

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.08.2019

DELIVERED ON : 30.08.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.24182 of 2019 and
W.M.P.Nos. 23966 & 23967 of 2019

The Institute of the Brothers of St.Patrick,
Gandhi Nagar, Adyar,
Chennai - 600 020
Rep. by its Secretary ... Petitioner

v.

- 1 The Corporation of Chennai,
Rep by its Commissioner,
Rippon Building, Egmore
Chennai - 600 003
- 2 The Zonal Deputy Commissioner (South),
Corporation of Chennai,
Zonal Office South,
Latiz Bridge Road, Adyar
Chennai - 600 020
.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue of Writ of Certiorarified Mandamus, calling for the records relating to impugned order of the 2nd respondent herein bearing Va (Thu) Na. Ka. No. A11/ 003/ 2019, dated 27.07.2019 and quash the same and direct the respondents herein to restore status quo ante in respect of the property of an extent of 2 hectares 10 ares and 40 square metres of land in Block No. 24, T.S. No.2, Old Survey No.2/2B2PT, 2/2APT, 2/2BPT and 2/1PT as it stood prior to 10.8.2019.

For Petitioner : Mr.AR.L.Sunderesan, Senior Counsel
For Mr. M.L. Ganesh

For Respondents : Mrs. Narmadha Sampath
Addl. Advocate General
Assisted by Mr.R.Arunmozhi
Standing Counsel - for R1

ORDER

VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

M. DURAISWAMY, J.,

The above Writ Petition has been filed by the petitioner to issue a Writ of Certiorari Mandamus to call for the records relating to the impugned order of the 2nd respondent dated 27.07.2019, to quash the same and direct the respondents to restore status quo ante in respect of the property measuring an extent of 2 hectares 10 ares and 40 square metres of land in Block No.24, T.S.No.2, Old Survey No.2/2B2PT, 2/2APT, 2/2BPT and 2/1PT, as it stood prior to 10.8.2019.

2.1 Earlier, the petitioner filed a Writ Petition in W.P.No.23787 of 2019 to issue a Writ of Mandamus to forbear the 1st respondent from dispossessing the Petitioner Institution from the lands mentioned above till the disposal of the Suit in O.S. No. 4413 of 2005 on the file of the VI Assistant Judge, City Civil Court, Chennai. When the said Writ Petition was moved for admission on 10.08.2019, it was informed by the 1st respondent that they have already taken possession of the land on the said date i.e. 10.08.2019 itself. When the said Writ Petition came up for hearing on 28.08.2019, the learned Senior Counsel appearing for the petitioner submitted that since the petitioner has challenged the notice issued under Sections 220 & 222 of the Chennai City Municipal Corporation Act, 1919 in the present Writ Petition, the said Writ Petition may be dismissed.

2.2 In view of the submission made by the learned Senior Counsel appearing for the petitioner, we have dismissed the Writ Petition in W.P.No.23787 of 2019 on 28.08.2019 by a separate order.

3.1 It is the case of the petitioner that the land in question was classified in revenue records as "Vilayattu Maidanam" (Playground) without showing the name of the petitioner. However, according to the petitioner, the said land was also in effective possession, control and enjoyment of the petitioner and the same was being used by the petitioner as Playground. In these circumstances, the petitioner made an application to the Tahsildar, Mylapore, for rectifying the mistake and for grant of patta in their favour in respect of the land measuring an extent of 10 acres and 2 grounds as well. The Tahsildar, Mylapore, by order dated 03.12.2003, rejected the petitioner's application.

3.2 After the rejection of the petitioner's application, the petitioner filed a Civil Suit in O.S. No. 4413 of 2005 on the file of the VI Assistant Judge, City Civil Court, Chennai, for declaration and permanent injunction, against the District Collector, Chennai and the Tahsildar, Mylapore-Triplicane Taluk, Chennai and also obtained an ex parte decree dated 23.08.2005.

3.3 Challenging the order dated 03.12.2003, passed by the Tahsildar, the petitioner preferred an appeal before the District Collector, Chennai on 14.07.2004. The said appeal was forwarded by the District Collector, Chennai by the proceedings dated 21.08.2012 to the District Revenue Officer, Chennai, who is the competent authority to exercise the general power to entertain the appeals. By order dated 28.12.2012, the District Revenue Officer, declined to interfere with the order passed by the Tahsildar for the grant of patta for the land in dispute for the reason that the said land is classified as "Sarkar Poromboke, Chennai Corporation Vilayattu Maidanam Nagarasabai Vilaiyattu Maidhanam".

3.4 As against the order passed by the District Revenue Officer, the petitioner preferred a Revision before the Principal Secretary and Commissioner of Land Administration and the Revisional Authority also dismissed the Revision by the order dated 25.07.2013.

4. Challenging the order dated 25.07.2013, passed by the Principal Secretary and Commissioner of Land Administration, the petitioner preferred a Writ Petition in W.P.No.21619 of 2013 and this Court, dismissed the

Writ Petition, by order dated 18.09.2013. While dismissing the Writ Petition, this Court, observed as follows:-

"1. This is an era of land grabbing not only by private individuals but also by educational institutions and public charitable trust. It is also a matter of concern that unmindful of the law declared by the higher Courts that even when ex parte decree is passed, the merits of the matter should be considered, certain Civil Judges have been giving ex parte declaration of title without application of mind. The subject writ petition is a classic example as to how the City Civil Court, Chennai, declared the title of the petitioner with respect to 10 acres of prime land in the City without applying its mind and solely on the ground that the Government officials remained ex parte.

...

13. The Corporation of Chennai was not a party to the suit in O.S.No.4413 of 2005. The petitioner knowing very well that the property belongs to the Corporation, failed to implead the local body as a party to the writ petition. The Chennai Corporation purchased the subject property by way of a sale deed No.435 of 1956 dated 03 March, 1956. The petitioner wanted to create documents and for the said purpose by showing an artificial threat a Civil suit was filed before the City Civil Court impleading the District Collector and Tahsildar as parties. Since the Civil Court has not given any finding on merits with respect to the title or possession, the ex parte decree would not be of any help to the petitioner in its contention that the property belongs to the society.

14. The revenue records clearly shows that the land was classified as "Sarkar Poramboke". It was described as "Chennai Corporation Vilayattu Maidanam".

15. According to the petitioner, they have been in possession and enjoyment of the property from 20 September 1886. The revenue records shows that the land mentioned in the document dated 20 September 1886 was registered in the name of Dr. Joseph Colgen Bishop of Oorur Village. However, there was no such entries showing the name of the predecessor-in-interest of petitioner in revenue records with respect to the subject property. The mere fact that all other properties owned by the petitioner were all recorded in the revenue records and that the disputed property was not the subject of any such registration or endorsement in revenue records, itself would prove the falsity of the case pleaded by the petitioner. Therefore I do not find any merit in the contention raised by the petitioner."

5. As against the order passed by the learned Single Judge, the petitioner preferred an Appeal in W.A.No.2053 of 2013 and the Division Bench of this Court, by Judgment dated 15.07.2019, confirmed the order of the learned Single Judge and made the following observations:-

"... 5. Having considered the rival submissions and having perused the order of the trial court quoted by the learned Single Judge, we respectfully agree with the finding of the learned Single Judge and we are at a loss to understand, how the learned trial Judge could pass such a short and cryptic judgment in a civil suit, even though exparte, without discussing the facts, evidence and the arguments of the plaintiff side also. Such a cryptic order by a Civil Court cannot be said to be a valid foundation for a Decree passed in favour of the Appellant.

6. Therefore, in our considered opinion, the said Judgement and Decree passed by the learned trial Judge in O.S.No.4413 of 2005 dated 23.08.2005, deserves to be set aside and the suit deserves to be restored for fresh trial in accordance with law.

7. Accordingly, the Judgment and Decree dated 23.08.2005 passed in O.S. No.4413 of 2005 is set aside and the same is restored to the trial Court for fresh trial in accordance with law. We further direct the Chennai City Corporation to be impleaded by the trial court as a Defendant in the said suit and the suit will commence from the beginning stage. The defendants including the new defendant shall be given an opportunity for filing of written statement, etc., and thereafter, the trial be proceeded in accordance with law.

8. The trial court will also consider the application for temporary injunction also, if any afresh in accordance with law after giving the opportunity of hearing to the defendants.

9. The pendency of suit, will not prevent the defendants from taking any other legal action in accordance with law nor it will prevent the Petitioner/Appellant from seeking their legal remedy in accordance with law. No costs. The connected CMP is closed."

6. After the dismissal of the Writ Appeal on 15.07.2019, the petitioner filed an Impleading Application in O.S.No.4413 of 2005 to implead the Corporation of Chennai as a defendant on 02.08.2019 and moved the said application on 06.08.2019 before the Trial Court.

7. In view of the observations made in para 9 of the Judgement in W.A.No.2053 of 2013, to the effect that the pendency of the suit will not prevent the defendants from taking any other legal action in accordance with

law, the 2nd respondent issued the impugned notice dated 27.07.2019 under Sections 220 & 222 of the Chennai City Municipal Corporation Act, 1919 calling upon the petitioner to vacate the encroached land within a period of 7 days.

8. Though the Division Bench of this Court had given a direction to implead the Corporation of Chennai as a defendant in the Suit, by its Judgment dated 15.07.2019, the petitioner choose to file the Impleading Application only after the issuance of notice dated 27.07.2019. Thereafter, as already stated, the petitioner filed the Writ Petition in W.P.No.23787 of 2019, which was dismissed by us on 28.08.2019, in view of the submissions made by the learned Senior Counsel appearing for the petitioner.

9. The learned Senior Counsel appearing for the petitioner submitted that when the title is in dispute, the 2nd respondent should not have issued the impugned notice dated 27.07.2019. The learned Senior Counsel, further submitted that the petitioner would be satisfied if a direction is given to the respondents not to create any third party interest in the land in dispute till the disposal of the Suit in O.S. No. 4413 of 2005.

10. The learned Senior Counsel, also relied upon the following Judgments:-

(i) 1982 (2) SCC 134 [Government Of Andhra Pradesh v. Thummala Krishna Rao & Anr] wherein the Hon'ble Supreme Court held as follows:-

" ... 8. It seems to us clear from these provisions that the summary remedy for eviction which is provided for by section 6 of the Act can be resorted to by the Government only against persons who are in unauthorized occupation of any land which is "the property of Government". In regard to properly described in sub-Sections (I) and (2) of section 2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in section 6. A person who occupies a

part of a public road, street, bridge, the bed of the sea and the like, is in unauthorised occupation of property which is declared by section 2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously which can only be done by resorting to the summary remedy provided by the Act. But section 6 (1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in unauthorised occupation of a land "for which he is liable to pay assessment under section 3". Section 3, in turn, refers to unauthorised occupation of any land "which is the property of Government". If there is a bona fide dispute regarding the title of the Government to any property the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by section 6 for evicting the person who is in possession of the property under a bona fide claim or title. In the instant case, there is unquestionably a genuine dispute between The State Government and the respondents as to whether The three plots of land were the subject-matter of acquisition proceedings taken by the then Government of Hyderabad and whether the Osmania University, for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation. The suit filed by the University was dismissed on the ground of limitation, inter alia, since Nawab Habibuddin was found to have encroached on the property more than twelve years before the date of the suit and the University was not in possession of the property at any time within that period. Having failed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impermissible. The respondents have a bona fide claim to litigate and they cannot be

evicted save by the due process of law. The summary remedy prescribed by section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title. That procedure is, therefore, not the due process of law for evicting the respondents."

(ii) 2019 SCC OnLine SC 394 [Kaikhosrou(Chick) Kavasji Framji v. Union Of India] wherein the Hon'ble Supreme Court held as follows:-

" ... 71. Sixth, the Civil Court alone could try and decide the question of declaration of ownership of any immovable property between the parties and such disputes could not be decided in summary proceedings under the PP Act."

11. When the facts leading to the filing of the present Writ Petition standing as stated above, the ratio laid down in the said Judgments are not applicable to the present case.

12. From the materials available on record, it is clear that the 2nd respondent had issued the impugned notice dated 27.07.2019 following the observations made by the Division Bench in W.A.No.2053 of 2013. That apart, they have taken possession of the property only after the expiry of 7 days time granted in the impugned notice dated 27.07.2019.

13. When this Court has given an opportunity to the respondents to take any other legal action in accordance with law, the action taken by the 2nd respondent cannot be construed as illegal or unlawful. That apart, the Division Bench also gave liberty to the petitioner to file an application for temporary injunction and also directed the Trial Court, to consider the same, after giving an opportunity of hearing to the defendants.

14. The learned Senior Counsel appearing for the petitioner submitted that though the petitioner had filed an application for interim injunction, the said application was not moved by the petitioner so far.

15. Mrs. Narmadha Sampath, learned Additional Advocate General, appearing for the respondents, submitted that the impugned notice issued by the 2nd respondent is legally valid and therefore, there is no ground to interfere with the same.

16. Unless the petitioner establish their right over the property in dispute in the pending Civil Suit in O.S.No.4413 of 2005, the impugned order cannot be set aside.

17. When the petitioner's request for issuance of patta was rejected by the authorities and also by this Court in the Writ Petition as well as in the Writ Appeal, the impugned order passed by the 2nd respondent is valid in law. That apart, the 2nd respondent also took possession of the property from the petitioner on 10.08.2019 and therefore, we are of the view that the impugned notice dated 27.07.2019 is legally valid and no ground has been made out to interfere with the same. The Writ Petition is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

Rj
To

- 1 The Corporation of Chennai,
Rep by its Commissioner,
Rippon Building, Egmore
Chennai - 600 003
- 2 The Zonal Deputy Commissioner (South),
Corporation of Chennai,
Zonal Office South,
Latiz Bridge Road, Adyar
Chennai - 600 020

+1cc to M/s.Al.Gantimathi , Advocate SR.No. 75894

+1cc to M/s.R.Arunmozhi , Advocate SR.No. 75333

W.P. No.24182 of 2019 and
W.M.P.Nos. 23966 & 23967 of 2019

A.SK(23/09/2019)