

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.2212 OF 2018

K.V.RATHNAM

... Appellant

Vs

1 THE DIVISIONAL ENGINEER (H)
CUM - HIGHWAYS AUTHORITY
CHENNAI CITY ROAD DIVISION
CHENNAI - 600 006.

2 THE ASSISTANT DIVISIONAL ENGINEER (H)
CHENNAI CITY ROAD SUB - DIVISION I
CHENNAI - 600 115.

3 THE ASSISTANT ENGINEER (H)
CHENNAI CITY ROAD SECTION III
CHENNAI - 600 015.

4 THE EXECUTIVE ENGINEER
HIGHWAYS DEPARTMENT SAIDAPET DIVISION
CHENNAI - 500 028.

L.RAMALINGAM (DECEASED)
33/23 NETHAJI NAGAR VILLIVAKAM KORATTUR
CHENNAI.

5 R.RAJKUMAR
(LEGAL HEIR OF DECEASED L.RAMALINGAM) S/O.
LATE L.RAMALINGAM 33/23 NETHAJI NAGAR
VILLIVAKAM KORATTUR CHENNAI Respondents

Appeal filed Under Clause 15 of the Letters Patent against
the order passed by this Court dated 28.06.2018 passed in
W.P.No.33341 of 2006.

Prayer in W.P.No.33341 of 2006:

Petition filed under Article 226 of the constitution of India seeking to issue a Writ of Mandamus forbearing the respondents from demolishing the building constructed in the patta land in an extent of 5600 sq.ft comprised in Survey No.150/1 and 150/2 Korattur Village, Ambattur Taluk, Tiruvallur District.

For appellant : Ms.M.Dhivya

For Respondents : Mr.A.Kumar,
Additional Advocate General,
assisted by Ms.Thangavadhana Balakrishna,
Additional Government Pleader,
for respondents 1 to 4

J U D G M E N T

(delivered by K.K.SASIDHARAN, J.)

This is the case of an agreement holder agreeing to purchase the land acquired by the Government of Tamil Nadu for widening the State Highway, pursuant to the award No.1/87 dated 7 January 1987. The appellant, on the basis of the sale agreement dated 31 August 1998, executed by a person who had no title, constructed a commercial building and resisted the action initiated by the Highways Department for eviction, all these years. The initiation of writ petition is the final attempt to protect the illegal possession of the Government land.

The facts:-

2. The appellant filed a Writ Petition in W.P.No.33341 of 2006 for issuance of a Writ of Mandamus forbearing the respondents from demolishing the building constructed in Survey No.150/1 and 150/2, Korattur village, Ambattur Taluk. The appellant in the said Writ Petition, claimed that he purchased 5600 sq.ft. of land in Survey No.150/1 and 150/2 from Mr.Ramalingam, as per sale agreement dated 31 August 1998. Even though the entire sale consideration was paid, sale deed was not executed by the vendor. The appellant claimed that he was put in possession of the land. The appellant constructed a huge building and commenced business in steel and hardwares.

3. The Highways Department claimed ownership of the land on the strength of the award No.1/87, and took series of measures to evict the appellant. The appellant initiated string of

proceedings and throttled the attempt. When a notice calling upon the appellant as to why he should not be evicted was issued on 23 March 2006, he filed a Writ Petition in W.P.No.33341of 2006. The petitioner obtained an interim order of injunction restraining the respondents from taking possession and continued to occupy the land all these years.

4. The Writ Petition was taken up for final hearing by the learned Single Judge. The learned Single Judge, on the basis of the documents available on record, arrived at a finding that the subject property belongs to the Highways Department and terming the appellant as an encroacher, dismissed the Writ Petition. Feeling aggrieved, the appellant has come up with this intra court appeal.

Submissions:-

5. The learned counsel for the appellant contended that the appellant has been in possession and enjoyment of the land right from 31 August 1998. According to the learned counsel, the land originally belonged to Thiru.Vasudeva Gramini and Thiru.Ponna Veerasamy Naicker. It was only from the then landowners, Thiru.Ramalingam, the vendor purchased the land. Sub division was carried out by the revenue officials in respect of the land in Survey No.150/1. The learned counsel contended that the Highways Department has no right to evict the appellant from the subject property.

6. The learned Additional Advocate General by producing the "A" Register maintained by the Revenue Department, contended that the land was acquired as per Award No.1/87. According to the learned Additional Advocate General, the entire land owned by the then landowners in Survey No.150/1 and 150/2 were acquired by issuing notification under the provisions of the Land Acquisition Act, 1894. The District Collector passed the award and thereafter possession was taken and it was handed over to the Highways Department. The learned Additional Advocate General contended that the subject property was kept as reserve land for future expansion of road. The appellant is only an agreement holder. Since his vendor has no title to the property, the appellant would not get a better right to keep possession of the land acquired for the Highways Department.

Discussion:-

7. The land in Survey No.150/1 and 150/2, Korattur Village, was originally owned by Thiru.Sali Naidu and others. The land in Survey No.150/1 was having a total extent of 30 cents. Similarly, the land in Survey No.150/2 was having a total extent of 50 cents. The entire extent of land in Survey No.150/1 and 150/2 were notified for acquisition, along with a larger extent, as per notification issued under Section 4(1) of the Act and the

subsequent declaration under Section 6 of the Act, published in G.O.Ms.No.706 (H & UD) dated 31 August 1984. The District Collector, after conducting necessary enquiry, passed an award. The land was taken possession by the Land Acquisition Officer and it was handed over to the Highways Department.

8. We have perused the entire revenue records relating to the property in question.

9. The documents very clearly show that the entire land in Survey No.150/1 and 150/2, Korattur Village, were acquired by the Government for and on behalf of the Highways Department. It was acquired for forming the inner ring road under the World Bank Project. The total extent was 22.80 acres. It also included Survey No.150/1 and 150/2. There was no challenge to the land acquisition at the instance of the landowners, who were parties to the entire proceedings. The award was passed in Award No.1/87 dated 7 January 1987. The appellant has claimed possession on the basis of certain entries made by the Revenue Department earlier. The then Tahsildar sub divided the land in Survey No.150/1 as 150/1A1A1A2, 150/1A1A1A3, 150/1A1A1A4, 150/1A1A1A5, 150/1A1A1A6. The sub division was made notwithstanding the fact that it was a Government land, which was in the possession of the Highways Department, pursuant to the award. The Revenue Divisional Officer, Saidapet, conducted a detailed enquiry with respect to the fraudulent act committed by the Tahsildar and cancelled the sub division by order dated 28 March 1995. The order is available on record. There was no challenge to the said order either at the instance of the landowners or by the vendor, who executed the agreement in favour of the appellant on 31 August 1998.

10. There is a document dated 5 April 2006 found in the typed set of papers produced by the appellant. The said document is in the nature of a reply given by the appellant to the Sub Divisional Engineer, Highways Department. In the said explanation, the appellant has very clearly stated that the land was originally owned by Thiru.Vasudeva Gramani and Thiru.Ponna Veerasamy Naicker and the total extent was 80 cents. The survey number was mentioned as 150/1 and 150/2. Therefore, even the appellant has admitted that the land originally belonged to third parties. The entire land owned by the landowners in Survey Nos.150/1 and 150/2 was acquired. There was nothing left to be retained by the landowners so as to enable them to assign it subsequently.

11. The Highways Department in its counter affidavit very clearly stated that the subject land was kept for future expansion of the State highway. The vendor who executed the sale agreement in favour of the appellant on 31 August 1998 made an

attempt to take possession of the land, having found that it was kept idle by the Highways Department. The Revenue Officials initially abetted in the act of land grabbing. The appellant succeeded in keeping possession of the land by constructing a non residential building. The appellant at all point of time threatened the Highway officials that the High Court is seized of the matter and as such, it would not be possible for them to evict him from the subject premises. There was no attempt even by the Highways Department to bring the Writ Petition for final hearing. The officials, for the reasons best known, indirectly assisted the appellant to keep in possession of the land in question.

12. The appellant has no right, title or interest in respect of the land owned by the Highways Department. He is a rank trespasser. The appellant stalled the statutory proceedings all these years. Now it is time for handing over possession to the Highways Department.

13. We direct the appellant to handover vacant possession of the land in Survey Nos.150/1 and 150/2, Korattur village, Ambattur Taluk, to the first respondent, within a period of fifteen days from the date of receipt of a copy of this judgment.

14. The intra court appeal is dismissed without any liability to pay costs. Consequently, C.M.P.No.17374 and 17376 of 2018 are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

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+lcc to M/S.T.K.S.Gandhi, Advocate Sr.68918
+lcc the Government Pleader Sr.68835

W.A.No.2212 OF 2018

srg 08/10/2018



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