IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2018

Delivered on : 21.03.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.755 of 2015

1.T.K.Vasudevan (Deceased)
2.T.K.Raghu ...Appellant
(2nd appellant substituted in the place of deceased sole appellant vide order dated 10.03.2016 in CMP No.884/2016)

Vs

1.The District Collector of Chennai
Office of the Collectorate,
Chennai - 600 001.

2.The District Revenue Officer,
Office of the Collectorate,
Chennai - 600 001.

3.The Tahsildar,
Velachery Taluk, Chennai.

4.The Registrar,
Indian Institute of Technology
Chennai - 600 036.

5.The Secretary to Government,
Revenue Department,
Government of Tamil Nadu,
Fort St.George, Chennai. ...Respondents
(R5 impleaded as party respondent vide order dated 23.07.2015 made in M.P.No.3 of 2015)

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent against the order dated 28.04.2015 in W.P.No.794 of 2015.

Prayer in WP.794 of 2015: Writ petition filed under Article 226 of the constitution of India, praying the issue writ of certiorarified mandamus Calling for the records pertaining to the order of the 2nd respondent in J2/ 22106/2006 dated

22.12.2014 and quash the same and further direct the 3rd respondent to grant patta to the petitioner in respect of the property measuring an extent of 97.56 cents comprised in paimash Nos. 804 816A 817 818 & 828 A in Block No.8 T.S.No.2/3 Door No.4A Tharamani Road of Thiruvanmiyur Village No.140 Chennai within the Sub Registration District of Saidapet and Registration District of Chennai South.

For Appellant in : Mr.ARL.Sundaresan
Senior Counsel for
Mrs.Sudharshana Sundar
Mr.Suresh

For Respondents : Mrs.A.SriJayanthi
Spl.Govt.Pleader for R1 to R3 & R5
Ms.Chitra Sampath
Senior Counsel for
M/s.Menon Karthik Mukundan
for R4

J U D G M E N T

K.K. SASIDHARAN,J.

Introductory

The claim of the deceased first appellant for the grant of patta in respect of the land allotted to him as per Partition Deed dated 25 June 1961, and registered as Document No.1616 of 1961 was rejected by the District Revenue Officer, Chennai, notwithstanding the two reports, dated 12 June 2009 and 21 February 2014, submitted by the Assistant Director of Land Survey to the said authority during the course of the proceedings indicating the factual position that it was not part of the land acquired for the Indian Institute of Technology (hereinafter referred to as "IIT"). The District Revenue Officer without discussing as to whether the reports are fundamentally wrong and without making an attempt to disprove the statement made by the survey officials that the land of the deceased appellant is in Paimash Nos.804, 816/A, 818 and 828/A, which would fall in Old Survey No.4/1 Part and 7/7 Part corresponding to T.S.No.2/3, Block 8, negatived the claim with an observation that the land in Old S.No.4/1 and 7/7 have already been acquired for I.I.T. When a challenge was made to the order passed by the District Revenue Officer, the learned single Judge dismissed the writ petition with an observation that the reports submitted by the two officers of the Survey Department were without reference to any documents and it was clearly contrary to the Survey and Land Register maintained by the Revenue Department without mentioning as to how such a finding was given and notwithstanding the fact that those reports were heavily relied on by the District Revenue Officer and that there was no factual finding given by the authority that those reports were without reference to any documents.

The order passed by the District Revenue Officer and the learned single Judge are liable to be set aside for the simple reason that the survey reports were submitted only by the Land Survey authorities, whose reports are relevant for deciding the matter by the revenue officials, unless, it is shown that the reports are manifestly wrong or unsupported by survey records on the basis of relevant materials on record. The failure to substantiate the ultimate finding made the writ petitioner to file the intra court appeal.

The Relevant Facts

The case of the writ petitioner

2 (a) The father of the deceased appellant (hereinafter referred to as the "writ petitioner") along with his brother and sister inherited 6.61 acres of land in Paimash Nos.804, 814 B, 816 A, 817, 818, 828 A, 837 A, 838 A, 837 B, 839 A, 838, 810, 811 and 812 B in Thiruvanmiyur Village from his parents Thiru.Annamalai Gramani and Kanniammal.

(b) There was a partition among the legal heirs as per Partition Deed dated 27 March 1961 and 25 June 1961 registered as Document Nos.717/1961 and 1616 of 1961 respectively. The parties have also executed an Exchange Deed, dated 13 June 1962, which was registered as Document No.1510 of 1962. The subject property was allotted to the writ petitioner and his brothers.

3. It was the case of the writ petitioner before the Writ Court that he along with his brothers T.K.Sathyamurthy, T.K.Kabali and T.K.Raghu were in joint possession and enjoyment of 97.56 cents of land in Paimash Nos.804, 816 A, 817, 818 and 828 A out of the 2.56 acres of land, which was part of 6.61 acres of land. The Government acquired vast extent of land, including 3.98 acres of their original holding in Paimash Nos.804, 814 B, 816 A, 817, 818, 828 A, 837 A, 838 A, 837 B, 839 A, 836, 810, 811, 812 B for I.I.T., as per Award dated 4 March 1963. Since Survey Numbers were not assigned, only the Paimash numbers were shown in the documents of title and possessory documents.

4. The names of Thiru.Kalyanasundara Gramani, the father of the writ petitioner and Annamalai and Mariammal, brother and sister of Kalyanasundara Gramani were shown as the Pattadars and enjoyers of the land in the land acquisition proceedings including the Award dated 4 March 1963. The compensation amount was deposited in Civil Court.

5. The writ petitioner submitted application for Patta. The

application was rejected by the Tahsildar, Velachery, by order dated 20 September 2006 stating that the land was shown as Government Poramboke land in the revenue records. The appeal preferred against the said order was dismissed by the District Revenue Officer, by order dated 19 April 2007.

6. The writ petitioner preferred a revision petition before the Special Commissioner for Land Administration. The revision petition was allowed by order dated 21 July 2008. The Revisional Authority remitted the matter for fresh consideration to the District Revenue Officer.

7. The appellate authority called for a report from the survey authorities. The Assistant Director, District Land Survey Department, Chennai, conducted field verification, examined the Town Survey documents and thereafter, submitted a report dated 12 June 2009 confirming the factual position that Old Survey number for R.S.No.2/3, Block No.8 is Survey No.4/1 Part and 7/7 Part.

8. The Assistant Director, District Land Survey Department, pursuant to the letter dated 7 July 2009 sent by the District Collector, submitted another report, dated 8 November 2010 stating that the land of the writ petitioner as per document dated 25 June 1961 (Registered as Document No.1616/1961) is Survey No.4/1 and 7/7 Part in Block No.8 and that T.S.No.2/3 comes under Paimash Nos.804, 816A, 817, 818 and 828 A. The Assistant Director on verification of the Award reported that the acquired land is in S.No.17, which is in Paimash Nos.810, 811, 812, 814, 836 and 837 in T.S.No.3 part , 4 part and 9 part in Block No.8 and it has no relevancy to the land claimed by the writ petitioner.

9. The District Revenue Officer after remitting the matter for fresh consideration by the Revisional Authority by letter dated 30 December 2013 called for a fresh report from the Assistant Director, Survey Department.

10. The Assistant Director verified the land registers in respect of T.S.No.2/3, Block 8, Thiruvanmiyur Village and opined that 97.56 cents of land in T.S.No.2/3 belongs to Late Kalyanasundaram Gramani, father of the writ petitioner. According to the Assistant Director of Survey, 3 acre and 98 cents out of 6 acres and 61 cents in Old Paimash Nos.804, 814, 816 A, 817, 818, 828 A, 837 A, 838 A, 837 B, 839 A, 836, 810, 811 and 812 B correlating to Old Survey No.17/4 of Thiruvanmiyur Village was acquired for I.I.T. The Assistant Director confirmed the position that the land owner is in possession of 98 cents in T.S.No.2/3 Block 8, Thiruvanmiyur Village. The Assistant Director submitted his report, dated 21 February 2014 to the District Revenue Officer along with a copy of the FMB Sketch.

11. The District Revenue Officer passed an order dated 22 December 2014, rejecting the appeal and negativing the plea for grant of patta. The District Revenue Officer in the order referred to the reports dated 12 June 2009 and 21 February 2014 submitted by the Assistant Director of Survey. The District Revenue Officer on a verification of those two reports stated that the land occupied by the petitioner is in T.S.No.2/3 Block No.8, corresponding to Old Survey No.4/1 part, 7/7 part. The District Revenue Officer without reference to the Award observed that the land in Old Survey No.4/1 and 7/7 have already been acquired for I.I.T .

The Writ Petition and the Order

12 A). The writ petitioner challenged the order dated 22 December 2014 in W.P.No.794 of 2015 before the Writ Court.

B). The learned single Judge while dismissing the writ petition referred to those two reports dated 12 June 2009 and 21 February 2014 filed by the Assistant Director of Survey and ignored it on the ground that the reports were without any reference to the documents or survey records. However, nothing was said as to how such an observation was made.

C). The order dated 28 April 2015 in W.P.No.794 of 2015 is under challenge in this intra court appeal.

Submissions:-

13. The learned Senior Counsel for the writ petitioner by placing reliance on the Award dated 4 March 1963 and the Land Survey Register in relation to the land in Paimash Nos.804, 814 B, 816 A, 817, 818, 828 A, 837 A, 838 A, 837 B, 839 A, 836, 810, 811 and 812 B contended that the documents are very clear that the predecessor-in-interest of the writ petitioner was in possession of 6.61 acres of land and out of the said extent, only 3.98 acres was acquired for the I.I.T. The remaining land was the subject matter of partition and the petitioner was allotted 97.56 cents of land. The learned Senior Counsel contended that there was a specific order passed by the revisional authority to verify the documents submitted by the writ petitioner, its correlation and the connected records relating to the land acquisition. According to the learned Senior Counsel, there was no attempt made by the District Revenue Officer to find out the factual position with regard to the land acquired for I.I.T. and the situation of the remaining land out of 6.61 acres originally belonged to the predecessor-in-interest of the writ petitioner. The learned Senior Counsel took us through the reports submitted by the Assistant Director, Land Survey and contended that those reports were in line with the revenue records. The learned Senior Counsel contended that out of the total extent of 6.61 acres,

only an extent of 3.98 acres was acquired. The I.I.T is not justified in making a claim for larger extent more than the extent acquired. The learned Senior Counsel further contended that the writ petitioner is not claiming the land acquired for I.I.T. The learned Senior Counsel contended that the Patta in respect of 6.61 acres was earlier granted to the predecessor-in-interest of the writ petitioner and the remaining land after acquisition was wrongly recorded as government poramboke. It was only to rectify this mistake, application was given before the statutory authority. The learned Senior Counsel submitted that the District Revenue Officer failed to consider the material documents available on record and rejected the claim made by the writ petitioner.

14. The learned Senior Counsel for the 4thh respondent contended that the writ petitioner has been taking contradictory contentions right from the beginning. According to the learned Senior Counsel, the original claim was in respect of the land in Survey No.17/4. Subsequently, the writ petitioner took a 'U' turn and claimed right in respect of the land in Paimash Nos.804, 816 A, 817, 818 and 828 A. The learned Senior Counsel contended that the Survey Reports were filed without the support of documents and it was rightly rejected. According to the learned Senior Counsel, the writ petitioner proceeded as if he is entitled to 97.56 cents out of the alleged remaining extent of 2.56 acres without producing documents to substantiate his right, title and interest. The learned Senior Counsel has taken us through the application originally filed by the predecessor-in-interest of the writ petitioner and the notes of arguments filed before the statutory authority. The learned Senior counsel on the basis of those documents contended that the writ petitioner has no consistent case and the attempt was to grab the land acquired for I.I.T.

Discussion

15. The Award passed by the Land Acquisition Officer in Award No.1/62 dated 4 March 1963 indicates that 3.98 acres of land owned by the predecessor-in-interest of the writ petitioner in S.No.17/4, corresponding to Paimash No.810, 811, 812, 814, 836 and 837 was acquired for I.I.T. along with larger extent. The Award shows that the land was registered in the revenue records in the name of Kalyanasundara Gramani and his sister Mariammal and brother Thirugnanam.

16. The three reports submitted by the Assistant Director of Survey on three occasions contain the details of the land acquired for the I.I.T and the land in respect of which the writ petitioner made a claim. Similarly, there is a report dated 24 February 2014 submitted by the Tahsildar, Velachery to the District Revenue Officer, Chennai, which is found at Page 62 of

the Additional typed set III produced by the writ petitioner.

The Survey Reports

17. The following statement contained in the respective reports are relevant for deciding the lis.

A) Report dated 12 June 2009 (By Assistant Director of Survey)
Old Survey Number for T.S.No.2/3, Block No.8 is Survey No.4/1 Part and 7/7 Part.

B) Report dated 8 November 2010 (By Assistant Director of Survey)
i) Old Survey Number for T.S.No.2/3, Block No.8 Thiruvanmiyur Village are S.No.4/1 Part, 7/7 Part and that is indicated in Paimash Nos. 804, 816 A, 817, 818 and 828 A. The extent is 0 acre 97 cents
ii) The land of the petitioner as per Document No.1616 of 1961 dated 25 June 1961 is S.No.4/1, and 7/7 Part in Block No.8, T.S.No.2/3 comes under Paimash Nos.804, 816 A, 817, 818 and 828 A.
iii) It is informed that there is no nexus between the Survey No.17 acquired for Southern Regional Institute and the Survey Number referred to by the petitioner.

C) Report dated 21 February 2014 (By Assistant Director of Survey)
i) It is seen that Old Survey Number for T.S.No.2/3 Block 8, Thiruvanmiyur Village is 4/1 Part and 7/7 Part and Paimash Numbers are 804, 816 A,817, 818 and 828 A and that the 98 cents are included therein.
ii) The land of the petitioner are in Paimash Nos.804, 816 A, 818 and 828 A within Old No.4/1 part and 7/7 Part now T.S.No.2/3 Block 8. There is no nexus between this survey number and S.No.17 which was acquired for IIT. (This has reference to the report dated 21 October 2010)

D. Report dated 24 February 2014 (By Tahsildar)
(i) When joint inspection made with the Assistant Director (Land Survey) on 11 January 2014, the following are noticed:-
a) It is confirmed that the land in Paimash Nos.804, 816 A, 817, 818 and 828 A for which Old S.No.4/1 part and 7/7 part in Thiruvanmiyur Village, now in possession of petitioner are in T.S.No.2/3 Block No.8 of Thiruvanmiyur Village.

b) There is no nexus between the land to the extent of 3 acres 98 cents which was acquired for IIT and the land in T.S.No.2/2 Block No.8, Thiruvanmiyur Village, which are in the possession of the petitioner."

Reports referred to by the District Revenue Officer

18. The Appellate Authority in its order dated 22 December 2014 referred to the reports dated 12 June 2009 and 21 February 2014. The District Revenue Officer in her eagerness to dispose of the appeal referred to only a portion of the reports and simply ignored the other materials.

19 a) In the report referred to by the District Revenue Officer in the impugned order dated 22 December 2014, there is a reference that the land claimed by the writ petitioner is in T.S. No.2/3 and it correlates to Paimash Nos.804, 816 A, 817, 818 and 828 A. The entire case of the writ petitioner rests on the factual foundation that his land is in Paimash Nos.804, 816 A, 817, 818 and 828 A. In case, the District Revenue Officer was not in agreement with the findings given by the Assistant Director of Survey, she should have either conducted a further enquiry or collected materials to disprove it. The statutory authority cannot simply ignore unfavourable materials and take only a part of the report, which is favourable to the revenue to negative the claim. It would not be permissible to take an observation out of context and ignoring the relevant materials to arrive at a particular finding. The authority must consider the report in its entirety to arrive at a definite conclusion. Since it was a statutory appeal, the District Revenue Officer was expected to consider the entire materials and pass an order on merits and in accordance with law.

b) There is no difficulty to identify the land acquired for IIT. The Award contains the total extent acquired from the predecessor-in-interest of the writ petitioner and its survey particulars. However, efforts were not taken by the District Revenue Officer to survey the land on the basis of survey registers and verification of the relevant records for resolving the dispute.

c) The observation that the entire land in Old S.No.4/1 has already been acquired is not supported by records. The Award dated 4 March 1963 shows that 3.98 acres of land in S.No.17/4 and 93 cents of land in S.No.7/7 were acquired. There is no reference about the acquisition of land in S.No.4/1 in the Award. Therefore, the District Revenue Officer is factually not correct in her finding and the indication given that the entire land in S.No.4/1 was acquired for I.I.T.

d) Even in respect of S.No.7/7, no attempt was made to find out the total extent of land in the said survey number originally and the remaining extent after acquiring 97 cents for IIT.

Scope of the Remand Order

20. The proceedings of the Special Commissioner and Commissioner of Land Administration, dated 21 July 2008 contained the details of the case pleaded by the writ petitioner and the specific direction given to the District Revenue Officer. The Special Commissioner, while remanding the case for fresh consideration directed the District Revenue Officer to consider the entire background facts and find out the correlation to the lands under reference taking into account the Paimash Numbers and the connected records relating to the land acquisition. Though the District Revenue Officer was expected to take into account the Award passed by the Land Acquisition Officer, the fact remains that scrutiny of Award proceedings was not undertaken at all.

21. The I.I.T. must enjoy the land to the extent of 3.98 acres acquired by Award dated 4 March 1963. It would not be possible for the I.I.T to claim more than the land acquired by Award dated 4 March 1963. The attempt of the District Revenue Officer must be to identify 3.98 of acres of land acquired for I.I.T. in S.No.17/4 and 93 cents in S.No.7. The claim made by the writ petitioner must be considered thereafter on merits. The District Revenue Officer committed a fundamental mistake by not correlating the Paimash Numbers with the Survey and Town Survey Numbers. The Re-Survey No.17/4 found in the Land Survey Register would include Paimash Nos. 804, 814 B, 816 A, 817, 818, 828 A, 837 A, 838 A, 837 B, 839 A, 836, 810, 811 and 812 B. The total extent of land is 6.61 acres. However, in the Award, only Paimash Nos.810, 811, 812, 814, 836 and 837 were mentioned. The District Revenue Officer was expected to clear the doubt on the basis of Survey Records. It is the responsibility of the statutory authority to arrive at a factual finding with regard to the land claimed by the writ petitioner and 3.98 acres of land acquired by I.I.T. It is for this purpose, the Special Commissioner directed the District Revenue Officer to verify the connected records relating to the land acquisition and make an attempt for correlation. However, no such effort was taken by the District Revenue Officer.

Views of the learned single Judge

22. The learned single Judge referred to the survey reports and rejected it with an observation that those reports were without reference to any documents and it was contrary to the Survey and Land Register. The said observation goes against the

records referred to in the report. There were no contra materials produced by the District Revenue Officer before the Writ Court to ignore the report as factually incorrect. In fact, it was only by misquoting those two reports dated 12 June 2009 and 21 February 2014, the District Revenue Officer rejected the appeal.

Extent of Judicial Review

23. In Syed Yakoob v. K.S.Radhakrishnan and others [AIR 1964 SC 477], a Constitutional Bench of the Supreme Court made it clear that in regard to a finding of fact recorded by the authority, a Writ of Certiorari can be issued, if it is shown that in recording the said finding, the adjudicating authority had erroneously admitted inadmissible evidence or had erroneously refused to admit admissible evidence which has influenced the impugned finding that would be regarded as an error of law, which can be corrected by a Writ of Certiorari.

24. The Supreme Court in State of U.P. and another v. Johri Mal [(2004) 4 SCC 714] indicated the scope of judicial review in the following words:

> "30. It is well settled that while exercising the power of judicial review the court is more concerned with the decision-making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact-finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision-maker's opinion on facts is final. But while examining and scrutinizing the decision-making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the court of judicial review can reappreciate the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of hte authority on the touchstone of the tests laid down by the court with special

reference to a given case. This position is well settled in the Indian administrative law. Therefore, to a limited extent of scrutinizing the decision-making process, it is always open to the court to review the evaluation of facts by the decision maker."

Identity of the Land and Correlation

25. There would not be any difficulty for identifying the land acquired for the I.I.T as per Award dated 4 March 1963. The extent and Paimash Numbers are clearly mentioned in the Award. The plan showing the total extent of land in the Paimash Numbers and the extent acquired out of it would be available in the Award File. The possession of 3.98 acres of land was given to the I.I.T. by the Land Acquisition Officer. The plan would show the acquired land handed over to the I.I.T with its four boundaries. The problem has arisen only on account of indicating the Paimash Numbers instead of the Survey Numbers. The identification and demarcation of the land claimed by the writ petitioner would arise only after identifying the land acquired for I.I.T. The District Revenue Officer must give a finding with regard to the total extent of land in the Paimash Numbers 804, 814 B, 816 A, 817, 818, 828 A, 837 A, 838 A, 837 B, 839 A, 836, 810, 811 and 812 B, the land acquired for I.I.T. and the relevant Paimash Numbers in relation to the acquired land. The corresponding survey number must also be ascertained by correlating the Paimash Numbers as directed by the Commissioner for Land Administration. Since the writ petitioner has claimed that his predecessor-in-interest was the patta holder in respect of 6.61 acres of land in the above Paimash Numbers and produced the extract of the Land Survey Register for the entire extent of 6.61 acres, the District Revenue Officer must verify the entire land Survey Records and the Award File. The Paimash numbers of the remaining land after acquisition in favour of I.I.T must be ascertained including its corresponding survey numbers. Thereafter, the right claimed by the writ petitioner must be considered in the light of the Survey Plan, FMB, Village Records and the other relevant Land Records.

Conclusion

26. For all these reasons, we are of the view that the District Revenue Officer dismissed the appeal without considering the relevant materials available on record. We are therefore of the view that the issue requires fresh consideration by the District Revenue Officer.

Disposition

27 a) The impugned order dated 22 December 2014 is set aside. The District Revenue Officer is directed to consider the matter afresh on merits and as per law with opportunity of

hearing to the writ petitioner and the Indian Institute of Technology. The District Revenue Officer must deal with all the documents produced by the parties and reports submitted by the survey authorities and a factual finding with reasons should be given. It is open to the District Revenue Officer to call for the survey reports for deciding the matter on merits. In case, any new materials are collected, reasonable opportunity should be given to the writ petitioner and I.I.T. to offer their comments. The District Revenue Officer is at liberty to survey the land acquired for I.I.T as per Award dated 4 March 1963 for ascertaining the correct factual position. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment. We make it clear that it is open to the District Revenue Officer to decide the statutory appeal on merits uninfluenced by any of the observations contained in this judgment.

b) The order dated 28 February 2015 in W.P.No.794 of 2015 is set aside. The writ petition in W.P.No.794 of 2015 is allowed as indicated above.

28. The intra court appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

svki

To

1.The District Collector of Chennai
Office of the Collectorate,
Chennai - 600 001.

2.The District Revenue Officer,
Office of the Collectorate,
Chennai - 600 001.

3.The Tahsildar,
Velachery Taluk, Chennai.

4.The Registrar,
Indian Institute of Technology
Chennai - 600 036.

5.The Secretary to Government,
Revenue Department,
Government of Tamil Nadu,
Fort St.George, Chennai.

+1cc to Mr.S.Suresh, Advocate SR.No.21375
+1cc to Mr.Menon, Advocate SR.No.22217
+1cc to Government Pleader SR.No.22384

W.A No.755 of 2015

NRL(CO)
GN(06/04/2018)