Pleader, S.R.No.21395

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CS/06/04/18



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