



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2020

C O R A M

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THE HONOURABLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No. 1107 of 2020

1.The Adirampattinam Education Trust,
Adirampattinam Represented by its Secretary,
M.S. Tajudeen,
Pattukkottai Road,
Adirampattinam - 614 701,
Thanjavur District.

2.The Imam Shafi (RAH) Matric Higher Secondary School,
Represented by its Correspondent,
M.S. Tajudeen,
Pattukkottai Road,
Adirampattinam - 614 701,
Thanjavur District.

... Petitioners

Vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue and Disaster Management Department,
Secretariate, Chennai.

2.The Principal Secretary to Government/
Commissioner of Land Administration,
Ezhilagam, Chepauk,
Chennai.

3.The District Collector,
Thanjavur District,
Thanjavur.

4.The Adirampattinam Town Panchyat,
Rep. by its Executive Officer,
Adirampattinam.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Mandamus, to direct the Respondents to consider the request of the Petitioners seeking grant of the land in Survey No. 313/2 admeasuring 52 cents in Adirampattinam Village, Pattukkottai Taluk, Thanjavur District to the Petitioners for continuing their school for the benefit of girl students in



accordance with their representation dated 04.07.2019 and the recommendations/proposals of the District Collector dated 08.01.2010 and 15.02.2010 and that of the Principal Secretary and Commissioner of Land Administration dated 05.05.2010 within a reasonable time period to be fixed by this Hon'ble Court.

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For Petitioners : Mr. N.Dilip Kumar
For Respondents 1 to 3 : Mr. S.Angappan
Government Advocate
For 4th Respondent : Mr. M.Rajarajan
Government Advocate

O R D E R

Heard Mr. N.Dilip Kumar, Learned Counsel for the Petitioner and Mr. S.Angappan, Learned Government Advocate appearing for the First to Third Respondents and Mr. M.Rajarajan, Learned Government Advocate appearing for the Fourth Respondent and perused the materials placed on record, apart from pleadings of the parties.

2. The land measuring 52 cents in S.No. 313/2 in Adirampattinam Taluk, Thanjavur District was acquired by the Government of Tamil Nadu under the provisions of Land Acquisition Act, 1894, for the benefit of the Fourth Respondent, viz., Adirampattinam Town Panchayat for the formation of Radio Park for the use of general public. After the property was vested with the Fourth Respondent, the Radio Park named as 'Hazan Radio Park' was formed in the year 1946, but went into disuse later. At that stage, it appears that for the purpose of augmenting income of the Fourth Respondent, it was decided to lease out that land pursuant to which it was initially leased for a period of three years in the year 1975 to the Petitioners, who continued to be in occupation of the same. A fresh Lease Deed was executed between the Fourth Respondent and the Petitioner on 30.06.2006 for a period of two years on the yearly rent of Rs.24,000/- for the first year and Rs.26,000/- for second year and the Petitioners agreed to vacate and hand over possession at the end of that lease period. However, the Petitioners did not surrender possession to the Fourth Respondent when the lease period came to an end on 31.07.2007 and also did not request for any extension of lease. The Fourth Respondent by notice dated 25.03.2009 called upon the Petitioners to vacate the premises pursuant to the Resolution dated 16.07.2008 passed in the Panchayat for resuming the property for their own use for setting up of a Radio Park as before. The Petitioners then filed a suit for injunction in O.S.No. 50 of 2009 in the District Munsif Court, Pattukkottai, in which it was held by judgment and decree dated 16.12.2009 that the Petitioners can be evicted only by due process of law. Thereafter, the Fourth Respondent issued legal notice dated 04.12.2009 terminating the tenancy, but the Petitioners did not hand over possession of the



property and sent a reply dated 08.02.2010 refusing to hand over possession of the property. In such circumstances, the Fourth Respondent instituted the suit in O.S. No. 146 of 2010 in the District Munsif Court, Pattukkottai, for eviction of the Petitioners and recovery of arrears of lease rent with interest and damages for use and occupation, which was decreed by judgment and decree dated 22.12.2014 granting that relief, and confirmed in appeal by judgment and decree dated 22.08.2019 in A.S. No. 9 of 2015 passed by the Sub Court, Pattukkottai. This Court by judgment and decree dated 26.11.2019 in S.A. (MD) No. 559 of 2019 refused to entertain the Second Appeal filed by the Petitioners. Considering the request made by the Learned Counsel for the Petitioners that the academic year would end in March 2020, time was granted till the second week of March 2020 for the Petitioner to vacate and handover possession to the Fourth Respondent.

3. In the interregnum, at the request of the Petitioners, the Revenue Divisional Officer, Pattukkottai in his proceedings in Na.Ka. 2439/2008/Aa3/ dated 23.01.2009, and the District Collector, Thanjavur by proceedings in Na.Ka. 14111/2008/Aa2 dated 08.01.2010 and the Principal Secretary and Commissioner of Land Administration in letter No. B2/1155/2010 dated 05.05.2010 had made recommendations for resumption of the land in question from the Fourth Respondent and thereafter consider alienation in favour of the Second Petitioner on collection of land cost and other charges. Though these proposals were brought to the notice of the Courts in the aforesaid eviction proceedings, it did not find any acceptance. While the matter stood narrated supra, the Petitioners claim to have made fresh representation dated 04.07.2019 to the District Collector, Thanjavur, followed by letter dated 26.08.2019 to the Additional Chief Secretary, Government of Tamil Nadu, Land Revenue and Disaster Management, Chennai, for alienation the land in favour of the Second Petitioner for its school. This Writ Petition has been filed for a direction to the Respondents to consider the said representations made by the Petitioners in the light of the earlier recommendations made by the authorities in the administrative hierarchy.

4. At the outset, it requires to be examined as to whether the recommendations made by the officials in the administrative hierarchy, viz., by the Revenue Divisional Officer, Pattukkottai in Na.Ka. 2439/2008/Aa3/ dated 23.2009, the District Collector, Thanjavur in Letter Na.Ka. 14111/2008/Aa2 dated 08.01.2010 and the Principal Secretary and Commissioner of Land Administration in letter No. B2/1155/2010 dated 05.05.2010, would create any enforceable right in favour of the Petitioner. In this context, reference may be made to the decision of the Hon'ble Supreme Court of India in **Sethi Auto Service Station -vs- Delhi Development Authority** [(2009) 1 SCC 189], where it has been observed as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>



"13. Thus, the first question arising for consideration is whether the recommendation of the Technical Committee vide minutes dated 17-05-2002 for resitement of appellants' petrol pumps constitutes an order/decision binding on the DDA?

14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department; gets his approval and the final order is communicated to the person concerned.

15. In **Bachhittar Singh Vs. State of Punjab** [AIR 1963 SC 395] a Constitution Bench of this Court had the occasion to consider the effect of an order passed by a Minister on a file, which order was not communicated to the person concerned. Referring to the Article 166(1) of the Constitution, the Court held that order of the Minister could not amount to an order by the State Government unless it was expressed in the name of the Rajpramukh, as required by the said Article and was then communicated to the party concerned. The court observed that business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. Before an action is taken by the authority concerned in the name of the Rajpramukh, which formality is a constitutional necessity, nothing done would amount to an order creating rights or casting liabilities to third parties. It is possible, observed the Court, that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion which may be opposed to the earlier opinion. In such cases, which of the two opinions can be regarded as the "order" of the State Government? It was held that opinion becomes a decision of the Government only when it is communicated to the person concerned.

16. To the like effect are the observations of this Court in **Laxminarayan R. Bhattad vs. State of Maharashtra** [(2003) 5 SCC 413] wherein it was said that a right created under an order of a statutory authority must be communicated to the person concerned so as to confer an enforceable right.

17. In view of the above legal position and in the light of the factual scenario as highlighted in the order of the learned Single Judge, we find it difficult to hold that the



recommendation of the Technical Committee of the DDA fructified into an order conferring legal right upon the appellants."

This legal position squarely applies to the facts of the instant case as well, and the Petitioners cannot rely upon the aforesaid recommendations made by the authorities in the administrative hierarchy so as to create any legally enforceable right in their favour.

5. Moreover, it must be recapitulated here that it is well settled that disposal of public property by the State or its instrumentalities partakes the character of a trust and the methods to be adopted for its disposal must be fair and transparent providing an opportunity to all the interested persons to participate in the process and the law in that regard has been lucidly explicated by the Hon'ble Supreme Court of India in **Kasturi Lal Lakshmi Reddy -vs- State of Jammu & Kashmir** [(1980) 4 SCC 1] in the following words:-

"10. There is increasing expansion of the magnitude and range of Governmental functions, as we move closer to the Welfare State, and the result is that more and more of our wealth consists of these new forms of property. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. The law has however not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Government largess, formerly regarded as privileges, have been recognised as rights, while others have been given legal protection not only by forging procedural safeguards but also by confining, structuring and checking Government discretion in the matter of grant of such largess. The discretion of the government has been held to be not unlimited in that the Government cannot give largess in its arbitrary discretion or as its sweet will or on such terms as it chooses in its absolute discretion. There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is in regard to the terms on which largess may be granted and the other in regard to the persons who may be recipients of such largess.

11. So far as the first limitation is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largess. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in



entering into a contractor dealing with his property. But the Government is not free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner; it has to be exercised for the public good. Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid...

14. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so.

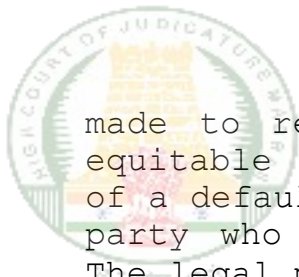
15. The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largess may be granted. It is now well settled as a result of the decision of this Court in **Ramana Dayaram Shetty -vs- International Airport Authority of India [(1979) 3 SCC 489]** that the Government is not free like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the Government need not deal with anyone but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or



capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the Court as a rule of administrative law and it was also validated by the Court as an emanation flowing directly from the doctrine of equality embodied in Article 14."

This view has been reiterated by the Constitution Bench of the Hon'ble Supreme Court of India in **Natural Resources Allocation, In Re, Special Reference** [(2012) 10 SCC 1]. The recommendations made by the officials in the administrative hierarchy to divest the land from the Fourth Respondent, which is a local authority representing the interests of the public at large, and to transfer the same in favour of the Petitioner, which is a private institution, at the mere asking without showing any benefit derived for the cause of public good is opposed to public policy, and is in blatant disregard of the aforesaid authoritative pronouncement of the highest Court of the land holding the field, which cannot be countenanced. It must also be noticed here that though the Petitioners claim that by running the school in the property they are serving the society, there is nothing to show that education is provided free or at subsidized cost and in any event, the income generated from that school does not in any way contribute to the public exchequer. Fortunately, good sense has prevailed with the higher authorities and the unconscionable proposal mooted from the District Level has not been acceded.

6. The circumstances that the Petitioners have invested in the property by constructing buildings and having been in occupation for more than four decades cannot, by any stretch of imagination, constitute any equity in their favour. As held by the Hon'ble Supreme Court of India in **C.Albert Morris -vs- K.Chandrasekaran** [(2006) 1 SCC 228], the litigious possession of that property by the Petitioners after expiry of lease period on 31.07.2007 cannot confer any right on them to use the property. The recalcitrant Petitioners have unscrupulously resisted the eviction proceedings raising untenable defences, such as, denial of title of the Fourth Respondent to the property in contravention of the bar under Section 116 of Indian Evidence Act, 1872, apart from refusing to pay damages for use and occupation, which has accumulated into huge arrears. There is not even a whisper, much less any acceptable explanation, from the Petitioners for not having pursued the claim made in the representations from the year 2010 onwards. The sequence of events that have followed reflects that after protracting the eviction proceedings for more than a decade, the Petitioners have in a cavalier manner made the representations to the First Respondent with ulterior motives to indefinitely retain the illegal possession of the property belonging to the Fourth Respondent. The Hon'ble Supreme Court of India in **C.Jacob -vs- Director of Geology & Mining** [(2008) 10 SCC 115], has deprecated the practice of invoking the discretionary powers of the High Court under Article 226 of the Constitution of India to direct disposal of a fresh representation



made to resurrect a stale claim. It cannot be gainsaid that the equitable jurisdiction of this Court cannot be exercised in favour of a defaulting party to frustrate the legitimate claim of the other party who has consistently succeeded in a long drawn litigation. The legal maxim '*jus ex injuria non oritur*', which postulates that a right cannot arise out of a wrong doing, comes into play to reject a case like this at the threshold, where the Petitioners have been invigorated to even take unfair advantage of it to suit their self-serving convenience.

7. It would be evident from the foregoing discussion that the Petitioners neither have any enforceable right to claim transfer of the public property from the Forth Respondent, nor the First to Third Respondents have any legal obligation to take a decision on granting the same to the Petitioners. Reference may in this backdrop be made to the ruling of the Hon'ble Supreme Court of India in **Director of Settlements, A.P. -vs- M.R. Apparao** [(2002) 4 SCC 638], wherein it has been expounded as follows:-

"17.One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (**Kalyan Singh -vs- State of U.P.** (AIR 1962 SC 1183)). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."

In the light of this incontrovertible legal position, coupled with facts of this case as borne out from the record, there is no justification to entertain this Writ Petition.



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8. In the upshot, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

sj

To

1.The Secretary to Government,
Revenue and Disaster Management Department,
Government of Tamil Nadu,
Secretariate, Chennai.

2.The Principal Secretary to Government/
Commissioner of Land Administration,
Ezhilagam, Chepauk,
Chennai.

3.The District Collector,
Thanjavur District,
Thanjavur.

4.The Adirampattinam Town Panchyat,
Rep. by its Executive Officer,
Adirampattinam.

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-11673[F] dated
13/03/2020)

W.P. (MD) No.1107 of 2020
12.03.2020

AP(02/06/2020) 9P 6C