

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.27377 of 2009

St.Joseph's Matriculation Higher
Secondary School,
Rep. by its Correspondent
Rev.Sr.Arputha Mary,
Koothappakkam,
Cuddalore District.Petitioner

Vs.

- 1.The Secretary to Government,
Department of School Education,
Secretariat,
Fort St. George,
Chennai 09.
 - 2.The District Collector,
Cuddalore,
Cuddalore District.
 - 3.Arulmighu Devanatha Swami Devasthanam,
Rep by its Executive Officer,
Thiruvendipuram,
Cuddalore District.
- सत्यमेव जयते ... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the G.O.Ms.No.322 School Education Department (X2) dated 07.12.2009 on the file of the first respondent and quash the same directing the respondents 1 and 2 confirm the alienation of the lands S.No.16/1, Koothapakkam Village, Cuddalore District as per G.O.Ms.No.404 Education Department dated 14.03.1979, in favour of the petitioner.

For Petitioner : Mr.FR.A.Xavier Arulraj,
Senior Counsel for
Mr.S.M.Edward Stanely

For Respondents: Mr.N.Vijaya Narayanan,
Advocate General
Assisted by Mr.J.Ramesh,
Additional Government Pleader
for R1 & R2
Mrs.Chithra Sampath,
Senior Counsel for
Mr.T.S.Baskaran for R3

O R D E R

The petitioner filed this Writ Petition to issue a writ of Certiorarified Mandamus to call for the records pertaining to G.O.Ms.No.322 School Education Department (X2) dated 07.12.2009 on the file of the first respondent, to quash the same and to direct the respondents 1 and 2 to confirm the alienation of the lands at S.No.16/1, Koothapakkam Village, Cuddalore District, as per G.O.Ms.No.404 Education Department dated 14.03.1979, in favour of the petitioner.

2. The facts in a nutshell are as under:

The case of the petitioner, the petitioner school is run by the Roman Catholic nuns under the name and style of the Congregation of the "Immaculate Heart of Mary", bearing Registration No. S.3 of 1973. The members of the said society are all Catholic religious nuns. It is a branch Society of the Parent body bearing Registration No.S.40/1945-1946. All the institutions run by the said society are Minority Educational Institutions under Article 30(1) of the Constitution of India. The said society is committed to protect and promote the minority rights of the educational institutions of its members. Even prior to the formation of the said society, the institutions were established and are functioning, rendering educational services for more than 150 years in the State of Tamil Nadu. The said Educational Agency and its Society of Catholic Nuns is running 135 schools, 8 Arts and Science Colleges, an Engineering College, 3 Teacher Training Institutes and a college of Education. Besides, the said society is running 36 orphanages and 50 hostels for girl students. The said Educational Agency is not only doing educational service in Tamil Nadu and Union Territory of Puducherry, but also in other States of India.

3.The said Immaculate Heart of Mary Society, the religious congregations of Catholic Nuns, has established the petitioner

school in the lands at S.Nos.16/1, 16/2, 16/3 and 16/4 of an extent of 5.77 Acre in Koothappakkam village in Cuddalore District purchased from the Government of Tamil Nadu, represented by the Education Department. The said lands were alienated to the educational agency for the purpose of establishing the petitioner school, in accordance with law under Board Standing Orders 24, after payment of the market price, as decided by the judicial process.

4. The petitioner claims to be cognizant of the fact that prior to the alienation vide G.O.Ms.No.404, Educational Department, dated 14.03.1979, the said lands of an extent of 5.77 Acres in S.Nos.16/1 to 16/4, Koothappakkam village, Cuddalore District, have been acquired by the Government for establishing a Government Basic Training School vide Award No.2/70 dated 10.04.1970 by the Land Acquisition Officer and the Revenue Divisional Officer, Chidhambaram acquired the land from some private parties and from Arulmigu Devanatha Samy Temple.

5. In the case on hand, the dispute is with regard to the land in Survey No.133/2 to an extent of 3.40 Acres belonging to the Arulmigu Devanatha Samy Temple, which was acquired by the Educational Department under the above said G.O., handed over to the petitioner. Thereafter, the HR and CE Department found that the land was donated by the devotee of Arulmigu Devanatha Samy Temple. Considering the prayer made by the third respondent/ Temple the Government passed the impugned order dated 07.12.2009 canceling the allotment granted in favour of the petitioner. Hence, the present Writ Petition is filed.

6. Mr.FR.A.Xavier Arulraj, learned Senior Counsel appearing for the petitioner would submit that the land in Survey No.16/1 to an extent of 3.40 acres New Survey No.133/2 in Koothappakkam Village was alienated to the petitioner by the Government for Educational purpose under Board Standing Orders 24 in the year 1979. The petitioner paid the valuable consideration as per the guidelines at the relevant point of time, when the land owners filed a case for enhancement of compensation. The petitioner also paid the additional compensation to the Government as per the directions of the authorities. Immediately, thereafter, the petitioner took possession of the property and leveled the land by material enforcement and also constructed the compound wall around the land.

7.The learned Senior Counsel for the petitioner further submitted that the School authorities spent considerable amount of money for leveling and constructing the compound wall. The disputed land, being in the heart of the town, the value of the land is very high and due to pendency of the case, the petitioner has not put up any construction, except the compound

wall. The petitioner has also planted lot of trees and plants and they maintained the said land for all these years. He, However, submitted that as per the directions of this Court, in order to maintain the communal harmony in the locality, the petitioner school agreed to go for exchange of land, without going into merits of the case and this Court may issue appropriate direction to allot alternate land to the petitioner for establishing the Educational Institution in the District of Cuddalore.

8. The learned Senior Counsel appearing for the petitioner further submitted that the petitioner school itself identified the availability of Manavari land in Bhuvanagiri Village in Cuddalore District at Survey No.70/1 to an extent of 22 hectares. It is suitable for establishing the school. Accordingly, he pleaded that this Court may issue a direction to consider the allotment of land at Survey No. 70/1 in Bhuvanagiri Village and if the same is alienated, any alternate land available in Cuddalore District may be allotted in favour of the petitioner school for establishing the Educational Institution for providing service to the general public.

9. Mr.N.Vijaya Narayanan, learned Advocate General appearing for the respondents would submit that in the impugned order, the Education Department resumed the land from the petitioner in order to allot the same to Arulmigu Devanatha Samy Temple, considering the sentiments attached with the said land. He further submitted that this Court may issue a direction to the Secretary to the Government, Revenue Department to allot alternate land situated at Survey No.70/1 in Bhuvanagiri village to the petitioner and if the said land is not available, the Revenue Secretary may be directed to allot any other land in Cuddalore District, abutting the State Highways or Rural Highways with road access.

10. Mrs.Chithra Sampath, learned Senior Counsel appearing for the third respondent/ Arulmigu Devanatha Samy Temple agreed with the proposal submitted by the learned counsel appearing for the petitioner.

11. Considering the facts and circumstances of the case, this Court records its appreciation for the earnest steps taken by the learned Senior Counsel and the learned Advocate General to resolve the controversy. The land which was acquired by the Educational Department was allotted to the petitioner/ School in the year 1979 and the petitioner also paid valuable consideration to the HR & CE Department and till date the amount was not returned to the petitioner. However, through impugned order the Educational Department resumed the said land which was allotted to the petitioner. Considering the above said facts and

further taking note of the submission made by the learned Senior Counsel for the petitioner that they are willing for allotment of alternate land instead of the impugned land. The learned Advocate General also concede and would submit that suitable direction may be issued to the Revenue Secretary for allotment of alternative land in this regard. I am inclined to issue a direction to the Secretary to the Government, Revenue Department to allot land of not less than 4 ½ acres either in the Bhuvanagiri Village, as pointed out by the petitioner, or in the alternative, if the land is not feasible for allotment, any other land which is situated near the town or village with easy access to the main road or abutting the road. Immediately after allotting alternate land in favour of the petitioner, the first and second respondents shall take possession of the petitioner's land and allot the same in favour of the Arulmigu Devanatha Samy Temple. The said exercise should be completed within a period of three months. It is made clear that the petitioner is at liberty to make appropriate application within a period of two weeks seeking allotment of land, giving the details of the land, to the Secretary to the Government, Revenue Department and the Revenue Secretary shall pass orders allotting the land within ten weeks thereafter.

12. With the above direction, this writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Department of School Education,
Secretariat,
Fort St. George,
Chennai 09.

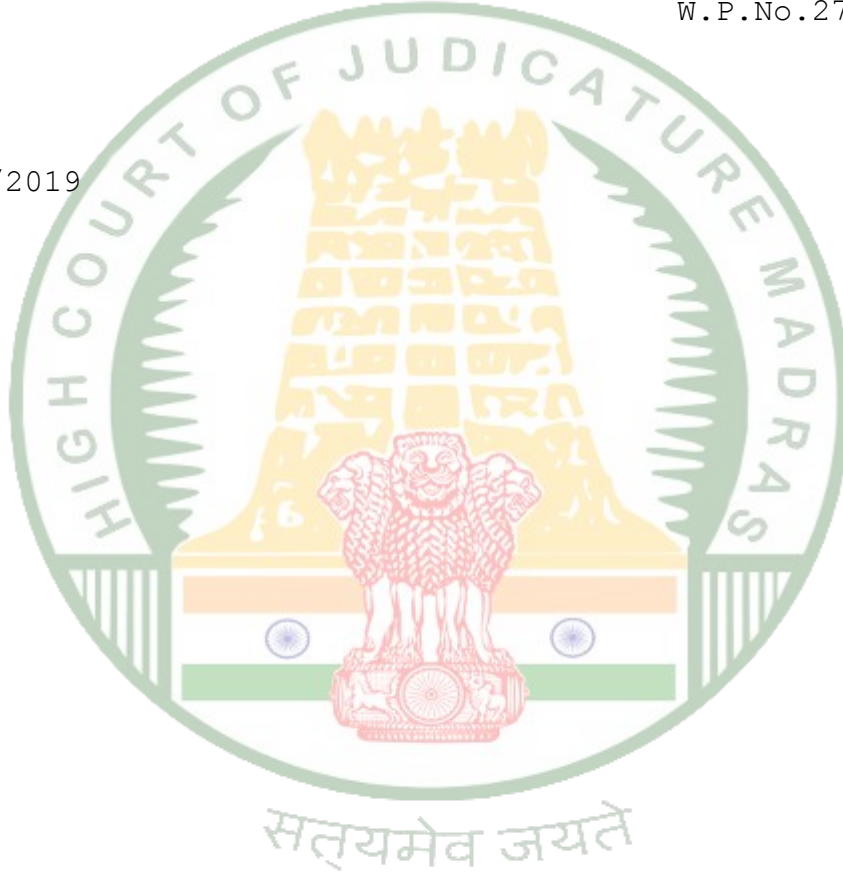
2.The District Collector,
Cuddalore,
Cuddalore District.

3.Arulmighu Devanatha Swami Devasthanam,
Rep by its Executive Officer,
Thiruvendipuram,
Cuddalore District.

+2cc to M/s.Father Xavier Associates, Advocate Sr.75973
+1cc to Mr.T.S.Baskaran, Advocate Sr.75904
+1cc to the Government Pleader Sr.76176

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