

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.6465 of 2017

M.S.Ganesan

... Petitioner

vs.

1. The Collector,
Cuddalore District,
Cuddalore - 607 001.

2. The Commissioner,
Cuddalore Municipality,
Cuddalore - 607 001,
Cuddalore Taluk,
Cuddalore District.

3. The Secretary to Union of India,
Ministry of Human Resources &
Urban Development,
New Delhi.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the Respondents to demolish the construction unauthorizedly and illegally made by Respondents in portions of 6340 sq. ft. in T.S.No.1497/2 in Soorappanaickenchavadi, Cuddalore, Cuddalore Taluk, Cuddalore District, forthwith.

For Petitioner : Ms.Grahalakshmi
for Mr.R.Gururaj

For 1st Respondent : Mr.R.Udaya Kumar,
Addl. Government Pleader

For 2nd Respondent : Mr.P.Srinivas

For 3rd Respondent : Mr.G.Karthikeyan,
Assistant Solicitor General of India

O R D E R
(Order of the Court was made by M.VENUGOPAL,J.)

Heard the Learned Counsel for the Petitioner, the Learned Additional Government Pleader appearing for the 1st Respondent; the Learned Counsel appearing for the 2nd Respondent and the Learned Assistant Solicitor General of India, appearing for the 3rd Respondent.

2. According to the Petitioner, the property in T.S.No.1497 measuring an extent of 41 1/4 cents in Soorappanaickenchavadi, Thiruppadiripuliyur, Cuddalore, belongs to his mother Vijayalakshmi and she purchased the same by means of a registered Sale Deed dated 26.03.1990. The said property, at the time of purchase, remained as a vacant site. The property is in the heart of Cuddalore Town, just about 200 metres south of Cuddalore Bus Stand. The Petitioner divided the property as four plots and sold away three plots, totalling 9600 sq. ft. to three persons and retained 5,570 sq. ft. and another extent of 2695 sq. ft. adjacent to it. The property is in irregular shape.

3. The Learned Counsel for the Petitioner submits that the Revenue Divisional Officer, Cuddalore had acquired the property for construction of Railway Over-Bridge and by means of a Notification dated 01.02.2000, 1206 sq. ft. of the Petitioner's mother's property was acquired and as per Award No.1 of 2001, dated 03.01.2001, a meagre compensation of Rs.42.50 per sq. ft. was fixed. Later, another extent of 1400 sq. ft. was acquired for service road and for the said acquisition, compensation was not paid.

4. The Learned Counsel for the Petitioner brings it to the notice of this Court that in reality, the compensation ought to have been fixed as per the award passed in L.A.O.P.No.155 of 2001 arising out of another acquisition under the same Award. Since, it was not done, the Petitioner's mother filed W.P.No.13384 of 2010 before this Court and the same is pending. Later, his mother filed W.P.No.23239 of 2015, claiming compensation as per Act 30 of 2013, which is also pending. In fact, an extent of 2606 sq. ft. of the Petitioner's mother's property was already acquired and an extent of 6340 sq. ft. remained with his mother, which now bears T.S.No.1497/2. She has settled the property in favour of the Petitioner by virtue of a Settlement Deed dated 24.08.2012 and that the Settlement Deed was duly executed, validly attested, registered, accepted and acted upon. Even since the date of settlement, the Petitioner became the owner of the property measuring an extent of 6340 sq. ft., which remained vacant.

also acquired. The Survey Number 1497 was sub-divided into S.Nos.1497/1 and 1497/2 and S.No.1497/1 was acquired for the Railway Over-Bridge.

9. It is represented on behalf of the 2nd Respondent that after the construction of the Railway Over-Bridge, the Land for the Service Road was also acquired by means of another proceedings under the Tamil Nadu Highways Act, 2001. Survey No.1497/2 has been sub-divided into S.No.1497/2A and 1497/2B in the year 2003 and S.No.1487/2A has been acquired for the Service Road and the Service Road has been developed. The Service Road below the Railway Over-Bridge has been developed and the same is in use by the public and vehicular traffic. The Petitioner's lands are abutting the Railway Lands in T.S.No.1501 and the Service road ends with the said Railway lands.

10. It is to be pointed out that across the Railway Over-Bridge, from the Petitioner's lands, there are numerous houses, where there are no Toilets, as they belong to poor strata of society. Most of the residents of the said area use the Railway lands and the adjoining lands including that of the Petitioner, for nature's call. As per the mission of the State and Central Government, to eradicate open defecation, Public Conveniences in the form of community Toilets are being built, wherever Public land is available. The Service road in T.S.No.1497/2A ends in a dead end with the Railway Land and there is sufficient space to accommodate a Community Toilet and therefore, it was chosen as one of the places for the construction of Community Toilet. Accordingly, as per the Scheme of the Central Government, the Community Toilet over an extent of 540 sq. ft. was built and the same has been placed under the maintenance of a Self-Help Group of the residents for the purpose of enabling the residents to use the same and avoid open defecation in the area.

11. The crystallised stand of the 2nd Respondent is that the Toilet was constructed and demarcated as T.S.No.1497/2A only in the land acquired from the Petitioner and not in the land that is vested with the Petitioner. After the notice was received from this Court, the 2nd Respondent made another inspection and verified with the Survey records and found that the Community Toilet has been constructed only in the land acquired for the Service Road in T.S.No.1497/2A and not in the lands that are vested with the Petitioner.

12. The Learned Standing Counsel appearing for the 2nd Respondent brings it to the notice of this Court that the Petitioner had failed to mention that the lands have been sub-divided into T.S.No.1497/1 and 1497/2 initially and

thereafter, T.S.No.1497/2 has been further sub-divided into T.S.No.1497/2A and 1497/2B. Only T.S.No.1497/2B is vested with the Petitioner and other persons. Even as per the the Gazette publication issued for the land acquisition, the Lands in T.S.No.1497/2A are shown to have been vested with four other persons apart from the Petitioner's mother. In short, it can be safely said that Toilet has not been constructed in the Petitioner's land as claimed in the Writ Petition. Hence, the Writ Petition is liable to be dismissed, as the same is filed with misconceived notion.

13. Considering the fact that the 'Community Toilet' has been constructed in the Land acquired for the Service Road in T.S.No.1497/2A and not in the lands that are vested with the Petitioner and also to carry out the mission of the State and Central Government to eradicate open defecation, Public Convenience in the form of Community Toilets are being built wherever there is available public land and accordingly, as per the Scheme of Central Government, 'Community Toilet' measuring an extent of 540 sq. ft. was built and the same has been placed under the maintenance of a Self-Help Group of the residents for the purpose of enabling the residents to use the same and avoid open defecation in the area.

14. It is seen that the Petitioner's mother was issued with a Notice and only thereafter, the Petitioner was settled with the property in the year 2012 by means of a Settlement Deed dated 24.08.2012, which is subsequent to the acquisition of the Land in 2001 and also, it cannot be brushed aside that Award No.1 of 2001, dated 03.01.2001 was passed by the competent authority.

15. This Court is of the earnest opinion that the stand of the Petitioner in seeking the relief of mandamus for passing of an order by this Court in directing the Respondents to demolish the construction unauthorizedly and illegally made by Respondents in portions of 6340 sq. ft. in T.S.No.1497/2 in Soorappanaickenchavadi, Cuddalore, Cuddalore Taluk, Cuddalore District, forthwith, cannot be granted by this Court. Even the balance of convenience is not in favour of the Petitioner. Apart from that, it cannot be forgotten that as per the Government Order in G.O.(D) No.287, Highways and Minor Ports (HP1), dated 31.12.2013, the Governor of Tamil Nadu, having satisfied that the lands specified in the schedule below have to be acquired for Highways purpose, for the construction of Road, Over Bridge and providing Service Road at Thirupathiripuliyur Village and it has already been decided that the entire amount of compensation to be awarded for the lands is to be paid out of the funds controlled and managed by the Divisional Engineer (H) Projects, Cuddalore, after

considering the cause shown by the owner or other persons having interest on such lands, as the case may be, published a Notification under sub-section (1) of Section 15 of the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002) for acquiring the wet lands as specified in the Schedule measuring an extent of 102231 sq. ft. to the same, a little more or less required for the construction of Road Over Bridge.

16. In the light of the above qualitative and quantitative discussions and keeping in mind of the primordial fact that the 'Community Toilet' was constructed in the Land acquired for the Service Road in T.S.No.1497/2A and not in the lands that are vested with the Petitioner, the Writ Petition filed by the Petitioner is dismissed as devoid of merits.

No costs. Consequently, connected W.M.P.No.6975 of 2017 is closed.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To:

1. The Collector,
Cuddalore District,
Cuddalore - 607 001.
2. The Commissioner,
Cuddalore Municipality,
Cuddalore - 607 001,
Cuddalore Taluk,
Cuddalore District.
3. The Secretary to Union of India,
Ministry of Human Resources &
Urban Development,
New Delhi.

- 1 cc to Mr.G.Karthikeyan, Advocate Sr.No.18560
- 2 cc to Mr.R.Gururaj, Advocate Sr.No.18671
- 1 cc to The Government Pleader Sr.No.19256

Order in
W.P.No.6465 of 2017

RRI 28/03/2018