

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NOS.28 AND 29 OF 2018
AND WMP NOS.34 AND 35 OF 2018

Revoor Padmanabha Chetty's
Educational Trust
Rep. by its Managing Trustee
and Correspondent R.Prabhakar
Old No.83, New No.155, T.H.Road,
Kaladipet,
Chennai - 600 019.

... Petitioner in
W.P.No.28 / 2018

Dr.Rohit

... Petitioner in
W.P.No.29 / 2018

Versus

1. The District Collector
Thiruvallur District,
Thiruvallur.
2. The Tahsildar
Thiruvottiyur Taluk,
Thiruvottiyur.
3. The District Revenue Officer / Legal Officer
Chennai Metro Rail Limited
CMRL Depot, Admin Building,
Poonamallee High Road,
Koyambedu, Chennai - 600 107.

... Respondent 1-3
in both WPs'

PRAYER IN W.P.NO.28 / 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent in his notice Na.Ka.No.1762/2017/A1 dated 28.10.2017 and quash the same and forbearing the respondents from any way summarily evicting the petitioner from the School building and the shops situated in lands in T.S.No.145/1 and 145/2 admeasuring 2.0 sq.mts out of 350 sq.mts T.S.No.146 admeasuring 43.0 sq.mts out of 170 sq.mts and T.S.No.144 admeasuring 38.5 sq.mts out of 543 sq.mts situated in Sathangadu Village, Manali Sub Taluk, Tiruvottiyur Taluk, Thiruvallur District.

PRAYER IN W.P.NO.29 / 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent in his notice Na.Ka.No.1762/2017/A1 dated 28.10.2017 and quash the same and forbearing the respondents from any way summarily evicting the petitioner from the Hospital building and land, situated in lands in T.S.No.47/1 admeasuring 109.5 sq.mts out of 3198 sq.mts situated in Sathangadu Village, Manali Sub Taluk, Tiruvottiur Taluk, Thiruvallur District.

For Petitioner : Mr.A.Govindasamy
(in both WPs')

For Respondents : Mr.A.N.Thambidurai
1 and 2 Special Government Pleader
(in both WPs')

For Respondent 3:Mr.R.Thiyagarajan
(in both WPs') Senior Counsel for Mr.Jayesh B.Dolia

COMMON ORDER

(ORDER OF THE COURT WAS MADE BY M.SATHYANARAYANAN, J.)

By consent, both the writ petitions are taken up for final disposal and disposed of by this common order, as the points urged to be adjudicated, are one and the same.

2. The learned counsel for the petitioners would submit that the lands which are the subject matter of acquisition, by the third respondent, originally belonged to Revoor Padmanabha Chetty and he purchased the same, in an auction sale, conducted by the Court, as per the judgment and decree dated 29.10.1952 in Application No.2575 of 1951 in C.S.No.306 of 1947.

3. The said person had purchased 14 grounds of land and building at Door No.70, T.H.Road, Kaladipet, Chennai-600 019, comprised in S.Nos.173, 173/M, 173/1, 173/56, 173/55, 173/56B.1 Pymash No.29, 3 grounds and 398 sq.ft or thereabouts and it was settled in favour of Revoor Padmanabha Chetty's Charities and a deed of endowment was also created and registered as Document No.1900 of 1956 in the Office of the Joint Sub Registrar, Sembium. Out of the said extent of land, 10 grounds and 2008 sq.ft or thereabouts was also settled in favour of the said Charities and registered as Document No.2356 of 1957 dated 18.10.1957 in the Office of the Joint Sub Registrar, Sembium. The said Charities, in turn, had executed a registered sale deed dated 15.03.1976, bearing Document No.326 of 1976, in favour of M/s.Swastik Agency. It is also pleaded that one Dr.Sheila

Sathiakumar, wife of Dr.Sathiakumar also executed a sale deed dated 29.12.2011 in favour of the said Trust, in respect of the land and building at Door No.82, T.H.Road, Kaladipet, Chennai and they claimed to be in possession and enjoyment of the same.

4. Similarly, the petitioner in W.P.No.29 of 2018 would plead that the land in question originally belonged to T.Shanmugam Pillai, son of Irusappa Gramani and he had purchased the same on 10.02.1929 and it was divided by his legal representatives among themselves and registered as Document No.1990 of 1968 dated 08.05.1968 on the file of the Office of the Sub Registrar, Madras. Mrs.Duraiammal has got a share in the property and she in turn executed two lease deeds bearing Document Nos.1009 of 1980 and 1777 of 1980, dated 24.04.1980 and 29.08.1980 respectively, in favour of the petitioner. It is further averred that the said Duraiammal subsequently executed a Will dated 09.10.1986 in favour of her brother's daughter, namely Tmt.Anjugam, wife of Raja and she got the Will probated in O.P.No.96 of 1990 (T.O.S.No.15 of 1990) who in turn sold the property in favour of the petitioner vide registered sale deed dated 31.07.2002. The petitioner claims to be in possession and enjoyment of the same and also running the Hospital.

5. A portion of the land belonging to the petitioner in W.P.No.28 of 2018 and a portion of the land belonging to the petitioner in W.P.No.29 of 2018 was acquired by the third respondent / Chennai Metro Rail Limited. When the petitioners' claimed compensation, it was refused to be paid on the ground that the lands are classified as "Grama Natham" and that those lands are also used for commercial purposes. The petitioners were also issued impugned notices under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. Challenging the legality of the same, the petitioners also filed statutory appeals dated 20.11.2017, before the first respondent and apprehending dispossession and further action in terms of the acquisition proceedings, pending disposal of the appeals, they came forward with these writ petitions challenging the said impugned notices.

6. The learned counsel for the petitioners would submit that the title of the respective petitioners to the lands sought to be acquired have been traced out and he would further add that once the lands are classified as "Grama Natham", the provisions of the Tamil Nadu Land Encroachment Act, 1905 (shortly "the Act") cannot be invoked at all and the second respondent / Tahsildar, Thiruvottiyur Taluk, without properly looking into the records and legal position, had erroneously issued notices under Section 7 of the Act, and therefore, prays for interference.

7. Mr.A.N.Thambidurai, learned Special Government

Pleader appearing for the respondents 1 and 2 would submit that as per the classification, the lands are shown as "circar poramboke" and only the usage is classified as "Grama Natham" and as such, the second respondent is entitled to invoke the provisions of the Act and prays for dismissal of both the writ petitions.

8. Mr.R.Thiyagarajan, learned Senior Counsel for Mr.Jayesh B.Dolia, learned counsel appearing for the third respondent would submit that assuming for the sake of arguments that the lands are classified as "Grama Natham", the fact remains that the lands can be used only for commercial purposes and as such, the petitioners cannot claim that the provisions of the Act have no application and he would further add that since the lands are classified as "Grama Natham" and that can only be used for commercial purposes, the petitioners are not entitled for compensation and prays for dismissal of both the writ petitions.

9. This Court has carefully considered the rival submissions and also perused the materials placed before it.

10. It is relevant to extract Section 10 as well as Section 10-B of the Tamil Nadu Land Encroachment Act, 1905.

"10. An appeal shall lie (a) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar '[or an authorized officer] under this Act, and (b) to the District Collector from any decision or order of a Collector passed otherwise than on appeal, and (c) to the Board of Revenue from any decision or order of a District Collector passed otherwise than on appeal.

10-B. Pending the disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, the Board of Revenue, or the State Government, as the case may be, may by order, and subject to such conditions as may be specified therein, stay the execution of the decision or order appealed against or sought to be revised. "

11. Admittedly, the writ petitioners had invoked Section 10 of the Act and filed appeals before the first respondent on 20.11.2017 and the said appeals are sought to be disposed of. This Court, while entertaining the writ petitions, has also granted interim order of status quo and thereby protected the possession of the petitioners to the lands in question.

12. This Court, taking into consideration the above facts and circumstances, and without going into the merits of the respective claim projected by the petitioners, as well as by the respondents, directs the first respondent or the delegated appellate authority, to entertain the appeals dated 20.11.2017, if the papers are otherwise in order, and after affording an opportunity of hearing to the petitioners or their authorised representatives, shall consider and dispose of the said appeals, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioners.

13. Till such time, the respondents shall not disturb the possession of the petitioners, in respect of the lands in question. It is also made clear that the petitioners, till the disposal of the appeals, by the first respondent or the delegated appellate authority, shall not create any third party rights, in respect of the site/super structure, said to have been in their possession and shall not alter physical features also.

14. Both the writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

TK
To

1. The District Collector
Thiruvallur District,
Thiruvallur.
2. The Tahsildar
Thiruvottiyur Taluk,
Thiruvottiyur.
3. The District Revenue Officer / Legal Officer
Chennai Metro Rail Limited
CMRL Depot, Admin Building,
Poonamallee High Road,
Koyambedu, Chennai - 600 107.

+1 CC to Mr.Jayesh B.Dolia, Advocate sr 36525.
+2 CC to Mr.A. Govindasamy, Advocate sr 36502.
+1 CC to Govt. Pleader sr 37508

W.P.NOS.28 AND 29 OF 2018

SP(18/06/2018)



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