

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 17.12.2019

ORDERS PRONOUNCED ON : 03.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.NO.22884 OF 2019
AND
W.M.P.NOS.22512, 22513 AND 22515 OF 2019

1. P.Dhanalakshmi
2. P.Paulraj Naidu @ Paulraj ... Petitioners

Vs.

1. The Secretary to Government,
Industries Department,
St.George Fort, Chennai.
2. The Managing Director,
Tamil Nadu Industrial Development
Corporation Limited (TIDCO),
No.19A, Rukmani Lakshmipathi Road,
(Marshal Road), Egmore, Chennai-600 008.
3. The Executive Director,
Tamil Nadu Industrial Development
Corporation Limited (TIDCO),
No.19A, Rukmani Lakshmipathi Road,
(Marshal Road), Egmore, Chennai-600 008.
4. The Revenue Divisional Officer,
Ponneri, Thiruvallore District.
5. The Tahsildar, Ponneri, Thiruvallore District.
6. The Chairman,
TNEB,
Mount Road, Chennai.
7. The Deputy Director,
TNEB North, Mount Road,
Chennai.

8. The Chief Engineer - North,
TNEB, Mount Road, Chennai.
9. The Superintending Engineer (North),
TNEB, Mount Road, Chennai.
10. The Divisional Engineer,
TNEB, Tondiarpet, Chennai.
11. The Asst. Divisional Engineer,
TNEB, Thiruvallavoyal, Minjur,
Ponneri Taluk, Thiruvallore District.
12. The Assistant Engineer, TNEB,
Thiruvallavoyal, Minjur,
Ponneri Taluk, Thiruvallore District.
13. G.Gopal
14. S.Munusamy
15. K.Venkatesan
16. V.Uma
17. Sarasu @ Saraswathi
18. Lalitha
19. Manjula
20. Sujatha
21. Chandra
22. Thulukanam
23. Krishnamurthy
24. Babu
25. Ravi
26. Pushpa
27. Sarala

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to forbear the respondents 1 to 12 from interfering with the petitioners' peaceful possession and enjoyment of the schedule properties, except under due process of law.

Schedule Properties

Item No.1:

Sale agreement dated 25.10.2002 with one Gopal, the 13th respondent herein for Rs.1,60,000/-.

Thiruvallore District, Ponneri Taluk, North Madras Registration District, Ponneri Sub-Registration District, No.93, Kalanji Village in Punja S.No.87/2 in total extent Acre 3.64 cents in S.No.86/6 in total extent in Acre 0.07 Cents, out of

total extent of Acre 3.71 cents in 2 acres only in this sale agreement:

North by : Rajendran land
South by : Pensil Naidu land
East by : Munusamy Naidu land
West by : Pensil Naidu land

Item No.2:

Sale agreement for Rs.3,04,800/-, dated 25.10.2002 with Late Yasodammal and Munusamy, the said Munusamy is the LRs. of Yasodammal showing as 14th respondent herein.

Thiruvallore District, Ponneri Taluk, North Madras Registration District, Ponneri Sub-Registration District, No.93, Kalanji Village in Punja S.No.86/7 in total extent 0.3 cent, S.No.87/3 total extent 3.40 cents in S.No.88/3 total extent 0.05 cent, in total extent acres 3.81 cents land only for this sale agreement.

Item No.3:

Sale agreement dated 25.10.2002 for Rs.1,56,800/- with Venkatesan and Uma, the 15th and 16th respondents.

Thiruvallore District, Ponneri Taluk, North Chennai Registration District, Ponneri Sub-Registration District No.93, Kalanji Village, in Punja S.No.86/5 283/1.13 acre 1.13 cents, S.No.86/5 283/0.83 total extent 0.83 cent in total acre 1.96 cents of lands in this sale agreement.

Item No.4:

Sale agreement dated 27.03.2003 for Rs.1,40,000/- with one Late Pensil Naidu, the LRs. showing as 21 to 25th respondents.

Thiruvallore District, Ponneri Taluk, North Madras Registration, Ponneri Sub-Registration District, No.93, Kalanji Village, Punja S.No.87/2 in total extent acre 1.75 cent land only under this sale agreement.

North by: Rajendran Land
South by: Katturankal Odai
East by : Gopal land
West by: Sivaji land

Item No.5:

Sale agreement dated 19.03.2004 for Rs.80,000/- with one Late Rajendran, the LRs. shown as 17th Respondent to 20th respondents.

Ponneri Taluk, No.93, Kalanji Village, S.No.86/3A, total extent in acre 2 in Radhakrishnan Share 1 acre, the remaining acre 1, the share of Rajendran.

Item No.6:

Sale agreement dated 19.03.2004 for Rs.60,000/- with one Late Pensil Naidu, the LRs shown as 21st respondents to 25th respondents.

Ponneri Taluk, No.93, Kalanji Village in S.No.86/1, 86/2, 87/2 hectare 1.47.5 total extent 2 acre 5 cents in 0.75 cents only this agreement.

North by : Kattur Anbarasu land
South by : Gopal Naidu 0.50 cent land
East by : Janagiram Reddiar land
West by : Najimudeen Bai land

Item No.7:

Sale agreement dated 19.03.2004 for Rs.40,000/- with G.Gopal, the 13th respondent.

Thiruvallore District, Ponneri Taluk, No.93, Kalanji Village in Punja S.No.86/1, 0.50 are, 86/6-0.3, 83/2 - 1.47.5 total 2 acres 0.05 cents in 0.50 cents only in sale agreement.

North by : Pensil Naidu land
South by : Danapal Reddiar land
East by : Radhakrishnan Naidu land
West by : Najumudeen Bai land

Item No.8:

Sale agreement dated 19.03.2004 for Rs.80,000/- with Late T.Radhakrishnan, the LRs shown as 26th respondent and 27th respondent.

Ponneri Taluk, No.93, Kalanji Village in S.No.86/3A, in total extent 2 acres in Rajendran's share 1 acre out of Radhakrishnan share 1 acre.

For petitioner : Mr.S.Ramesh Kumar

For respondents : Mr.V.Shanmuga Sundar,
Spl.G.P. for RR-1, 4 and 5
Mr.Vijay Narayan,
Advocate General, assisted by
Ms.C.N.G.Niraimathi for RR-2 & 3
Mr.P.R.Dhilip Kumar for RR-6 to 12
No appearance for RR-13 to 27

ORDER

R.SUBBIAH, J

The petitioners have filed the above Writ Petition praying for issuance of a Writ of Mandamus to forbear the respondents 1 to 12 from interfering with the petitioners' peaceful possession and enjoyment of the schedule properties, except under due process of law.

2. The case of the petitioners is as follows:

(i) The second petitioner is the Proprietor of M/s.Blue Star Farms, doing the prawn culture business at Kalangi Village for the past 17 years with the huge investments of Rs.75 lakhs in the schedule mentioned properties. By G.O.Ms.No.85, Industries Department, dated 21.03.1997, administrative sanction was granted by the first respondent to acquire the lands at 1.Puludivakkam, 2.Kattupalli, 3.Kalangi, 4.Voyalur III Villages, respectively to set up a Petro-Chem Park (PCP) Project. The sanction was granted to acquire the land(s) of an extent of 7155.95 acres in the said four villages. The land(s) were acquired by the third and fourth respondents during the period 1997 - 1998 and the Awards were passed accordingly.

(ii) After passing the Awards in the four villages, the second and third respondents found out several difficulties to set up the Petro-Chem Park Project at Kalangi Village. The second and third respondents passed a resolution and restricted their acquisition only for Kattupalli, Pulidivakkam and Voyalur Villages. The second and third respondents have excluded the entire extent at Kalangi Village from acquisition for the purpose of Petro-Chem Park Project and due to this reason, the possession had not been taken in Kalangi Village. In the meanwhile, the Petro-Chem Park Project had been dropped by the Government. The third respondent, on behalf of the second respondent, wrote a letter dated 11.10.2001 to the first respondent to issue the re-administrative sanction to exclude the entire extent of Kalangi Village to facilitate them to re-

deliver the lands to the land owners. After passing the resolution by the second and third respondents, several land owners at Kalangi Village, who are not able to make their representation (barred by limitation) for their enhanced compensation through appropriate Court, approached the petitioners and entered unregistered sale agreements, received the entire considerations from the petitioners and handed over the physical possession of the scheduled properties under the petitioners' use and occupation.

(iii) Thereafter, the petitioners invested Rs.75 lakhs to set up eight numbers of prawn culture ponds and other infrastructures for agriculture in the field of prawn culture. From 2002 to till date, the petitioners are in peaceful possession and enjoyment of the schedule properties. After lapse of several years, due to increase in land price, several land owners demanded the petitioners to pay additional money. All the land owners disturbed the peaceful possession and enjoyment of the schedule properties.

(iv) Hence, the petitioners have filed a Civil Suit in O.S.No.2615 of 2014 before the 18th Assistant City Civil Court, Chennai, in which, the City Civil Court granted interim injunction restraining the land owners from interfering with the peaceful possession and enjoyment of the schedule properties of the petitioners to carry out the business in the name and style of M/s.Blue Star Farms, subject to the condition to deposit the initial compensation received by the land owners from the second and third respondents in their respective lands. The petitioners had deposited the value received by the land owners from the second and third respondents of Rs.5,10,000/- with the City Civil Court, Chennai to the credit of the said suit. The interim order in the said suit, was extended from time to time. Thus, the physical possession of the schedule mentioned properties is under "lis-pendens".

(v) While so, on 15.06.2019, the Special Tahsildar (TIDCO) came along with the respondents 4, 5 and 12 with Police official with JCB machine without giving any prior intimation or opportunity to the petitioners and started to demolish the compound entrance gate with JCB and damaged eight ponds meant for irrigation of the prawns. They caused damage to the petitioners' property and disconnected the two electricity service connections. The petitioners objected and explained them that without electricity, the entire prawns cultivated and valued at Rs.75 lakhs would perish. But the respondents threatened the petitioners that they would damage the entire ponds with JCB machine, if the petitioners resisted.

(vi) The respondents treated the petitioners as if they are encroachers. If the respondents intend to initiate any action against the petitioners, the same should have been done only in accordance with the provisions of the Tamil Nadu Land Encroachment Act. Hence, the petitioners have filed the present Writ Petition for the relief stated supra.

3. When the matter is taken up for consideration, the learned counsel for the petitioners made detailed submissions advertng to the averments made in the affidavit filed in support of the Writ Petition. The crux of the submissions of the learned counsel for the petitioners is that without issuing notice under Section 7 of the Tamil Nadu Land Encroachment Act, the respondents are taking action to demolish the properties and they have damaged eight ponds. The fact remains that the petitioners are in occupation and possession of the properties by entering into sale agreement with the erstwhile land owners, and therefore, the respondents 1 to 12 should be restrained from interfering with the petitioners' peaceful possession and enjoyment of the schedule properties. In support of his contentions, the learned counsel for the petitioners relied on various decisions of Courts.

4. Countering the above submissions, the learned Advocate General appearing for the respondents 2 and 3/TIDCO, by filing detailed counter affidavit, submitted that administrative sanction was accorded by the Government, vide G.O.(Ms.).No.85 (A), Industries Department, dated 27.05.1997 for acquisition and alienation of lands to an extent of 2897.14.5 Ha (7155.79 acres including 3500 acres of salt department land) in Kalangi, Kattupalli, Puzhudevakkam and Voyalur Villages of Ponneri Taluk in Tiruvallur District, for setting up of Petro-Chem Park Project. However, due to various reasons including environment related matters, the TIDCO, in its Board meeting held on 09.07.2001, recommended to exclude the land area in Kalangi Village and to limit the land acquisition to a total area of 3809 acres (including 1500 acres of sale department land) in Kattupalli, Puzhudevakkam and Voyalur villages. Based on this recommendation of the Board, the TIDCO, vide its letter dated 11.10.2001, requested the first respondent for orders to re-convey the above land area under Section 48-B of the Land Acquisition Act to the respective original land owners. In this situation, TIDCO, vide letter 29.05.2014, requested the first respondent to ignore the proposal submitted to the first respondent regarding re-conveyance of the land(s) acquired for the said project and sought permission to utilise the said lands as alternative lands for establishment of heavy engineering hub, in respect of which, the proposal was submitted by the TIDCO, vide letter dated 07.12.2012 and subsequently, administrative sanction was obtained.

5. The learned Advocate General further submitted that the lands were not re-conveyed to the original owners, who have entered into sale agreement with the petitioners and started to carry on the activities of aqua-farming. Neither the petitioners have derived a valid title by purchasing the lands acquired and possessed by TIDCO, nor the original land owners had a legal right to sell the lands, the possession of which they have already parted with after collecting the Award amounts from the respondents. Therefore, the petitioners being unauthorised occupants of the lands in question, did not have any right to do any business or aqua-farming in the properties, which are the subject matter of the present Writ Petition. When the TIDCO came to know about the alleged occupation of the petitioners in the lands in question through the Special Tahsildar (Land Acquisition) during his inspection of the subject premises on 22.09.2014, TIDCO directed the Special Tahsildar (Land Acquisition) to further instruct the Assistant Engineer (TNEB) concerned not to provide any electricity connection or to install electric transformer in the subject land(s), which will facilitate the petitioners/illegal occupants to carry on the aqua-farming.

6. The learned Advocate General further contended that when steps are being taken to evict the petitioners, the petitioners moved the City Civil Court in O.S.No.2615 of 2014 for injunction restraining the Special Tahsildar and the vendors from disturbing their peaceful possession and enjoyment of the property and also obtained ad-interim injunction. In the said suit in O.S.No.2615 of 2014, the official respondents including the Government, were not made as parties. While so, on 05.03.2019, when the officials of the TIDCO visited the site, they found that the petitioners have occupied illegally the subject lands and created 9 aqua culture ponds with two permanent buildings constructed, of which, one is being utilised for store room/watchman and another room as pump shed, enjoying separate electricity transformer with three-phase connection and the Southern side of TIDCO's lands were illegally occupied by several others for aqua-farming. Hence, a meeting was convened, in which TIDCO requested the District Collector to arrange to evict the encroachments. The Assistant Engineer of TNEB was requested to disconnect the power connections provided to all the encroachers.

7. The learned Advocate General also submitted that during the eviction process, all the encroachers including the petitioners herein, came forward with an undertaking that they would vacate the aqua ponds after harvesting the yields, since the culture was in the advanced stage of harvest. However, even after all the other encroachers have vacated after harvesting the yield, the petitioners herein have chosen to squat on the

premises. The learned Advocate General invited the attention of this Court to the averments made in O.S.No.2615 of 2014 and submitted that the petitioners are aware of the fact that the erstwhile owners did not have a clear title to pass on their title to the petitioners/plaintiffs. He further submitted that all the above facts clearly show that the petitioners are unauthorised and illegal occupants and they are only rank trespassers. The possession of the lands by the petitioners from the original owners, is not supported by any legal title. Therefore, the petitioners have to necessarily quit the premises in question. The statement voluntarily given by the petitioners that they would vacate the premises after harvesting the yield, is to be treated as sufficient notice under Section 7 of the Tamil Nadu Land Encroachment Act.

8. In support of his contentions, the learned Advocate General relied on the decisions of the Supreme Court reported in 2004 (1) SCC 769 (Rame Gowda Vs. M.Varadappa Naidu) and 1997 (3) SCC 169 (Anamallai Club Vs. Government of Tamil Nadu) and submitted that no one including the true owners, has a right to dispossess the trespasser by force, if the trespasser is in settled possession of the land and in such a case, unless he is evicted in due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. In the case on hand, the petitioners are rank trespassers and they are not entitled to any indulgence.

9. This Court also heard the submissions made by the learned Special Government Pleader appearing for the respondents 1, 4 and 5 and the learned counsel appearing for the respondents 6 to 12.

10. Heard both sides and perused the materials available on record.

11. It is the contention of the learned counsel for the petitioners that the petitioners have been carrying on business in the land(s) in question for the past 17 years. Suddenly, without any notice, action was initiated for acquisition of the properties. He further submitted that the petitioners have filed O.S.No.8017 of 2019 before the City Civil Court, Chennai to declare the land acquisition proceedings as null and void. According to the learned Advocate General appearing for the second and third respondents/TIDCO, such a prayer cannot be sought for in the said suit. He further submitted that after initiating the acquisition proceedings, the petitioners are trying to re-enter into the property(ies) in question and squatting on the property(ies) and hence, the trespassers are not entitled for indulgence by the Court.

12. Be that as it may. We are of the opinion that this Court is not conducting any roving enquiry under Article 226 of the Constitution of India with regard to the disputed questions of facts in this Writ Petition. As on date, it is clear from the materials available on record that the erstwhile land owners have received compensation amount and when once they have received the compensation amount, they did not have any right to execute the sale agreement with the petitioners, and the petitioners are in occupation of the property(ies). The petitioners are only rank trespassers. As on date, the encroachment was also removed by the authorities and the property(ies) is/are in possession of respondents 2 and 3/TIDCO. Hence, this Court cannot entertain the prayer sought for in the present Writ Petition. It is the submission of the learned counsel for the petitioners that the prawn culture ponds were demolished by the authorities. If it is so, the petitioners have to work out their remedy to claim compensation, if any, if they are so advised, by initiating separate proceedings.

13. With the above observations and direction, the Writ Petition is dismissed. No costs. Consequently, W.M.Ps. are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Industries Department,
St.George Fort, Chennai.
2. The Managing Director,
Tamil Nadu Industrial Development
Corporation Limited (TIDCO),
No.19A, Rukmani Lakshmipathi Road,
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11. The Asst. Divisional Engineer,
TNEB, Thiruvallavoyal, Minjur,
Ponneri Taluk, Thiruvallore District.
12. The Assistant Engineer, TNEB,
Thiruvallavoyal, Minjur,
Ponneri Taluk, Thiruvallore District.

+1cc to Mr.S.Ramesh Kumar, Advocate, S.R.No.206
+1cc to the Government Pleader, S.R.No.1308

W.P.No.22884 of 2019

RJI (CO)
CS/13/02/2020

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