

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.11.2019

PRONOUNCED ON : 22.11.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition Nos.15777 of 2018 and 9099 of 2019 and
W.M.P.Nos.18759 & 35430 of 2018 in
W.P.No.15777 of 2018

1.M.Vasantha
2.Balamanikandan
3.H.Lavanya
4.B.Kanagalakshmi

Represented by their
Power Agent B.Murali Narasiman

... Petitioners in W.P.No.15777/2018

B.Murali Narasiman Petitioner in W.P.No.9099/2018

Vs

1.The Commissioner Director of
Town Planning,
807, Anna Salai,
Chennai - 600 002.

2.The Commissioner of
Coimbatore Corporation,
Office of the Corporation
of Coimbatore,
Sivanada Colony,
Coimbatore - 12.

3.The Member Secretary (In-charge),
Coimbatore Town and Country Planning,
Office of the Corporation of Coimbatore,
Sivananda Colony,
Coimbatore -12.

WEB COPY

4.The Assistant Commissioner,
Coimbatore Corporation,
South Zone,
Sivananda Colony,
Coimbatore - 12.

5.The Special Tahsildar (South),
Town Survey Land Scheme,
Coimbatore. ... Respondents in W.P.No.15777/2018

1.The Commissioner Director of
Town Planning,
807, Anna Salai,
Chennai - 600 002.

2.The Commissioner of
Coimbatore Corporation,
Office of the Corporation
of Coimbatore,
Big Bazaar Street,
Coimbatore - 1.

3.The Revenue Divisional Officer,
Coimbatore South,
State Bank Road,
Coimbatore.

4.The Member Secretary (In-charge),
Coimbatore Town and Country Planning,
Office of the Corporation of Coimbatore,
Sivananda Colony,
Coimbatore - 12.

5.The Assistant Commissioner,
Coimbatore Corporation, सत्यमेव जयते
South Zone,
Palakkad Main Road, Kuniamuthur,
Coimbatore.

6.The Special Tahsildar (South),
Town Survey Land Scheme,
Coimbatore. ... Respondents in W.P.No.9099/2018

Prayer in W.P.No.15777 of 2018:- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorarified mandamus calling for the records on the file of the first respondent in his proceedings ROC No.25070/17/DP2, dated 14.06.2018 signed on 15.06.2018 (above proceedings is

annexed with the impugned order) and quash the same and consequently direct the first respondent to delete the name of the second respondent as per the recommendation of the third respondent in his proceedings Nos.Na.Ka.10743/2017/Uthiki-1 dated 07.02.2018 and pass any other further orders as this Court may deem fit.

Prayer in W.P.No.9099 of 2018:- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of mandamus directing the second respondent to conduct enquiry on the petitioner's representation dated 09.01.2019 and send his report to the first respondent within a stipulated period as fixed by this Court.

In W.P.No.15777 of 2018:-

For Petitioners :Mr.E.Sampathkumar

For Respondents 1, 3 & 5 :Mr.N.Inbanathan,
Additional Government Pleader

For Respondents 2 to 4 :Mr.R.Sivakumar, Standing Counsel

In W.P.No.9099 of 2019:-

For Petitioner :Mr.S.Venkatesh

For Respondents 1, 3 4 & 5 :Mr.N.Inbanathan,
Additional Government Pleader

For Respondents 2 & 5 :Mr.R.Sivakumar, Standing Counsel

COMMON ORDER

W.P.No.15777 of 2018:-

The petitioners are all members of same family representing through their power agent Murali Narasiman has filed the present writ petition seeking issuance of writ of certiorified mandamus to quash the proceedings of the first respondent dated 14/06/2018 and consequently to delete the name of the 2nd respondent as per the proceedings dated 07/02/2018.

2.The petitioners together hold 2.752 acres of land in Kumarapalayam Village, Coimbatore South Division in T.S.Nos.2022/3, 2033/2, 2024, 2025/2, 2032/2, New T.S.Nos. 500/2, 500/9, 501/2, 501/3 and 539/1. These properties were mostly inherited through their grand parents and partly by

purchase. They are in possession of the properties paying tax and holding patta.

3.The second petitioner/Balamanikandan on 08/12/2017 applied for planning permission to the Member Secretary, Town and Country Planning, Coimbatore (3rd respondent) to construct a school in the said land. Then, they came to know that in the revenue records, the name of the Coimbatore Corporation (2nd respondent) is shown against the said land for expansion of proposed C1C1 - 40 feet road. Immediately, they requested the 3rd respondent to delete the name of the 2nd respondent from the survey register. On the basis of their application, the 3rd respondent through the Assistant Commissioner, Coimbatore (4th respondent) conducted enquiry and submitted a report on 07/02/2018 to the first respondent recommending the deletion of proposed road C1C1 - 40 feet road bearing the name of the second respondent.

4.Since, there was no further progress on the 3rd respondent recommendation dated 07/02/2018, the petitioner filed a writ petition in W.P.No.5866 of 2018 seeking mandamus to the first respondent to pass orders on the 3rd respondent recommendations. This Court in the said writ petition on 16/03/2018 passed the following order:-

"7.In the light of the limited scope of the prayer sought for in the writ petition and the submissions of learned counsels on either side, this Court, without going into the merits of the case, directs the 1st respondent to pass appropriate orders on the recommendation made by the 3rd respondent in his proceedings in Na.Ka.10743/2017/Uthiku-1, dated 07.02.2018, on merits and in accordance with law, after providing an opportunity of hearing to the necessary parties, within a period of 10 weeks from the date of receipt of a copy of this order."

5.After the order in W.P.No.5866 of 2018, the first respondent issued notice of hearing and after hearing rejected the application on 15/06/2019 without assigning any reasons or support of records. The documents like (i)the patta issued by the Thasildar on 04/04/2018; (ii) the report of the Assistant Commissioner, Coimbatore Corporation (4th respondent) dated 30//01/2018 stating that the proposed road C1C1 does not come

under the land of the petitioner and his recommendation to delete the entry against the survey numbers of the petitioners land and (iii) the proposal and recommendation of the 3rd respondent to the first respondent vide proceedings dated 07/02/2018, were never considered by the first respondent, while passing the order impugned rejecting the application. Hence, the present writ petition.

6.W.P No.9099 of 2019:-

While the above writ petition was pending, Murali Narasiman, the power agent and the representative of the petitioners in WP 15777/2018 has filed this writ petition stating that, pending the earlier writ petition, he has collected details from the special thasildar about the awards passed in the year 1973 and the Scheme Award No.8/1986. He found that neither in the award passed in the year 1973, nor in the Scheme Award No.8/1986, the subject land was included. Having confirmed through RTI that their land are not part of Scheme Award No.8/1986, he gave fresh representation to the second respondent dated 09/01/2019 requesting him to reconsider earlier decision dated 15/06/2018. To dispose this representation, in view of the new documents, the second writ petition (W.P.No.9099 of 2019) is filed seeking mandamus directing the 2nd respondent to conduct enquiry on his representation dated 09/01/2019 and send his report to the first respondent within a stipulated period.

7.The respondents 2 and 6 have filed their counter in W.P.No.9099 of 2019. The learned Additional Government Pleader submitted that the counter affidavits filed in W.P.No.9099 of 2019 covers the averments made by the petitioners in both these writ petitions.

8.In the counter affidavit of the 2nd respondent, he has tendered apology for the averment made by his predecessor in the counter affidavit filed in W.P.No.15777 of 2018 that land in SF Nos.2022,2023 and 2030 were acquired for the purpose of formation of C1C1 scheme road under T.P. Scheme No.10, vide the Award No.8 of 1986. In fact, as per the approval of the 1st respondent, in T.P.Scheme No.10 some of the roads are to developed by the concern local authority (i.e., this respondent) and some of the road to be developed by the concern owners themselves. The approved C1-C1 road, which is the subject matter of the present writ petition, is the one to be developed by the owner themselves. All the roads to be developed by this

Corporation (then Municipality) under the Scheme which was to the extent of 7 acres 452 sq.fts were acquired by following the due process of law and roads were also formed by spending substantial public money. Many of the roads to be developed by the owners were also developed over the years either by the concern layout owners or by this Corporation after collecting the development charges while regularizing the concern layouts or the individual sites as per Clause 8(4) of the approved scheme. Thus the Kumarapallayam village has become fully developed area, but for few pockets of land. The land in dispute is such pocket of land which yet to be developed. The issue involved in this writ petition is pertaining to C1-C1 scheme road which proposed through the above land in survey Nos.539/1 & 540/3. The C1-C1 road is to connect Sundakamuthur main road, and C6-C6 Scheme road. The C6-C6 scheme road, which was already developed by this Corporation as per the terms on T.P.Scheme No.10. The total length of C1-C1 road is 540 ft length and 40ft wide between Sundakamuthur main road and C6-C6 Scheme road.

9. When the Member Secretary, Town and Country Planning, Coimbatore through letter dated 20/12/2017 sought for remarks of the Coimbatore Corporation upon the planning permission application of the petitioner, fielded inspection and verification of the town survey records were done by the Assistant commissioner of the Coimbatore Corporation and he submitted remarks on 18/01/2018 and 30/01/2018 pointing out the approved C1-C1 scheme road and also that the land in T.S.No.2023 & 2030, corresponding the old S.No.539/1/PART, 540/3/PART stand in the name of Commissioner, Coimbatore Corporation. Accordingly, he had recommended that C1-C1 road portion must be shown as open portion without any proposal for building upon the same. With the above remarks the petitioner application was returned.

10. When the planning permission application was forwarded to the first respondent along with the remarks, the first respondent after enquiry passed order on 15/06/2018. In his order the first respondent has observed that the some of the documents submitted by the petitioner may be forged one and accordingly criminal action may be initiated against the petitioner. This order was challenged by the petitioner in W.P.No.15777 of 2018 by 4 persons through their power agent, Murali Narasiman. Pending disposal of this writ petition, after resubmitting the planning permission application on the basis of the information submitted by District Revenue Officer, Coimbatore under Right to Information Act, Murali Narasiman has filed W.P.No.9099 of 2019.

11. Contending that, the petitioners claim about the ownership of the land in S.Nos. 539/1 and 540 itself doubtful and not admitted. The settlement deed which relied by the petitioners does not contain any specific boundaries of the property. It is incorrect to say that the 5th respondent (Assistant Commissioner of Corporation) recommended for grant of planning permission vide his letter dated 30/01/2018. In fact, he has returned their application on 18/01/2018 on specific ground that C1C1 Road portion must be shown as open portion without any proposal for building. Same was reiterated in his letter dated 30/01/2018.

12. It is further stated in the counter affidavit of the 2nd respondent that, the first respondent order dated 15/06/2018 which is the subject matter of W.P.No.15777 of 2018 was passed by the first respondent after considering the records which reveals that the land in S.No. 539/1 Part and 540/3 part were not acquired under the Award No.8/1986. The existing documents like the Town Survey Land Record (TSLR) show the land stands in the name of the Coimbatore Corporation. The District Collector is requested through letter dated 02/04/2018 that no corrections shall be effected in the Town Survey Land Record (TSLR) without the consent of the Corporation and copy of the letter was also marked to the 6th respondent. In spite of that, if the 6th respondent (Special Thasildar) has issued any patta in the name of the petitioners in respect of these survey numbers it is for him to explain under what circumstances the joint patta was issued without notice to the corporation.

13. The main contention of the 2nd respondent is that, though the subject land was not acquired under Award No.8/1986, it is earmarked for C1C1 40 feet road in the scheme duly approved and it stands in the name of the Corporation as per the Town Survey Land Record (TSLR). The none acquisition of the said portion of the and by itself will not confer right to the petitioners unless they prove their title over that land.

14. Initially, one Mr. R.Muthukumar, on behalf of the 6th respondent has filed a counter affidavit sworn on 31/07/2019 wherein, he admits issuance of joint patta to the petitioners on 04/04/2018 vide proceedings Na.Ne.Mu.9/2018. Based on the available records he asserts that, old T.S.No. 539,540 and New T.S.Nos. 2022,2032,2023,2024,2025, 500/9 in Kumarapalayam Village, Coimbatore admeasuring total extent of 2.72 acres of land is not covered by any land acquisition proceedings dated 23/09/1986 in award No. 8/1986 passed by the 3rd respondent.

15.Subsequently, one Mrs.P.Manimegalai has filed additional counter on behalf of the 6th respondent sworn on 11/10/2019 wherein, it is reiterated that the subject land though part of the draft scheme, no acquisition was initiated in respect of S.Nos.539,540 viz. New T.S. Nos. 2022,2032,2023,2024,2025 and 2030. Therefore, the land under S.Nos.539 and 540 does not come under the Town Planning Draft Scheme Road. They remain only as an agricultural wet land. Joint patta was issued to the petitioners only after proper verification of records. She has further stated that, she conducted inspection and verified the Town Survey Land Record (TSLR). Based on the office records and on the inspection, she found out that the lands in survey No.539 and 540, remains as a vacant land which is unused for several years and there is no road existing in the above survey numbers. Because of the inclusion in the Town Re survey Records 2001, the name of the 2nd respondent is found in the Town Survey Register along with the name of the petitioner from the year 2004. Since, the petitioner has not approached this authority in the earlier occasion with the records, the existing situation continued.

16.In the additional counter, at paragraph Nos.9 and 10, the 6th respondent has succinctly clarified the factual position on verification of records in respect of the land in dispute in the following manner:-

"9.I humbly submit that based on the Town Planning Draft Scheme without conducting acquisition proceedings in the Town Re Survey Records 2001 the then officials updated the Draft scheme roads in Survey No.539/1/part and 540/3/part and subsequently the Corporation name was entered in both the survey numbers as Corporation C1-C1 scheme existing road, this respondent office does not have any records relating to the acquisition proceedings of the above Survey number and as per the available records it has been thoroughly verified at No.539/1/part New T.S.No.2022, to an extent of 0.1257.5 Hec and T.S.No.2023 to an extent of 0.1573.0 Hec. Has not been acquired from any one including the petitioner by this respondent for the Corporation. Likewise in Survey No.540/3, New S.No.2030, to an extent 0.1250 which stands in the name of the Corporation as also not been acquired from any one including the petitioner by this respondent.

10.I humbly submit that the petitioner's land which falls in S.No.539 and 540, and T.S.Nos.2022, 2032, 2023, 2024, 2025, 2030 are free from acquisition in fact the 5th respondent in his proceedings Na.Ka.No.742/2018/H1(S), dated 30.01.2018 had certified that the above lands are not affected by Land acquisition proceedings and this also been further certified by Member secretary in his proceedings dated 07.02.2018 all the above mentioned documents are verified by me which founds part of the writ petition records, after verifying the above and also the records available in my office and also on inspection I found that 539/1 part & 540/3 part and New S.No.2022 & 2030 is not covered by Land Acquisition Proceedings."

17. Therefore, the records which speaks for itself clearly indicate that the land in Old T.S.Nos.539, 540 and New T.S.Nos. 2022, 2032, 2023, 2024, 2025, 500/9 in Kumarapalayam Village, Coimbatore admeasuring total extent of 2.72 acres of land is not covered by any land acquisition proceedings Award No.8/1986 dated 23/09/1986 passed by the 3rd respondent. This factual position though denied by the 2nd respondent in his first counter affidavit later withdrawn as wrong assertion based on the instruction given by the staff subordinate to him. The present contention of the 2nd respondent is that under Town Planning Scheme, some roads are acquired and developed by the local authority and some of the roads to be developed by the concern owners themselves. The approved C1C1 road, which is the subject matter of the present writ petition is one to be developed by the owner themselves. This contention has not backing of statute. If the Corporation intend to form a road for the use of public in the land owned by private party it has to acquire it in the manner known to law and not otherwise. From the additional counter affidavit of the 6th respondent, this Court finds that still the subject lands are classified as wet agricultural land and vacant. Erroneously, without any proceedings for acquisition, in the TSLR the 2nd respondent name has been mentioned. Taking advantage of this, the 2nd respondent cannot claim right over the property, an acquisition proceedings.

18. In so far as the doubt raised about the title of the petitioner over the property, it is a different issue which has

to be probed independently and in fact in the impugned order of the first respondent, it is mentioned that, ' the Assistant Executive Engineer (Planning), Coimbatore Corporation informed that the documents submitted by the petitioner showing ownership of the disputed portion are forged. Hence, FIR may be filed by Coimbatore Corporation against the concerned for the forged document and necessary legal action may be taken. This court need not interfere with the probe contemplated.

19.This court find factual error in the first respondent order dated 15/06/2018 in respect of his conclusion that, "there is no provision in the Tamil Nadu Town and Country Planning to delete the scheme road portion which was already acquired and transferred in the name of the local body. Hence, the proposal of deletion of scheme road is rejected." Hence, the order of the first respondent dated 15/06/2018 is set aside to that extent.

20.In view of the above finding, the application of the petitioners dated 09/01/2019 for planning permission required to be revisited by the second respondent afresh in the light of the documents presented by the petitioners and the stand of the Revenue Department as spoken through the affidavit and counter affidavit of the 6th respondent in this case.

21.In the result, the writ petitions W.PNos.15777 of 2018 and 9099 of 2019 are disposed of with a direction to the 2nd respondent to consider the application of the petitioner in W.P.No.9099 of 2019 made on 09/01/2019 afresh after affording personal hearing of the petitioners, Revenue Officials and the officials of Coimbatore Corporation and forward his report to the 1st respondent for appropriate action, as per law. The said exercise shall be preferably be completed within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

jbm

To

1.The Commissioner Director of
Town Planning,
807, Anna Salai, Chennai - 600 002.

2.The Commissioner of
Coimbatore Corporation,
Office of the Corporation
of Coimbatore,
Sivanada Colony, Coimbatore - 12.

3.The Member Secretary (In-charge),
Coimbatore Town and Country Planning,
Office of the Corporation of Coimbatore,
Sivananda Colony, Coimbatore -12.

4.The Assistant Commissioner,
Coimbatore Corporation,
South Zone,
Sivananda Colony, Coimbatore - 12.

5.The Special Tahsildar (South),
Town Survey Land Scheme,
Coimbatore.

6.The Commissioner of
Coimbatore Corporation,
Office of the Corporation
of Coimbatore,
Big Bazaar Street, Coimbatore - 1.

7.The Revenue Divisional Officer,
Coimbatore South,
State Bank Road, Coimbatore.

8.The Assistant Commissioner,
Coimbatore Corporation,
South Zone,
Palakkad Main Road, Kuniamuthur,
Coimbatore.

+1cc to Mr.S.Venkatesh, Advocate SR.No.97693

+1cc to Government Pleader SR.No.98059

W.P.Nos.15777 of 2018 and
9099 of 2019

KJI (CO)
GMY (03/12/2019)