

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.11.2018

CORAM

THE HONOURABLE MR.JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

WA.No.2559 of 2018 and
CMP.No.20659 of 2018

J.Sathiyabama ...Appellant/Petitioner

Vs

- 1.The Principal Secretary to the Government,
Revenue and Disaster Management Department,
Secretariat, St.George Fort, Chennai-600 009.
- 2.The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, St.George Fort, Chennai-600 009.
- 3.The Additional Chief Secretary to the Government &
the Commissioner of Land Administration,
Chennai-600 005.
- 4.The District Collector,
Tiruvallur District, Tiruvallur-602 001 (Now Chennai District)
- 5.The District Revenue Officer,
Tiruvallur District, Tiruvallur-602 001 (Now Chennai District)
- 6.The Revenue Divisional Officer,
Ambattur Division, Anna Nagar (W) Extn., Chennai-600 101.
- 7.The Tahsildar,
Ambattur Taluk, ambattur, Chennai-600 053.
- 8.Mr.N.Ponsingh

...Respondents/Respondents

PRAYER:- Writ Appeal filed under clause 15 of the Letter Patents
to set aside the dismissal order passed by this Court dated
31.07.2018 passed in WP.No.19599 of 2018.

WP.No.19599 of 2018:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 21.09.2017 made in G.O.(Ms) No.308 Revenue & D.M.(LD2(1))Department passed by the 1st respondent to quash the same as illegal arbitrary and unsustainable under law and consequently direct the 1st respondent to grant the lease hold rights based on the petitioners representation dated 09.02.2016 in respect of lands to an extent 7 1/2 cents belonging to the Home and Revenue Department comprised in S.No.320/2B and S.No.320/2C of Padi Village Ambattur Taluk Tiruvallur District

For Appellant : Dr.P.Vasudevan

For Respondents : Mr.A.Ansar, Government Advocate
for R1 to R7

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

The writ petitioner is the appellant herein and she filed W.P.No.19599 of 2018, praying for issuance of Writ of Certiorarified Mandamus to quash the G.O.Ms.No.308, Revenue & D.M. [LD2(1)] of the 1st respondent dated 21.09.2017, with a consequential direction to grant her leasehold rights based on her representation dated 09.02.2016 in respect of the lands admeasuring to an extent of 7 1/2 cents to the Home and Revenue Department comprised in S.No.320/2B and 1 cent of Revenue Department land comprised in S.No.320/2C of Padi Village, Ambattur Taluk, Thiruvallur District for the purpose of constructing superstructure of a multi-brand two wheeler show room. The writ petition, after contest, came to be dismissed, vide impugned order dated 31.07.2018 and challenging the legality of the said order, he has filed this writ appeal.

2. The appellant / writ petitioner had made a request for lease of the said land for a minimum period of 15 years to set up multi brand two wheeler show room with an undertaking to pay a sum of Rs.20,00,000/- at an average lease rent per annum. Since the said request has not been considered and disposed of, the appellant / writ petitioner filed W.P.No.15805 of 2016, praying for Writ of Mandamus directing the respondents to consider the representation of the petitioner dated 09.02.2016 and this Court has disposed of the writ petition by directing the concerned authorities to consider and dispose of her representation within a stipulated time. Accordingly, her request was considered and on a detailed consideration of the

factual aspects, the 1st respondent vide impugned order in G.O.Ms.No.308 dated 21.09.2017 has rejected the said request.

3. The learned counsel appearing for the appellant would submit that originally, the land was illegally sold out in favour of one Mr.Ponsingh and against the said fraud, criminal action has also been taken and when the writ petitioner / appellant applied for the lease of the land, it was opposed by Thiru. Ponsingh as well as by Thiru.V.M.Chicago, who has illegally sold the said land in favour of Mr.Ponsingh and without understanding the actual situation that in the event of lease of the land, the land will be protected from the encroachers, the 1st respondent has erroneously rejected such a request through the impugned Government order and therefore, prays for interference.

4. Per contra, Mr.A.Ansar, learned Government Advocate accepts notice on behalf of the official respondents and would submit that since the land in question is recommended for public purpose, a decision has been rightly taken to reject the said request and also invited the attention of this Court to the reasons assigned by the learned Judge in dismissing the writ petition and prays for dismissal of the writ appeal with exemplary costs.

5. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

6. It is not in dispute that the land admeasuring to an extent of 7 1/2 cents belonged to the Home and Revenue Department comprised in S.No.320/2B and 1 cent of Revenue Department land comprised in S.No.320/2C of Padi Village, Ambattur Taluk, Thiruvallur District, belonged to Home and Revenue Department of Tamil Nadu. A perusal of the impugned order of the 1st respondent in G.O.Ms.No.308 dated 21.09.2017 would disclose that originally the land was leased out in favour of one Mr.V.M.Chicago for a period of three years vide G.O.(Ms). No.841, Revenue Department dated 11.05.1998 and he illegally sold the said land in favour of one Mr.Ponsingh and after some delay, fraud was detected and the land was also resumed in favour of the Government. In the considered opinion of this Court, that the public land of 7 ½ cents that too located in a prime locality has not been properly used and it enable the Lessee to sell the land in favour of somebody and thereby resorted to alleged illegal actions.

7. The primordial submission made by the learned counsel appearing for the appellant / writ petitioner is that since the land remains vacant without yielding any revenue, she is entitled to get the lease of the land. The said Government Order has also disclosed that the father-in-law of the petitioner himself, had obtained free house site assignment of 0.01 cent in S.No.320/2C and also obtained an extent of 2.40 sq.ft of land in the same survey number on lease basis for running an Art Shop and the learned counsel appearing for the appellant on instructions would submit that lease amount has been paid properly in respect of the said extent of land.

8. The appellant / writ petitioner, as a matter of right, cannot ask for the concerned Department of the Government to lease out the land in his favour. In the considered opinion of this Court, she is not having subsisting or vested with legal right to make such a demand. A perusal of the Government Order would disclose that the Government has taken a fair decision to earmark the said land for construction of T3 Korattur Police Station or Ambattur Deputy Commissioner of Police Office. Since the land in question is intended to be used for public purpose coupled with the fact that the appellant / writ petitioner has not been vested with legal right to ask for lease of the land, the reasons assigned by the learned Single Judge for dismissing the writ petition, do not warrant interference. It is also to be pointed out at this juncture, the Government, being the custodian of its own property, is under obligation to protect it's property from encroachers or occupiers and paragraph No.3.2 of the said Government Order also points the same as to the efforts and endeavor taken by the concerned department to protect the land.

9. This Court, on an independent application of mind to the entire materials placed, is of the considered opinion that there is no error apparent or infirmity in the reasons assigned by the learned Judge in dismissing the writ petition and finds no merits in the writ appeal.

10. In the result, the writ appeal stands dismissed confirming the order dated 31.07.2018 made in W.P.No.19599 of 2018. No costs. Consequently connected miscellaneous petition is closed. In the light of the above facts and circumstances, concerned officials of the Home and Revenue Department of the Government of Tamil nadu are directed to file a status report as to further action taken as to the observation made in Paragraph No.3 (ii) of G.O.Ms.308 Revenue Department dated 21.09.2017 as

well as the endeavor taken by them to utilise the said land for public purpose.

11. Call on 17.12.2018. Status report of the concerned officials of the said Department by then.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

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To

1. The Principal Secretary to the Government,
Revenue and Disaster Management Department,
Secretariat, St.George Fort, Chennai-600 009.
2. The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, St.George Fort, Chennai-600 009.
3. The Principal Secretary to Government,
Home Department, Secretariat, Fort St.George,
Chennai-9.
4. The Additional Chief Secretary to the Government &
the Commissioner of Land Administration,
Chennai-600 005.
5. The District Collector,
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6. The District Revenue Officer,
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7. The Revenue Divisional Officer,
Ambattur Division, Anna Nagar (W) Extn., Chennai-600 101.
8. The Tahsildar,
Ambattur Taluk, Ambattur, Chennai-600 053.

Copy To
The Section Officer,
Writ Section, High Court, Madras-104

WA.No.2559 of 2018

SR(co)
GSP/17/12/2018