



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.04.2019

DELIVERED ON : 08.05.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .No.18880 of 2018 and
W.M.P. (MD) Nos.16715 of 2018 & 3548 of 2019

1. M.Palayee
2. Mohana
3. Pandian
4. Bhuvaneswari

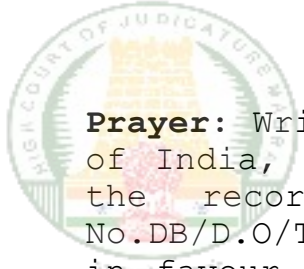
... Petitioners

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Science and Technology,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The District Collector,
Tiruchirappalli.
3. The District Revenue Officer,
Tiruchirappalli District,
Tiruchirappalli.
4. The Revenue Divisional Officer,
Tiruverambur Taluk,
Tiruverambur, Tiruchirappalli District.
5. The Tahsildar,
Tiruverambur Taluk,
Tiruverambur, Tiruchirappalli District.
6. The Bharathidasan University,
(Now Anna University),
Tiruchirappalli.
7. The Chief Engineer,
P.W.D. Technical Education Circle,
Chennai - 600 025.

8. T.Selvam

... Respondents



Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Award of Work under Letter No.DB/D.O/T.31/2018-19/TEC/dt.13.07.2018 of the seventh respondent in favour of the eighth respondent herein and quash the same and consequently direct the fourth respondent herein to grant patta in favour of the petitioners herein in respect of lands of an extent of 1.62.0 hectares (4.00 acres) comprised in Survey No.698 (Old Survey No.99 Part), Sooraiyur Village, Thiruverambur Taluk, Tiruchirappalli District.

For Petitioners : Mr.G.Prabhu Rajadurai
for M/s.AL.Ganthimathi.

For R-1 to R-5

&R-7

: Mr.K.Mu.Muthu,
Additional Government Pleader.

For R-6

: Mr.K.Govindharajan

O R D E R

The Writ petitioners claim ownership over the petition mentioned land comprised in survey No.698, Sooraiyur Village, Thiruverambur Taluk, Trichy District. By the impugned communication dated 13.07.2018, the eighth respondent has been entrusted with the work of constructing protective wall, entrance Arch and Gate arrangements for Anna University in BIT campus, Trichy - 24. If the wall in question is put up, it would encircle the petition mentioned land. Questioning the award of tender in favour of the eighth respondent by the seventh respondent, this Writ petition has been filed.

2. This Court while entertaining the Writ petition, granted an interim order on 06.09.2018 in W.M.P.(MD)No.16715 of 2018. Seeking to vacate the same, the sixth respondent has filed W.M.P.(MD)No.3548 of 2019.

3. Heard the learned counsel on either side.

4. The learned counsel appearing for the Writ petitioners submitted that the land in question was purchased by their father Thiru.Mariappa Uthamandar vide registered sale deed dated 13.10.1966 (Document No.5571/66) from one Kumudhavalli Thayar. The said vendor would trace her title to an earlier document dated 13.02.1957. When the petitioners came to know that the property in question had been classified as Assessed Waste Dry in the revenue records, they filed O.S.No.617 of 2012 before the II Additional District Munsif Court, Thiruchirappalli, seeking the relief of declaration and permanent injunction. The suit was decreed on 20.08.2014. Based on the said Judgment and Decree, the petitioners have applied for mutation of revenue records in their favour. The proceedings are still pending.



5. Even though the lands belonged to the Writ petitioners, the Government had erroneously leased out the property in question in favour of the sixth respondent University. But the sixth respondent University had not taken possession of the same and it is under the occupation of the Writ petitioners. The specific contention of the learned counsel appearing for the Writ petitioners is that the sixth respondent University is tracing its leasehold rights only from the Government which is a defendant in O.S.No.617 of 2012. The sixth respondent University cannot claim a higher title than the lessor. It is bound by the decree passed against the Government of Tamil Nadu. According to the petitioners' counsel, the sixth respondent cannot make much out of the fact that they were not shown as party defendant in the said proceedings. The petitioners' counsel also wanted this Court to ignore the pendency of O.S.No.70 of 2019 filed by the sixth respondent against the Writ petitioners herein. The learned counsel would contend that the said suit is intrinsically not maintainable. He would point out that if at all the University was aggrieved by the Judgment and Decree made in O.S.No.617 of 2012, they should have filed a formal appeal. It is not open to the sixth respondent to file an independent suit for getting declaration of the decree as null and void. When the petitioners have obtained a declaration of title from the competent civil Court and it is still holding the field, it is not open to the official respondents to ignore the same.

6. Since the petitioner's counsel tried to lay much stress on the finding given by the civil Court that the lands in question are lying outside the compound wall of the University, this Court decided to make a personal visit to satisfy itself as to whether the said claim is true or not. Of course this Court could have appointed an Advocate Commissioner and obtained a report. But then, this Court wanted to obtain first hand information and it visited the site in question on 28.04.2019. The learned counsel on either side were given due intimation and the learned counsel as well as the parties were present, when I visited the spot. I could see that the construction of the compound wall is not complete and only to complete the construction, the impugned tender notification has been issued. Therefore, I could see for myself that the claim that the land in question is situated outside the compound wall is not correct. It is a bare vacant land. Therefore, the question of dispossessing the petitioners does not arise. Even according to the petitioners, the land in question was purchased way back on 13.10.1966. For the last 53 years, it has been remaining as such. No construction has come up. The land has not witnessed any development at all. If its value had appreciated, it is due to the establishment of the sixth respondent University.

7. This Court had a frank discussion with the faculty staff in the presence of the Writ petitioners. The faculty staff submitted that they are badly in need of the said land and that they will be able to set up labs with funds and grants from the Central Government. They pointed out that the Central Government is

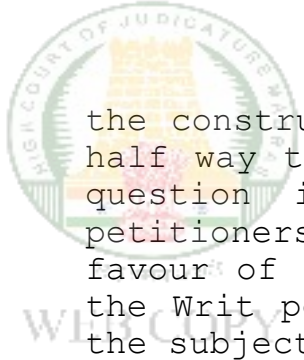


insisting that the said labs are established in a land that is abutting the main road.

8. I am convinced that the lands are absolutely required for the expansion of the University for setting up the additional labs. Anything that advances the cause of education can only be said to be public interest. It can also be seen that on account of non-completion of the compound wall, the security and safety aspects are under a question mark.

9. At the same time, I cannot lose sight of the fact that the Writ petitioners have obtained a declaratory decree declaring their title over the land in question. It is a fact that the Government originally intended to acquire this land. It even issued G.O.Ms.No.1349 Department of Education, Science and Technology, dated 26.06.1982 for that purpose. But carried away by the entry in the revenue records that the land has been classified as Assessed Waste Dry, the Government instead of acquiring the land chose to confer leasehold rights on the sixth respondent vide G.O.Ms.No.229 Revenue Department, dated 09.02.1990. When through a Government Order, the Government of Tamil Nadu had handed over the land in question to the sixth respondent University by way of lease, the lessee University is definitely a necessary party to the suit proceedings. But then, the Writ petitioners have chosen to obtain a decree behind the back of the Writ petitioners. When the petitioners filed O.S.No.617 of 2012 before the II Additional District Munsif, Thiruchirappalli, it was dismissed on 07.02.2013 even though the defendants were set ex-parte. The Writ petitioners filed A.S.No.68 of 2013 before the I Additional Sub Court, Thiruchirappalli and the appeal was allowed and the matter was remitted to the file of the trial Court for fresh disposal. Even thereafter, no written statement was filed. On the side of the Government/defendants, no evidence was let in. The trial Munsif was left with no other option but to decree the suit on 20.08.2014.

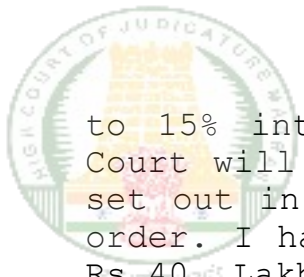
10. A mere reading of the plaint averments would clearly indicate that the plaintiffs were aware about the lease issued in favour of the Bharathidasan University. That is why they had earlier filed W.P.No.248 of 2011 for nullifying the said lease. In fact the suit itself came to be filed following the disposal of the Writ petition with liberty to the Writ petitioners to move the jurisdictional civil Court. On the own showing of the Writ petitioners' plaint averments, the sixth respondent University was a necessary party. I therefore hold that non-impleading of the sixth respondent University before the civil Court would come in the way of their taking advantage of the decree against the sixth respondent University. In paragraph No.6 of the Judgment in O.S.No.617 of 2012, dated 20.08.2014, it has been mentioned that the land in question is lying outside the compound wall of the University. As already stated, this is an erroneous finding. If the construction of the compound wall had been fully completed, then one can say whether the land is inside the compound wall or outside the compound wall. When



the construction of the compound wall itself is not complete and is half way through, it is absurd to give a finding that the land in question is lying outside the compound wall. Since the Writ petitioners have not successfully impeached the lease issued in favour of the University by the Government, I am of the view that the Writ petitioners are not entitled to obstruct the taking up of the subject tender works.

11. I hold that the land in question was leased out in favour of the sixth respondent University by the Government way back in 1990 and that the said lease is still holding good as it has not been set aside in the manner known to law. The Writ petitioners have not succeeded in impeaching the said lease till date. Since the sixth respondent has not been a party defendant in O.S.No.617 of 2012 on the file of the II Additional District Munsif Court, Trichy, the Writ petitioners are not entitled to take advantage of the declaratory decree dated 20.08.2014 passed against the sixth respondent. The land in question is not outside the compound wall. In fact to complete the construction of the compound wall, the impugned tender works have been issued. The land in question is required for the cause of education. Therefore, the interim stay granted earlier is vacated. W.M.P.(MD)No.3548 of 2019 stands allowed, accordingly.

12. But the matter cannot rest there. A mere perusal of the materials on record would indicate that the Writ petitioners have made out a prima facie case that the land in question belongs to them. Probably, that is why the Government issued G.O.Ms.No.3149 Department of Education, Science and Technology, dated 26.06.1982 for acquiring the same. Therefore it is necessary that the respondents are put on terms. Right or wrong, there is a declaratory decree standing in favour of the Writ petitioners. This Court permits the sixth respondent herein to file a third party appeal questioning the said Judgment and Decree. If such an appeal is filed within a period of four weeks from the date of receipt of a copy of this order, the same shall be entertained by the appellate Court without reference to limitation. It is the sixth respondent that wants to have the compound wall constructed by enclosing the land in question. Therefore they shall deposit a sum of Rs.40,00,000/- (Rupees Forty Lakhs only) to the credit of O.S.No.617 of 2012 on the file of the II Additional District Munsif, Thiruchirappalli. The first appellate Court shall dispose of the appeal within a period of four months from the date of filing. Additional evidence shall be permitted to be adduced. The first appellate Court shall decide as to whom the land in question belongs. If it comes to the conclusion that the land in question belongs to the Writ petitioners, in the very same proceedings, the first appellate Court will also finalise the compensation payable to the Writ petitioners. Since the lease was granted by the Government in favour of the sixth respondent University way back on 09.02.1990, it shall be taken as the cut off date for fixing the market value. Since the possession was handed over by the Government to the University on the said date, the Writ petitioners will be entitled



to 15% interest on the compensation awarded. The first appellate Court will apply the principles for determining the compensation as set out in Section 23 of the Land Acquisition Act 1894 and pass an order. I have directed the sixth respondent to deposit an amount of Rs.40 Lakhs, because I see that in a number of cases the compensation amount is not paid even after the passing of award. If the sixth respondent does not deposit the amount of Rs.40 Lakhs as directed, it will not be entitled to carry on with the construction of the compound wall. It is made clear that this Court has not given any definite finding on the title of the petition mentioned lands. It is for the appellate Court to adjudicate the issue.

13. The Writ petition stands disposed of, on these terms. No costs. Consequently, connected W.M.P.(MD)No.16715 of 2018 is closed.

Sd/-

Assistant Registrar(C.O)

/TRUE COPY/

Sub Assistant Registrar(CS)

To

1. The Secretary to Government,
Department of Science and Technology,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The District Collector, Tiruchirappalli.
3. The District Revenue Officer,
Tiruchirappalli District, Tiruchirappalli.
4. The Revenue Divisional Officer,
Tiruvarambur Taluk, Tiruvarambur, Tiruchirappalli District.
5. The Tahsildar,
Tiruvarambur Taluk, Tiruvarambur, Tiruchirappalli District.
6. The Bharathidasan University,
(Now Anna University), Tiruchirappalli.
7. The Chief Engineer,
P.W.D. Technical Education Circle, Chennai - 600 025.

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-65435[F] dated 09/05/2019)

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-65553[F] dated 09/05/2019)

+1 CC to M/s.SPL GP (SR-65742[F] dated 10/05/2019)

ORDER MADE IN

W.P. (MD) .No.18880 of 2018 and

W.M.P. (MD) Nos.16715 of 2018 & 3548 of 2019

CS(TR): 13/05/2019/6P/11C