

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2018

CORAM

THE HON'BLE Mr. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.28018 of 2017

and

W.M.P.Nos.30073 & 30074 of 2017

and W.M.P.No.3489 of 2018

S.Soundararajan

... Petitioner

Vs.

1. The Director,
O/o the Director of Fisheries,
Fisheries Department, DMS Campus,
Teynampet,
Chennai - 600 006.

2. The Assistant Director of Fisheries,
Kanchipuram District @ Neelangarai,
Chennai - 115.

3. The District Collector,
O/o The Collectorate,
Kancheepuram District.

4. The Executive Engineer,
Bharat Sanchar Nigam Ltd.,
Civil Division-III,
Chennai.

... Respondents

Writ petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned order of the 3rd respondent made in Ref.No.Na.Ka.No.21030/2015/Aa1 dated 07.08.2017 and quash the same as it is arbitrary, illegal and violative of principles of natural justice.

For Petitioner : Mr.V.Subramanian

For Respondents : Mr.R.Govindsamy,
Special Government Pleader
for R1 to R3
Mr.S.Udayakumar for R4.

O R D E R

This writ petition is filed by the petitioner challenging the order of the 3rd respondent dated 07.08.2017, wherein and whereby, the subject matter land in S.No.221/5 situated at Perur Nemmili Village, Thiruporur Taluk, was transferred to Fisheries Department for the purpose of establishing/developing communication towers as part of executing the World Bank Funded Scheme for Coastal Disaster Risk Reduction Project (CDRRP).

2. The case of the petitioner is as follows:

The subject matter property was originally assigned to one Perumal on 30.12.1948 and thus, he became the absolute and exclusive owner of the property. After the death of the said Perumal in the year 1985, his legal heirs sold the said property to one Rajkumar Sethupathy. Thereafter, the said property was sold to one Ashish Suri & Robert Suri, from whom, the petitioner purchased the said property through their power agent on 11.03.1996 and under Document No.570/1996. Subsequent to the purchase, the petitioner applied for mutation of the revenue records where the said property was wrongly mentioned as "Tharisu". In the year 1998, the petitioner sold a portion of the property to two persons measuring an extent of 10.65 cents. Consequently, the petitioner is in enjoyment of the remaining extent of the said lands. The petitioner also filed a suit in O.S.No.28/2016 against the third parties for permanent injunction and obtained an interim injunction as well. While so, the 3rd respondent, through the impugned proceedings transferred the petitioner's property in favour of Fisheries Department. Therefore, the present writ petition is filed with the relief as stated supra.

3. The 1st and 2nd respondent filed a counter affidavit wherein it is stated as follows:

The Fisheries Department is implementing the World Bank Funded Scheme for providing Seamless Communication Network Facilities for ensuring the safety and security of marine fishermen of Tamilnadu as part of Coastal Disaster Risk Reduction Project at an estimated cost of Rs.62.14 crores. The Scheme proposed to provide 5 watt and 25 watt VHF sets to the marine fishermen of Tamil Nadu and facilitate communication between the control rooms at Land and Fishing crafts inside the sea, for which, establishing Tower network facilities is inevitable. One among the said towers is to be established at S.No.221/5, Perur Nemmili Village, Thiruporur Taluk, which is the subject matter land herein. The said land is a promboke (Punjai Tharisu). The Revenue Inspector, Kelambakkam, had given a public notice on 03.09.2015 seeking objections, if any, from

the public within 15 days of such announcement, for allotting the land to Fisheries Department. The petitioner has not responded to the said public notice. The District Collector has instructed the Tahsildar, Thiruporur, to verify the facts and details on the request of Fisheries Department for transfer of land. The District Revenue Officer through proceedings dated 23.12.2015 to the District Collector informed that the land at Survey No.221/5 shall be recommended to Government for transfer to Fisheries Department. Thereafter, the District Collector has transferred the subject matter land to the Fisheries Department for construction of new 100 m Tower and control room. The claim of the petitioner that he is in possession and enjoyment of the said land is in contradiction to the Government records.

4. Learned counsel for the petitioner vehemently contended that the subject matter property is a private property of the petitioner, over which, the respondents have no right or title. He further contended that the claim of the petitioner is supported by very many documents and therefore, the transfer of the land by the Revenue Department in favour of the Fisheries Department, cannot be sustained. He also sought further time to produce relevant records before this Court to establish the title of the petitioner.

5. On the other hand, the learned Special Government Pleader appearing for the respondents vehemently contended that the subject matter land is a promboke land and all the revenue records clearly indicate the said fact. Therefore, he submitted that the transfer of the land which is impugned in this writ petition cannot be questioned by the petitioner.

6. Heard both sides.

7. Perusal of the impugned order would show that the same was not passed against the petitioner. On the other hand, it is an order passed by one wing of the Government transferring a Government promboke land in favour of its other wing viz., Fisheries Department for the purpose of establishing/ erecting the tower as stated supra. No doubt, the petitioner claims that he is the owner of the said property and therefore, the respondents cannot have any right or title. Needles to say that this Court, while exercising the jurisdiction under Article 226 of the Constitution of India cannot decide the title of the parties in respect of the properties in dispute, as it is for him to agitate and establish such right before the competent Civil Court. Moreover, in this case, the impugned order as stated supra, is not an order passed against the petitioner and on the other hand, it is an internal communication between two Departments of same Government transferring the subject matter land from one to another. It is the categorical case of the

respondents that the subject matter land is the Government promboke land. Therefore, unless and until the petitioner establishes his title by filing appropriate civil proceedings before the competent Civil Court, he is not entitled to question the impugned order, more particularly, when the same was not passed against the petitioner. At this juncture, it is also to be noted that when a public notice was issued as early as on 03.09.2015 calling upon the public to give their objections, if any, against such transfer of the land, the petitioner has not chosen to give any objection. Therefore, I do not think that the petitioner can maintain the present writ petition, that too, to challenge the said internal communication made between the respective Departments. Considering all these facts and circumstances, the request of the learned counsel for the petitioner for producing the additional documents is also rejected, since this Court is of the view that such disputed question of fact on title to a property cannot be gone into in this writ petition. Accordingly, the writ petition fails and the same is dismissed, however, by giving liberty to the petitioner to agitate the matter before the competent Civil Court. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Director,
O/o the Director of Fisheries,
Fisheries Department, DMS Campus,
Teynampet,
Chennai - 600 006.
2. The Assistant Director of Fisheries,
Kanchipuram District @ Neelangarai,
Chennai - 115.
3. The District Collector,
O/o The Collectorate,
Kancheepuram District.

4. The Executive Engineer,
Bharat Sanchar Nigam Ltd.,
Civil Division-III,
Chennai.

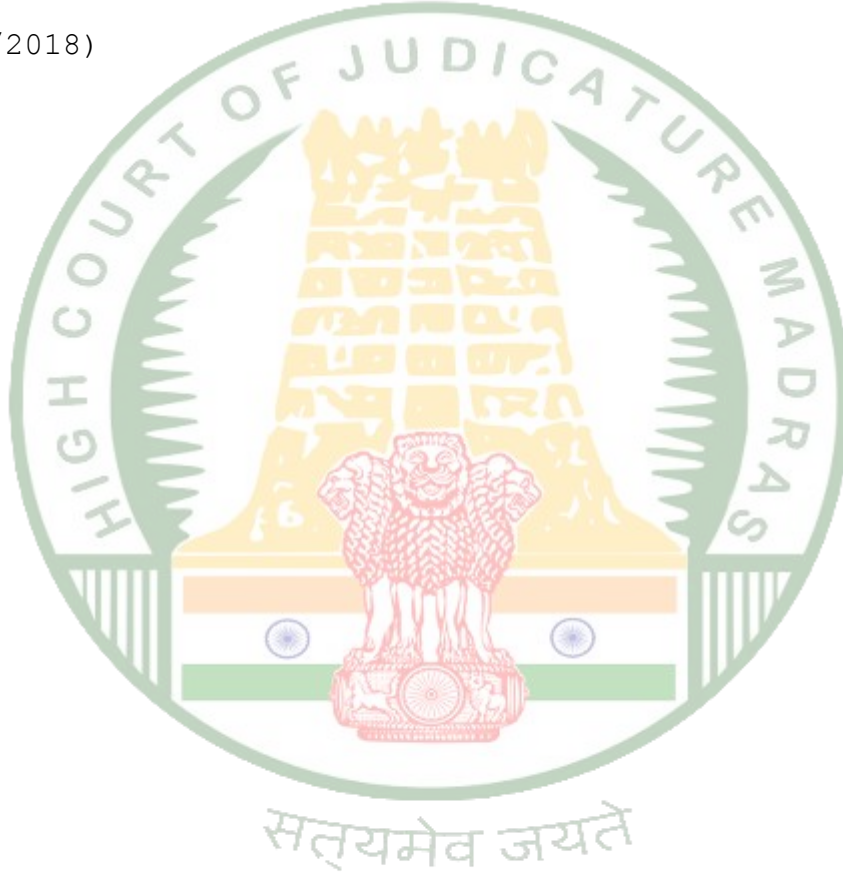
+1cc to Mr.V.Subramaniam, Advocate, S.R.No.12835

+1cc to Mr.S.Udayakumar, Advocate, S.R.No.13140

W.P.No.28018 of 2017

VS (CO)

RRK (07/03/2018)



WEB COPY