IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 12.04.2018	Delivered on 24.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.Nos.1637 & 1638 of 2017
and CMP Nos.21325 & 21327 of 2017

1. The State of Tamil Nadu,
   Rep. By its Secretary to Govt.,
   Revenue Department.
   Fort St. George, Chennai 600 009.

2. The State of Tamil Nadu
   Rep. By its Secretary
   High Education Department,
   Fort St. George, Chennai 600 009.

3. The Special Commissioner and
   Commissioner of land Administration
   Chepauk, Chennai 600 005.

4. The Collector,
   Sivagangai District.

5. The District Revenue Officer,
   Sivagangai.

6. The Tahsildar,
   Manamadurai,
   Sivagangai District. ... Appellants
   in both the appeals

versus

Thangachiammal Trust,
Seikalathur Kamatchiamman Polytechnic,
Seikalathur Village,
Manamadurai (Taluk), Sivagangai District,
Presented by its Chairman G.Kathamuthu ... Respondent
(in both the appeals)

Appeals filed against the order passed by this Court dated 27.02.2008 passed in W.P.Nos.8965 & 8966 of 2004.

WRIT PETITION NO 8965 of 2004 : writ petition is filed under Article 226 of the Constitution of India for the issuance of a writ of certitorified Mandamus to call for the records relating to the order passed ny the Collector, Sivagangai (4th respondent herein) in Proceedings ROC NO. C4/45702/2003 dated 05/12/2003 and the consqential demand made by the Tahsildart, Manamadurai (6th respondent herein) in memo ROC No A7/5411/2000 29/12/2003 quash the same and consequently direct the respondent to fix the land value that prevailed in the year 1984 at the time of taking over the possession of the land.

WRIT PETITION NO 8966 of 2004: Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorarified Mandamus to call for the records relating to GO Ms No 286 Revenue M.Mu.5(1) Department dated 28.8.2001 passed by the first respondent and quash the same in so far as para 3 (b) of the above G.O. and consequently direct the respondent to fix the land value that prevailed in the year 1984 at the time of taking over the possession of the land.

For appellants: Mr.S.T.S.Moorthy,
Additional Advocate General
Assisted by Mrs.A.Sri Jayanthi,
Spl. Govt. Pleader

For Respondent: Mr.M.Suresh Kumar

C O M M O N   J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

These Intra Court Appeals have been filed by the State, challenging the common order of the learned Single Judge made in WP No.8965 and 8966 of 2004, allowing the said Writ Petitions filed by the respondent.

The brief facts that led to the filing of the Writ Petitions are as follows:

2. The State Government had passed a Government Order in G.O.Ms.No.2131/Establishment dated 29.09.1982, in and by which, it had decided to permit private managements to start and run Polytechnic on self financing basis, subject to certain conditions. The said Government Order also reduced the extent of land, which is required for establishing Polytechnics. It appears that the respondent Trust had applied for grant of

permission to start a self-financing Polytechnic at Manamadurai in Ramanathapuram District. It is also seen that such permission was accorded by the Department of Education in G.O.Ms.No.2161 dated 15.11.983. Thereafter, it is seen that the Chairman of the respondent Trust had applied to the District Revenue Officer, Ramanad at Madurai, seeking alienation of an extent of 25 acres of land in Survey No.273/1 (P), of Seikalathur Village at Manamadurai Taluk for construction of buildings for Polytechnic.

3. From the above proceedings of the District Revenue Officer of Ramnad at Madurai dated 06.11.1984, it is seen that the District Revenue Officer had conducted inspection and sent the proposals for alienation of an extent of 9.91.5 hectares of land in favour of the respondent Trust to be utilized for construction of buildings for the Polytechnic. The District Revenue Officer by his proceeding dated 06.11.1984, had in fact allowed the respondent Trust to enter upon the land and to start construction subject to the payment of market value of the land as fixed by the Government and other usual conditions prescribed by the Government. On the same day, the District Government Officer has also addressed the Special Commissioner and Commissioner of Land Administration, Chepauk, recommending assignment of land measuring about 9.91.5 hectares in favour of the respondent Trust. The said recommendation also suggested the valuation of the land at Rs.82,786/- and after deducting a sum of Rs.24,500/- towards reclamation charges, the total value was arrived at Rs.58,286/-. It appears that the processes of alienation took a long time and various correspondences went on between the Government and the respondent trust regarding the assignment during the interregnum.

4. On 28.10.1995, the Special commissioner and Commissioner of Land Administration wrote to the Government pointing out that the permission to enter upon granted to the respondent on 06.11.1984 was beyond the powers of the District Revenue Officer, but the District Revenue Officer had forwarded the proposal for alienation of the land to the Special Commissioner and Commissioner of land Administration had suggested that the land could be alienated to the respondent Trust, after collecting a sum of Rs.1,97,857/-. Eventually the Government passed the Government Order in G.O.Ms.No.286 dated 28.08.2001 accepting the proposal for alienation, but the Government had prescribed that a sum equivalent to twice the market value of the land, on the date of alienation should be collected from the Trust as cost of the land. Pursuant to the said Government Order dated 28.08.2001, the District Collector of Sivagangai, sent a communication to the respondent Trust demanding payment of a sum of Rs.3,01,10,324/- as cost of the land.

5. The respondent Trust challenged the Government Order in G.O.Ms. No.286 Revenue M.Mu.5(1) Department dated 28.08.2001 in WP No.8966 of 2004 and the consequential order of the Collector, Sivagangai in ROC No.C4/45702/2003 dated 05.12.2003 in WP No.8965 of 2004. The above Writ Petitions were heard together by this Court and a common order came to be passed on 27.02.2008, in any by which, the learned Single Judge, while allowing the Writ Petitions, directed the Government to alienate the lands in favour of the respondent Trust, after collecting a sum of Rs.1,97,857/- as fixed by the 3rd respondent, viz. the Special Commissioner and the Commissioner, Land Administration in its letter dated 28.10.1995 along with interest at 10% from 1995 to till date of the order in the Writ Petition.

6. Aggrieved the Government is on appeal.

7. We have heard Mr.S.T.S. Moorthy, Additional Advocate General assisted by Mrs. A.Sri Jayanthi, Special Government Pleader, appearing for the appellants in both the appeals and Mr.M.Suresh Kumar, learned counsel appearing for the respondent in both the appeals.

8. Mr.S.T.S.Moorthy, learned Additional Advocate General would submit that the learned Single Judge, erred in directing the Government to alienate a very valuable property at for a very low price fixed in the year 1995. According to him, the orders passed by the District Revenue Officer in 1984, were not within his powers and as such, the same will not confer any right on the respondent. He would also point out that the Special Commissioner and Commissioner of Land Administration has even in the proceeding dated 28.10.1995 observed that the order of the District Revenue Officer dated 06.11.1984, in and by which, he had allowed the Trust to enter upon the land was beyond the powers of the District Revenue Officer and as such, the respondent Trust cannot claim any benefit, out of the said illegal order, passed by the District Revenue Officer.

9. Mr.S.T.S.Moorthy, learned Additional Advocate General would also draw our attention to Revenue Standing Order No.24, which provides for placing State land at the disposal of a person, an institution or a local body. Clause 2 of the Revenue Standing Order No.24 provides for ceiling on the value of the land, which could be alienated by each authority. As per the said Clause, the District Revenue Officer can alienate the land of value up to Rs.50,000/- and any land having a value of above Rs.50,000/- cannot be alienated by the District Revenue Officer under Revenue Standing Order No.24.

10. The Revenue Standing Order No.24 (2) as it stood as on 06.11.1984, viz. the date on which, the District Revenue Officer permitted the respondent to enter upon the land is as follows:

"24 (2) Powers for disposal of State land:-

The Board has been empowered to sanction the placing of State land at the disposal of a person, an institution or a local body for any bona fide public purpose provided that the market value does not exceed Rs.20,000/- in the case of local bodies and Rs.3,000/- in the case of private bodies, institutions and individuals. The Board has also been empowered to dispose of State lands which contain buildings when the combined value of the land and the buildings does not exceed Rs.10,000/- in each case.

The Board has been empowered to place State lands at the disposal of local bodies for bona fide public purpose provided that the market value of the occupancy right in the land (as explained in paragraph 3 infra) together with the capitalized value of the assessment forgone (vide paragraph 8 infra) does not exceed Rs.10,000/-. If the assessment is not foregone its capitalized value should not be taken into account. Collectors have been empowered to sanction grants in favour of local bodies if the total value as calculated above does not exceed Rs.6,000/- and in the case of private bodies, institutions and individuals when the value of the land does not exceed Rs.2,000/-. Where, however the land is given for the purposes of a road or appurtenances thereto such as gravel depots, store sheds and the like, Collectors can make similar grants provided the value calculated as explained above does not exceed Rs.6,000/-. The Revenue Divisional Officers may place State lands at the disposal of local bodies for bona fide public purposes in cases in which the market value of the occupancy right in the land together with the capitalized value of the assessment foregone does not exceed Rs.2,000/-. With these exceptions every case of disposal of State land to local bodies, private bodies and institutions and private individuals, whether by sale, gift or grant and whether subject to or free of charge for land revenue requires the sanction of the State Government, for which an application should be made in the prescribed form.

The authorities competent to sanction grants of land may, in cases of emergency, permit entry upon the land, pending issue of formal orders sanctioning the grant. Before doing this such authorities should obtain an undertaking from the grantee that they will abide by all the conditions which will be imposed in the orders sanctioning the grant."

11. The Board of Revenue was replaced by the Commissioner for Land Administration. Subsequently, in 1989, Revenue Standing Order 24 was amended, by fixing the value of the land that could be alienated by each authority. The amended Revenue Standing Order No.24 (2) reads as follows:

"24.(2) Powers for Disposal of Stand Land:

Tahsildar	Rs.	Upto 10,000/-
Revenue Divisional Officer	Rs.	Upto 20,000/-
District Revenue Officer	Rs.	Upto 50,000/-
Collector	Rs.	Upto 2,00,000/-
Commissioner of Land Administration	Rs.	Upto 2,50,000/-
Government	Rs.	2,50,000/-and above

The authorities competent to sanction grants of land may, in cases of emergency, permit entry upon the land, pending issue of formal orders sanctioning the grant. Before doing this such authorities should obtain an undertaking from the grantee that they will abide by all the conditions which will be imposed in the orders sanctioning the grant."

12. Both under the un-amended Revenue Standing Order No.24 as well as the amended Revenue Standing Order 24, the District Revenue Officer did not have the power to sanction alienation of the land or to allow the respondent to enter upon the land. Therefore, according to Mr.S.T.S.Moorthy, learned Additional Advocate General appearing for the appellants/State, the respondent cannot be allowed to claim any right on the basis of the orders passed by the District Revenue Officer on 06.11.1984. The learned Additional Advocate General would contend that it was the Government, which was the competent authority to sanction alienation of the Government land and therefore, the value of the land should be determined on the day on which, it is actually alienated by the Competent Authority. Hence, according to the learned Additional Advocate General, the Government was justified in demanding twice the market value, on the date of the alienation of the land which was determined by the Collector at Rs.3,01,10,264/-.

13. Mr.S.T.S.Moorthy, learned Additional Advocate General would also point out that there cannot be an estoppel against the statute and as such the learned Single Judge was wrong in directing the Government to alienate its land at a lesser price than the actual market value.

14. Per contra, Mr.M.Sureshkumar, learned counsel appearing for the respondent Trust would contend that the respondent Trust would not be held in any way responsible for the delay. It was allowed to enter upon the land in 1984, by the District Revenue Officer and it was put up the construction also. Thereafter, it had sent several communications to the authorities' concerned seeking alienation of the land in its favour. He would also refer to the type set filed by him containing the various communications between him and the authorities to show that the respondent Trust cannot be blamed for the delay in the assignment of the land. He would also contend that the appropriate authority viz. the Special Commissioner and Commissioner of land Administration had fixed the value at Rs.1,97,857/- on 28.10.1995 and had recommended alienation. Therefore, at best the Government can seek payment of interest on the said sum, which has been rightly awarded by the learned Single Judge.

15. We have considered the rival submissions. The respondent Trust has no vested right to demand alienation of Government land at a particular price. As rightly pointed out by the learned Additional Advocate General, the District Revenue Officer had no power to either alienate or to allow the respondent Trust to enter upon the lands belonging to the Government. This is made clear, even in the proceedings of the Commissioner of Land Administration, dated 28.10.1995 wherein, it is specifically pointed out that the very order dated 06.11.1984, wherein, the District Revenue Officer has allowed the respondent Trust to enter upon the land and put up construction is beyond his power. The Revenue Standing Order No.24, provides for disposal of Government land and the power to dispose Government land in favour of private person was originally vested in the Board of Revenue, under the Standing orders of the Board of Revenue and after abolition of the Board of Revenue, the said powers came to be exercised by the Special Commissioner and the Commissioner of Land Administration. Even the Commissioner of Land Administration had no power to sanction alienation of Government land in favour of private persons, if the value of the land proposed to be alienated is above Rs.3,000/-.

16. In 1989, the Revenue Standing orders were amended by providing for alienation of Government land of a particular value by certain officers of the Government. Even there, the District Revenue Officers' power was extended only up to Rs.50,000/-. Therefore, it is clear that the proceedings of the District Revenue officer order dated 06.11.1984, is beyond his powers.

17. Mr.Suresh Kumar, learned counsel appearing for the respondent Trust would, however, contend that in view of the proceeding of the Commissioner of Land Administration, dated 28.10.1995, wherein, the market value of the land was fixed at Rs.1,97,857/- by the Commissioner of Land Administration. The respondent Trust would be entitled to alienation of the land at that price and nothing more. It should be pointed out that the proceedings dated 28.10.1995, is only a recommendation by the Commissioner of Land Administration to the Government and there is nothing to show that the Government had in fact accepted the said recommendation. The Government had only after considering the recommendation of the Commissioner of Land Administration dated 28.10.1995, passed the impugned Government Order, wherein, it had stated that the land could be alienated in favour of the respondent Trust by collecting twice the market value of the land.

18. Therefore, we are unable to find any assurance or promise made by the Competent Authority to the respondent, with reference to the alienation of land in question. May be there is some delay, on the part of the Government in processing of the request of the applicant for alienation of the Government land. We do not think that the said delay could be put against the Government in a case of this nature where the respondent Trust has no vested right to seek alienation of the Government land. The very standing order viz. the Revenue Standing Order No.24 is an enabling provision and does not create a right on any individual to seek assignment of Government land for any purpose.

19. In the light of the above, we are constrained to conclude that the learned Single Judge was not right in directing the Government to part with its land, at a price that was deliberated upon in 1995, in the absence of any material to show that the Government had at any point of time accepted the proposal for alienation of the land at the price fixed in 1995. After all the land belongs to the Government and it is for the Government to decide, at what cost it would alienate its land. We do not think, this Court could issue a Writ of Mandamus, directing the Government to alienate its land at a particular price that too to a private Trust for running a Self-Financing Educational Institution.

20. In the light of the above, we are constrained to set aside the order of the learned Single Judge made in WP Nos.8965 and 8966 of 2004. In fine the Writ Appeals are allowed, the order of the learned Single Judge in WP Nos.8965 and 8966 of 2004 will stand set aside and both the Writ Petitions will stand dismissed. However, the facts and circumstance of the case, there will be no order as to costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Secretary to Govt.,
Government of Tamil Nadu,
Revenue Department.
Fort St. George, Chennai 600 009.

2. The Secretary to Govt.,
Government of Tamil Nadu,
High Education Department,
Fort St. George, Chennai 600 009.

3. The Special Commissioner and
Commissioner of land Administration
Chepauk, Chennai 600 005.

4. The Collector,
Sivagangai District.

5. The District Revenue Officer,
Sivagangai.

6. The Tahsildar,
Manamadurai,
Sivagangai District.

+1cc to Mr.S.ASHOKKUMAR, Advocate, S.R.No.30152
+1cc to Mr.M.SURESHKUMAR, Advocate, S.R.No. 30185

Pre Delivery Judgment in
W.A.Nos.1637 & 1638 of 2017
and CMP Nos.21325 & 21327 of 2017

VG II(CO)
TR(14/05/2018)