

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM :

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.9322 of 2019

P.R.Sekar
Secretary

Thiruvanniyur House Site Ownership
Public Welfare Association for Natham
97/15, Pillaiyarkoil Street
Thiruvanniyur
Chennai - 600 041.

... Petitioner

Vs

- 1 The Government of Tamil Nadu
Rep. by its Secretary
Department of Housing and Urban Development
Secretariat, Fort St. George
Chennai - 600 009.
- 2 The Commissioner
Corporation of Chennai
Enforcement Cell
Ripon Buildings
Chennai.
- 3 The Joint Commissioner
Corporation of Chennai
Adyar, Chennai - 600 020
- 4 The Executive Engineer
Corporation of Chennai
Zone - XIII, Adyar
Chennai - 600 020.
- 5 The Chairman
Tamil Nadu Housing Board
Nandanam
Chennai - 600 035.

6 The Executive Officer
Arulmigu Marudheeswara Koil
Thiruvanmiyur
Chennai - 600 041.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issue of writ of mandamus directing the respondents herein to consider the representation of the petitioner dated 30.08.2018 and take all remedial measures to recover the encroached lands which are in possession of the 6th respondent in Survey No.106/3 measuring about 5 acres 91 cents, Survey No.106/6 measuring about 0.13 cents situate at Thiruvanmiyur Village, presently Velachery Taluk, Chennai and remove all illegal structures put up by the 6th respondent in the aforesaid lands.

For Petitioner : Mr.T.Ravichandran
for M/s.K.Elangovan

For Respondents : Mr.S.N.Parthasarathi
Government Advocate
for 1st respondent

Mr.V.C.Selvasekaran
for respondents 2 to 4

Mr.M.Baskar
for 5th respondent

Mr.M.Sriram
for M/s.A.S.Kailasam and
Associates
for 6th respondent

ORDER

(Order of the Court was made by DR.VINEET KOTHARI,J.)

The petitioner, P.R.Sekar, son of Rajakannu, claiming to be Secretary of the Thiruvanmiyur House Site Ownership Public Welfare Association for Natham, Thiruvanmiyur, Chennai, had filed this public interest litigation in this Court on 20.3.2019 with the following prayers:

"(a) to issue an order of interim injunction restraining the 6th respondent, their men, agents, servants, subordinates or any one acting under them from in any manner opening the building/construction/Kalyana Mandapam put up in Door No.74, East Coast Road, Thiruvanmiyur,

Chennai - 41 in survey No.106/3 measuring about 5 acres and 91 cents and Survey No.106/6 measuring about 0.13 cents situate at Thiruvanmiyur Village, presently Velachery Taluk, Chennai pending disposal of the present Writ petition.

(b) to issue a writ of mandamus or any other order or direction in a nature of writ of mandamus whereby directing the respondents herein to consider the representation of the petitioner dated 30.08.2018 and take all remedial measures to recover the encroached lands which are in possession of the 6th respondent in Survey No.106/3 measuring about 5 acres 91 cents, Survey No.106/6 measuring about 0.13 cents situate at Thiruvanmiyur Village, presently Velachery Taluk, Chennai and remove all illegal structures put up by the 6th respondent in the aforesaid lands and pass such further order or orders that this Hon'ble Court may deem it fit to be granted under the facts and circumstance of the case and thus render justice."

2. Upon issuance of notices, the respondents have filed their respective counters and we have heard the learned counsel for the parties.

3. It appears that the land in question, which is said to be belonging to the sixth respondent, Arulmigu Marundheeswarar Temple, was initially sought to be acquired by the State Government vide G.O.Ms.No.1096, Housing and Urban Development Department, dated 17.7.1978, but later on the said proceedings were dropped by the State. Thereafter, the sixth respondent/Temple made certain constructions, including one Kalyana Mandapam, by demolishing the two earlier Kalyana Mandapams on the said land in question, which seems to be the bone of contention of the petitioner in the present public interest litigation.

4. The learned counsel for the petitioner, Mr.T.Ravichandran, vehemently urged that the compensation amount was deposited by the fifth respondent/Tamil Nadu Housing Board for the said acquisition and the said amount has not been refunded to the Housing Board so far and, therefore, without any permission from the competent authorities for construction of building, the sixth respondent/temple cannot be permitted to go ahead with the construction and since the revenue records still show the land in question to be standing in the name of the Housing Board, the sixth respondent/temple cannot be permitted to go ahead with the construction in question.

5. On the other hand, the learned Government Advocate, Mr.S.N.Parthasarathi, submitted before us that with the withdrawal of the acquisition proceedings, the land stood reverted back to the sixth respondent/temple, which is the owner of the land, however, mutation of records is yet to be done and the sixth respondent is pursuing the matter with the authorities concerned. Paragraph (7) of the counter filed by the District Revenue Officer (LA), Tamil Nadu Housing Board, Chennai of September, 2019 is quoted for ready reference:

"7. I respectfully submit that the Government, after careful consideration has decided to re-convey the lands measuring 6.20 acre in 106/3, 106/6 and 104/6 of Thiruvanniyur Village, Madras district belonging to the A/m.Marundeeswarar Temple instead of issuing withdrawal notification vide Government Letter Ms.No.1326, Housing and Urban Development Department dated 12.11.90, after getting the amount paid as compensation."

6. The learned counsel for the sixth respondent/temple, Mr.M.Sriram, has also filed counter on 30.4.2019 giving the history of the said acquisition and construction in question. The relevant portion of the affidavit filed by Mr.K.Arutselvam, son of Karuppiyah, on behalf of the sixth respondent/temple is quoted hereunder:

"10. I state that subsequently, the Temple has been following up for re-conveyance of the said lands as the following facts would show. I state that after a series of correspondence, with the Tahsildar for change of name in the Patta, the Temple issued a detailed and comprehensive letter dated 07.04.2008 to the Tahsildar. I state that since the Tahsildar did not take any action, the Temple was constrained to write a reminder dated 07.09.2010 to the Tahsildar. I state that after a gap of more than 2½ years from letter dated 07.04.2008, the Tahsildar sent a reply dated 21.09.2010 directing the Temple to approach the 5th Respondent herein for re-conveyance. I state that the Temple wrote a letter dated 22.09.2010 to the District Revenue Officer attached to the Tamil Nadu Housing Board seeking re-conveyance of the lands. I state that subsequently, the Temple wrote another letter dated 17.08.2017 to the Tamil Nadu Housing Board seeking re-conveyance. I state that the 5th Respondent, acting through its officer, has also requested the Registrar of the City Civil Court by letter dated 10.1.2011 to refund the deposit amount to the Tamil Nadu Housing Board. I state that in spite of the

various representations to the Housing Board, viz., the 5th Respondent, the lands have not yet been re-conveyed. I however state that there is no doubt and it is admitted by all Statutory Authorities concerned that the said lands belong to the Temple and that the acquisition proceedings have been withdrawn. I state that it is in these circumstances that the other averments in the affidavit will have to be looked into. I state that the question of this Respondent trespassing into the lands will not arise since the lands are in the possession of the Temple. I state that the further averments in paragraph 10 that this Respondent started making illegal construction is hereby denied as totally false.

11. I state that the Temple has applied for appropriate permission with the 2nd Respondent for building permission and the same has been granted with Planning Permission No.11688 dated 29.12.2017 for which the Temple has paid a sum of Rs.25,57,500/-. I state that the Temple has also applied for Planning permit with the CMDA and the permit has been granted dated 29.12.2017 by CMDA, and the Corporation has granted building permit No.CEBA/WDCN 1313/00046/2018 dated 13.02.2018. I therefore state that the further averment in paragraph 10 that the construction has been made without obtaining building and planning permission is hereby denied as incorrect. I state that it may be a fact that the Revenue Records reflect the name of the Tamil Nadu Housing Board, but even according to the Tamil Nadu Housing Board, they have no right in the said lands.

12. I state that the averments in paragraph 11 are misconceived. I state that the entire extent of land is 5.91 acres in Survey No.106/3, 13 cents in Survey No.106/6 and 16 cents in Survey No.104/6, aggregates in all to 6.20 acres. I state that on the lands in Survey Nos.106/3 and 106/6, a Shopping Complex along with two Kalyana Mantapams were constructed around 1994 at Door No. 74, 75 & 76, East Coast Road, Thiruvannamiyur, Chennai 600 041. I state that the said complex was constructed with proper Planning permission and sanction. I State that Property Tax from the time of its construction has been paid for the 3 Kalyana Mantapams as well as the shopping complex. I state that 2 Kalyana Mantapams in Survey Nos.106/3 and 106/6 bearing

Door No.74, 75 & 76, East Coast Road, Thiruvannamiyur, Chennai 600 041 were almost 25 years old and were not built with the modern amenities that are associated with Kalyana Mantapams now a days. I therefore state that proposal was made to demolish the existing 2 Kalyana Mantapams and to construct a new Kalyana Mantapam and I state on oath that all the Rules have been followed in the construction of the same and all averments to the contrary are hereby denied as incorrect. I state that the existing 2 Kalyana Mantapams constructed in the year 1994 were demolished after obtaining due permission and subsequently, a new Kalyana Mantapam has been built and in fact 90% of the work for the new Kalyana Mantapam has been completed in accordance with the rules and regulations of all Statutory Authorities. I state that it is therefore evident that the present petition is put forth by the Petitioner based on selective information that he has obtained and certain other information which is elemental and which he has not attempted to enquire into or having received the same, is suppressing the same since the same would go against his case.

13. I state that the sequence of events in paragraphs 5 and 6 would clearly go to show that the Temple has been writing consistently to the 5th Respondent requesting for re-conveying the lands. I state that some of the letters that have been addressed to the 5th Respondent are being filed by me in the typed set of papers as a representative sample. I state that since this issue has come up before this Hon'ble Court, the temple should not be driven to litigation due to the inaction of the 5th Respondent in re-conveying the lands in which they admittedly do not have any subsisting interest. I state that the acquisition notification has been withdrawn and the money deposited by the 5th Respondent before the reference Court has also been withdrawn. I therefore state that there cannot be any impediment in the 5th respondent in reconveying the lands to the Temple. I state that this Hon'ble Court being the custodia legis of properties of IDOLS, Temples, etc., may be pleased to direct the 5th Respondent to re-convey the lands to Arulmigu Marundeeswarar Temple."

7. The learned counsel for the sixth respondent/temple further stated that for mutation of revenue records and for

formal re-conveyance of the land in favour of the temple from the fifth respondent/Housing Board, they are pursuing the matter with the authorities concerned.

8. In view of the aforesaid position and having heard the learned counsel, we are satisfied that the present public interest litigation filed by the petitioner does not require any further interference, enquiry or investigation by this Court. Admittedly, the land in question belonging to the sixth respondent/Temple was initially sought to be acquired for developing a Housing Society by the fifth respondent/Housing Board, but since the said proceedings were withdrawn by the State Government, the process of re-conveying or refund of deposit made by the fifth respondent/Housing Board may not have taken place by now. That in no way estops the sixth respondent/Temple from seeking re-conveyance of lands or mutation of Revenue Records in favour of the temple and proceeding with the construction of Kalyana Mandapam with due permission. It is clearly stated in the said affidavit filed by the sixth respondent/temple that new permissions have been obtained from the Chennai Metropolitan Developing Authority and the Corporation of Chennai for the new construction raised in the said property. Therefore, the petitioner cannot be permitted to espouse public interest for the said land, particularly when the fifth respondent/Housing Board itself does not seem to be interested and has not challenged the withdrawal of the acquisition proceedings.

9. A formal re-conveyance and mutual of records, for which the sixth respondent/Temple is pursuing the matter with the Government authorities is not the concern of this Court in the present public interest litigation, nor possibly a private individual can lay a challenge to the same. Therefore, we are satisfied that no public interest would be served by continuing the present public interest litigation.

In the result, the writ petition is dismissed. No costs. Consequently, W.M.P.No.9322 of 2019 is closed.

-s/d-
Assistant Registrar(co)

True Copy

Sub-Assistant Registrar

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To:

- 1 The Secretary
Government of Tamil Nadu
Department of Housing and Urban Development
Secretariat, Fort St. George
Chennai - 600 009.
- 2 The Commissioner
Corporation of Chennai
Enforcement Cell
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Thiruvanmiyur
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+1 cc to Mr.M.Baskar (TNHB) Advocate sr80466

+1 cc to Mr.A.S.Kailasam & Associates Advocate sr80572

+1 cc to Government Pleader sr 80705

W.P.No.9322 of 2019

spd(co)
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