

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.198 of 2004

B.Cheliyan

... Petitioner

Vs.

1. The Secretary,
Rural Works Department, Fort St.Geroge,
Chepauk, Chennai 600 009.
2. The District Collector,
Kancheepuram District,
Kancheepuram.
3. The Commissioner,
Kundrathur Panchayat Union at Padappai,
Sriperumbudur Taluk,
Kancheepuram District.
- 4.The Periyapanichery Village Panchayat,
Rep. by its President,
Periyapanichery, Via-Mangadu,
Sriperumbudur Taluk,
Kancheepuram District.
5. The Taluk Tashildar,
Sriperumbudur Taluk,
Sriperumbudur.
6. The Tamil Nadu Water Supply and
Sewerage Board for Kancheepuram District
Rep. by its Assistant Engineer at Kancheepuram.
7. The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irwin Road, Egmore,
Chennai 600 008.

...Respondents

Prayer: Writ petition filed under Article 226 of the
Constitution of India to issue a Writ of Certiorarified

Mandamus, calling for the records in pursuance of the second respondent's order in Na.Ka.No.27599/2002/A2, dated 10.06.2002 and to quash the same and consequently, direct the respondents 1 to 6 to restore the Government thrashing floor comprised in Survey No.116 in Periyapanicherry Village, Sriperumbudur Taluk of Kancheepuram District as well as Lake Channels etc., to its original conditions before the said developments took place and further direct the respondents 2,3,4 and 6 to pay damages with interest to the petitioner from the date of preventing the petitioner from cultivating his lands.

For Petitioner : Mr.B.Dayalan

For Respondents: Mrs.K.Bhuvaneswari, AGP, for RR1,2 & 5
Mr.S.Diwakar, for R3
Mr.R.Kanniyappan, for R4
Mr.Jankiraman, for R6
Mr.P.Veena Suresh, for R7

ORDER

This petition has been filed to quash the order of the second respondent and consequently, direct the respondents to restore the Government thrashing floor to its original condition.

2. The petitioner's grievance is that the lands comprised in Survey No.116 measuring 0.13.5 hectares is classified as Government thrashing floor, which had been used by the agriculturists and their forefathers from time immemorial, and the third respondent had now converted the thrashing floor by putting up several constructions therein.

3. The petitioner who owns agricultural lands had been using the thrashing floor and in view of the alleged unauthorised constructions surrounding the thrashing floor, the access to his own agricultural lands as well as to the thrashing floor was deprived. When he had approached the first respondent herein, an order dated 10.06.2003 came to be passed, whereby, the petitioner's request to restore the subject lands into a thrashing floor came to be rejected. Challenging the same, the present Writ Petition has been filed.

4. The learned counsel for the petitioner submitted that the lands in Survey No.116 measuring 0.13.5 hectares is classified as Government thrashing floor till date and when the third respondent intended to convert the classification, they were required to follow the procedures contemplated under Section 134 of the Tamil Nadu Panchayats Act, as well as, G.O.Ms.No.317, Rural Development Department, dated 06.12.2000.

Since such procedures were not adopted and the lands have been put to use for other purposes, the impugned order is liable to be set aside. The learned counsel also submitted that in view of the conversion of the lands, he has incurred huge loss and therefore, he is entitled for damages.

5. The learned Additional Government Pleader appearing for the respondents 1, 2 and 5 submitted that earlier one S.Thennarasu had filed two Writ Petitions touching upon the same relief sought for and the petitioner herein also already filed a Writ Petition ventilating his grievance for the same relief. Even otherwise, the District Collector had conducted an enquiry and rejected the request on the ground that the surrounding area had become house sites with buildings and there are no agricultural activities. The channels referred to by the petitioner are not used for irrigation purposes from Sembarambakkam Tank, since the water therein is now used for drinking purposes. The subject lands are now being used for various public purposes from the year 1998 onwards. The conversion was made based on the Panchayat resolution and since the land is now used for public purpose, it would not be appropriate to demolish such buildings.

6. I have given careful consideration to the submissions made by the respective counsels.

7. As pointed out by the learned Additional Government Pleader, one Thennarasu filed a W.P.No.12066 of 2002 for a Writ of Mandamus, whereby, pursuant to the order of this Court, the District Collector held an enquiry and rejected the request of Thennarasu for restoration of the thrashing floor. Later, the said Thennarasu filed a Public Interest Litigation in W.P.No.40353 of 2002, which was also dismissed. The petitioner herein had filed W.P.No.8458 of 2003, wherein, he had sought for Writ of Mandamus, restraining the respondents from converting the thrashing floor in the above site. While disposing of the said Writ Petition, this Court had directed the petitioner to make a representation to the District Collector, based on which, the District Collector has now passed the impugner order.

8. Section 134 of the Tamil Nadu Panchayats Act deals with the procedures for the Village Panchayat to use the thrashing floor, apart from other lands. In case of any conversion of the thrashing floors for other purposes or for exclusion of such lands from the operation of the Panchayats Act, the Collector, after consultation with the Village Panchayat, may pass such orders for exclusion of the lands from the scope of the Act. G.O.Ms.No.317, dated 06.12.2000 also stipulates the procedures to be adopted by the Collector for such conversion or exclusions.

9. In the present case, the subject lands had been put to use for various constructions, viz., Overhead Tank, Anganvadi Building, Village Administrative Office, Women and Children Sanitary Building, Women Self Help Group Building, Public Library. It is stated that these constructions had been made between the years 1998 and 2010. When this Court had also granted liberty to the petitioner to approach the Collector with a representation seeking for restoration of the thrashing floor, the Collector had already conducted an enquiry and expressed his view that the petitioner's request was not feasible.

10. Though the Collector is initially required to make orders excluding the lands from the purview of the Act, it is only the Panchayat which had approved the exclusion, through a resolution, for putting up buildings for public purpose. Pursuant to the order of this Court, the Collector had also ratified such an action taken through the resolution of the Panchayat. Though this can be termed as an irregularity and not in conformity with the procedures contemplated under the Act as well as the Government Order, in view of the decision taken by the Collector to ratify the Panchayat's resolution, pursuant to the directions of this Court, it can be said that such an irregularity has been ratified by the Collector who had acted on the basis of the directions of this Court.

11. Furthermore, the land is now being used for various public purposes from the year 1998 onwards and at this point of time, it would not be appropriate to restore the land to a thrashing floor. Above all, there are no agricultural activities in and around the subject lands and restoring the thrashing floor would be a futile exercise. As such, I do not find any reason to interfere with the impugned order.

12. The learned counsel for the petitioner submitted that in view of the constructions made in the land, he has been put to irreparable loss and also incurred monetary loss and therefore, seeks for the consequential prayer for award of damages.

13. I am of the view that in order to assess as to whether there was any damage caused or not, would be a ground reality, which requires an enquiry. If at all the petitioner herein is aggrieved that he had incurred monetary loss because of the constructions put up by the third respondent herein, it is open to him to make an application before the appropriate authority seeking such damages. However, the decision to grant damages would solely rest on the appropriate authority, who shall deal such an application, strictly in accordance with law.

14. With the above observations, the Writ Petition stands closed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

pvs
To

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Rural Works Department, Fort St. George,
Chepauk, Chennai 600 009.
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Kancheepuram District, Kancheepuram.
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4. The President,
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Chennai 600 008.

+2cc to Mr.B.Dayalan, Advocate SR.No.30714

+1cc to Government Pleader SR.No.31051

W.P.No.198 of 2004

GJ II (CO)
GMY (25/06/2019)