



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2018
(Reserved on 30.08.2018)

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.2883 of 2018

and

W.M.P(MD)Nos.3043, 3044 and 15521 of 2018

Tamilnadu State Transport
Corporation (Tirunelveli) Ltd.,
Tirunelveli,
Rep by its Managing Director,
No.19, Trivandrum Road,
Vannarpet Post,
Tirunelveli-627 003.

... Petitioner

vs.

1)The State of Tamil Nadu,
Rep by its Principal Secretary,
Revenue and Disaster Management Department,
Fort St.George,
Chennai-600 009.

2)The Principal Secretary/Commissioner,
(Urban Land Ceiling and Urban Land Tax),
Chepauk,
Chennai-600 005.

3)The District Collector,
Tirunelveli District,
Collectorate, Kokkirakulam,
Tirunelveli.

4)The Assistant Commissioner(Urban Land Tax),
Tirunelveli Division,
Tirunelveli-2.

5)Raja Rehnius

6)Jeyanth Rehnius

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent made in G.O.No.320, Revenue and Disaster Management Department dated 06/10/2017 and quash the same pertaining to Survey No.287/3D of VM Chartam Village, Tirunelveli, to an extent of 2564 sq mt and consequently direct the respondents not to interfere in the ownership and the peaceful possession of the petitioner with reference to the above



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For Petitioner : Mr.V.Sasitharan
For R1 to R4 : Mr.R.Murugan
Additional Government Pleader
For R6 : Mr.R.J.Karthick

ORDER

This Writ Petition is filed by the petitioner/The Tamilnadu State Transport Corporation (Tirunelveli) Limited, seeking to quash the G.O.No.320 Revenue and Disaster Management Department, dated 06.10.2017, pertaining to Survey No 287/3D of VM Chatram Village, Tirunelveli, to an extent of 2564 Sq.Mt.

2.The impugned G.O dated 06.10.2017 had directed the second respondent authority to cancel the allotment of the above disputed land to the petitioner subsequent to the Order dated 05.10.2010 of this Court in Writ Petition No.37053 of 2007.

3.The Order of this Court in Writ Petition No.37053 of 2007 had declared that the land acquisition proceedings initiated under the provisions of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978 in respect of the lands comprised in Survey Nos.287/3/4 and 287/3 measuring 0.53.0 hectares situated in VM Chatram, Palayamkottai, Tirunelveli District, stands abated in view of the Urban Land Ceiling Repeal Act, 1999.

4.The above decision of this Court was arrived at on the basis of the conclusion that the competent reviewing authority under the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978, had allowed the petitioners therein to retain the land holdings on the ground that they are used as agricultural land. It observed that once the order of the competent authority has become final, it is not open to the respondents government to deem that the said lands continued to have been acquired under the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978.

5.The above said Writ Petition No 37053 of 2007 was filed by the 5th and 6th respondents in this Writ Petition and the same was allowed in their favour. No appeal is filed against the above said order of this Court and the same has become final. It is in pursuance of this Order that the first respondent herein had passed the impugned GO directing the second respondent to cancel the allotment of the land to the Petitioner.

6.It is the grievance of the petitioner that they are the corporation and the land allotment ordered to be cancelled in the impugned GO had been legitimately allotted to them by the Government following due process of law during 1984 and that they had been enjoying possession of the same from 1989. The possession



the full consideration for the land vide challan dated 14.12.1988.

7.It was submitted that the impugned GO was passed by the first respondent in violation of the principles of natural justice in as much as no notice was served on the petitioner and that the order dated 05.10.2010 passed in WP.No.37053 of 2007 is *per incuriam* as the same was obtained behind the back of the petitioner corporation and therefore not binding on the first respondent.

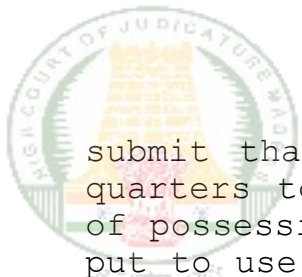
8.It was submitted that the respondents 5 & 6 are land grabbers who had created/fabricated documents to create a right to the devolution of the property and had fraudulently filed the WP.No.37053 of 2007. It was alleged that the respondents 5 & 6 belonged to Nadar Community while the title holder belonged to the Christian Pillai Community and the legal heirship is bogus. They contended that the land belonged to Late Justice Sir David Muthiah Devadoss and the same was settled in favour of his daughter Ms.Pearl alias Muthamma Devadoss for a life interest and thereafter his Son Mr.Samuel Srinivasagam Muthukrishnan Devadoss for absolute right vide settlement deed registered on 09.11.1949 by Document No.2958 of 1949.

9.It was also submitted that neither the impugned GO was communicated to them nor any notice served on them. On the other hand, the petitioner alleges that the respondents Nos.5 & 6 had engaged rowdy elements to disturb the peaceful possession of the property.

10.A common counter was filed on behalf of respondents 1 to 4. It was submitted that the Order dated 05.10.2010 passed by this Court in WP.No.37053 of 2007 reflects the correct position of the issue. The review authority had remanded the matter back to the original authority to determine the character of the land comprised in the impugned site of VM Chatram Village. Upon redetermination, it was concluded by the reviewing authority that the lands were agriculture in nature and as such the land did not come under the purview of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

11.It was further submitted that this Court in the present WP had also rightly observed that the earlier order passed in the land reforms proceedings has been set aside, and directed the learned Special Government Pleader to get instructions from the first respondents whether alternate land can be provided to the transport corporation.

12.The respondents submit that they have no suitable excess vacant land in Tirunelveli Urban Agglomeration that can be



submit that the allotment of the land was conditional to build quarters to the corporation employees within a period of 2 years of possession. It was submitted that the land was found to be not put to use for the allotted purpose at the time of inspection and remained vacant plot with bushes and therefore, the grievance of the petitioner is not genuine and sought dismissal of the Writ Petition. It was also submitted that the impugned GO was passed in compliance of the Order of this Court in WP No 37053 of 2007 upon receiving competent legal advice that the Order in the WP is in Order.

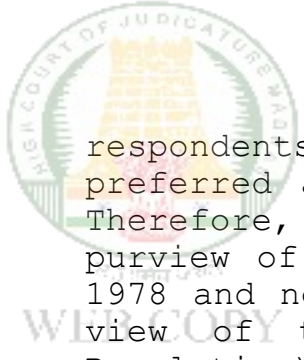
13. An additional affidavit was filed by the petitioner explaining the interference in the peaceful possession of the property by the respondents 5 & 6 through one Mr. B. Dhanasingh, Son of Mr. Balan. A case of land grabbing against the corporation was registered before the Land grabbing Special Cell, Tirunelveli and proceedings were initiated. It was submitted that enquiries were conducted by the police summoning the officers of the petitioner corporation. Evidential photographs in support of the allegations of violent interference in the peaceful possession of the property were also filed before this Court.

14. It is also submitted that the corporation suffer from huge debts and that the impugned land is also mortgaged for raising loan to several crores and that the government of Tamil Nadu is aware of the situations.

15. Heard the learned counsel for the petitioner as well as the respondents and perused the records.

16. The core contention of the writ petition is the title for the 2564 Sq.Mt. of land comprised in Survey No 287/3D of VM Chatram Village, Tirunelveli. The land was stated excess by the competent authority in the proceedings initiated under the Tamilnadu Urban Land (Ceiling & Regulations) Act, 1978 during the year 1991. Subsequently during 1994, in review proceedings, the land was inspected and found to be Agricultural land and therefore, it was ruled by the reviewing authority that the said land is outside the purview of Tamilnadu Urban Land (Ceiling & Regulations) Act, 1978. The above order was not appealed against and had become final. During 1999, the above said Tamilnadu Urban Land (Ceiling & Regulations) Act, 1978 itself got repealed in pursuance of The Urban land (Ceiling and Regulation) Repeal Act, 1999.

17. It is in this back ground that this Court vide Order dated 05.10.2010 in WP.No.37053 of 2007 allowed the Writ petition on the question of the state of the continuity of proceedings under the Act. The petitioners in the above Writ Petitions are the legal heirs of the original title owner of the land and arrayed as



respondents no 5 & 6 in the present Writ Petition. No appeal is preferred against the above order and it has attained finality. Therefore, in law, the subject land is held to be outside the purview of the Tamilnadu Urban Land (Ceiling & Regulations) Act, 1978 and not a subject of any legal proceedings under the Act in view of the adoption of the The Urban land (Ceiling and Regulation) Repeal Act, 1999. Therefore, in view of the Order dated 05.10.2010 in WP No 37053 of this Court, the title of the property is settled in favour of the legal heirs of the original title owner.

18.Writ Courts are not the forum to level allegations of fraud regarding the legal heirship which are subjects of detailed investigations against the accused persons with tort protections to the accused against mala-fide accusations. The petitioner has no remedy for such grievances under the Writ Jurisdiction. Therefore in view of the above, I have no hesitation in holding that writ interference is not warranted against the impugned GO.MS.No.320. dated 06.10.2017.

19.However, the fact that the petitioner carries a genuine grievance can not be lost sight of. In the course of the proceedings under the Tamilnadu Urban Land (Ceiling & Acquisition) Act, 1978, the land was allotted to the petitioner corporation during 1984 on payment of consideration for the land by GO.MS.No.1728 issued after following due process of law. Possession of the land rendered excess under the Act was handed over to the corporation during 1989 by the revenue Authorities following due legal process. Therefore the petitioner corporation is in lawful possession of the said property. It is pertinent to note that only during the year 1994, the statement of excess land was reversed on the basis of review appeal by the title owner and on a subsequent finding by the authorities that the subject land was used for agriculture.

20.Now, in view of the above, it is clear that the title of the land rests with the legal heirs of the original title owner, but the land is in lawful possession of the petitioner corporation. The allotment of land before the conclusion of the proceedings under the Tamilnadu Urban Land (Ceiling & Acquisition) Act, 1978, led to this anomalous situation. The petitioner is at no fault for this situation. The land got allotted to them on payment of considerable cash as capital expenditure. The land is now under mortgage to raise huge finances. In my view, it will be a travesty of justice, if the corporation is pushed to a position to deprive them of the legitimately allotted land enjoyed by them for a few decades and made to foot the repayment bills of mortgage loans raised against the land for no fault of their own.



21. Therefore, in my considered view, as contemplated by the learned brother judge in this Writ Petition, the ends of justice will be met if the Government allots alternate land to the Petitioner Corporation. It is not open for the Government to shirk responsibility on the hasty allotment made by them to the petitioner corporation on the sole ground that the land was not put to use to the intended purpose. Putting to use of the land to the intended purpose would not have altered the title of the land in view of the later developments now before us.

22. Similarly, it is painful to note that the government is a moot spectator to the conduct of respondents 5 & 6 in attaining forceful possession of land. Corporation and its employees cannot be exposed to such trespass or threats of violence until they are in lawful possession of the land. The enquiry instituted against the petitioner corporation through land grabbing cell of Police is a serious abuse of the process of law. The respondents 5 & 6 are free to reclaim possession of the land entitled to them but only in the manner known to law.

23. For the reasons stated above, the prayer of the Writ petitioner to quash the impugned GO cannot be granted. However, to make the ends of justice meet, the first respondent is directed to allot alternate land to the petitioner corporation in a reasonably convenient locality in mutual cooperation having the burden of mortgage loan in mind. The 5th and 6th respondents shall reclaim the possession of land only in the manner known to law. Police and land grabbing cell are directed to ensure peaceful possession of land by the petitioner corporation until the possession is lawfully reclaimed by the respondents No 5 & 6.

The Writ Petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar (CS-III)

To

1) The State of Tamil Nadu,
Rep by its Principal Secretary,
Revenue and Disaster Management Department,
Fort St. George, Chennai-600 009.



2) The Principal Secretary/Commissioner,
(Urban Land Ceiling and Urban Land Tax),
Chepauk,
Chennai-600 005.

3) The District Collector,
Tirunelveli District,
Collectorate, Kokkirakulam,
Tirunelveli.

4) The Assistant Commissioner (Urban Land Tax),
Tirunelveli Division,
Tirunelveli-2.

+1 CC To MR.V.SASITHARAN, Advocate SR. NO.86280
+1 CC To MR.R.J.KARTHICK, Advocate SR. NO. 86369
+1 CC TO The Special Government Pleader SR.NO. 86763

W.P (MD) No.2883 of 2018
25.09.2018

BALA
TR/SV/SAR-III (27.09.2018) 7P 8C