



.BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.12.2020

DELIVERED ON: 23.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE **S. VAIDYANATHAN**

W.P. (MD)No.8525 of 2018

and

W.M.P(MD) .No.8031 of 2018

M.C.D.A.Rajan

... Petitioner

-vs-

1.The District Collector,
Tirunelveli District,
Tirunelveli-9.

2.The Assistant Director (Panchayats),
Tirunelveli Collectorate,
Tirunelveli-9

3.The Executive Officer,
Vadakku Valliyoor Town Panchayat,
Radhapuram Taluk,
Tirunelveli District.

4.The Competent Authority and
Special District Revenue Officer (LA-NH),
Tirunelveli.

5.The Sub-Inspector of Police,
Valliyoor Police Station,
Valliyoor, Radhapuram Taluk,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 1 to 3 to ascertain the actual compensation amount paid to the petitioner, in respect of the Park Land in Survey No.1708/1B acquired for National Highways as per the records of the fourth respondent and collect the said compensation amount along with interest at 6% p.a. from the petitioner, considering the representation dated 30.10.2017 and 17.01.2018 of the petitioner within a time limit to be fixed by this Court.

For Petitioner
For Respondents

: Mr.A.Thirumurthy
: Mr.M.Rajarajan
Additional Government Pleader
for R1, R2, R4 & R5
Mr.N.Shanmugaselvam
Additional Governance Pleader
for R3

**ORDER**

The writ petition has been filed seeking for a Writ of Mandamus to direct the respondents 1 to 3 to ascertain the actual compensation amount paid to the petitioner in respect of the Park Land in Survey No.1708/1B acquired for National Highways as per the records of the fourth respondent and collect the said compensation amount along with interest at 6% p.a. from the petitioner by considering the representation dated 30.10.2017 and 17.01.2018 of the petitioner.

2.Heard Mr.A.Thirumurthy, learned counsel appearing for the petitioner, Mr.M.Rajarajan, learned Additional Government Pleader appearing for the respondents 1,2,4 and 5 and Mr.N.Shanmugaselvam, learned Additional Government Pleader appearing for the third respondent.

3.The sum and subsistence of the case on hand is that the petitioner has formed a layout namely 'Rajamalli Nagar' and the layout was approved on 17.09.1991 by the Director of Town and Country Planning, Chennai vide proceedings Ma.Va./Na.Vu.E.No.1031/91 and the proceedings No.440/90, dated 06.01.1992 by the Executive Officer/third respondent herein, Vadakku Valliyoor Town Panchayat. Besides the road laid in the layout, the petitioner had handed over the vacant land of 13620 sq.ft, which is reserved site for Park to be gifted to the third respondent, which was registered on 30.12.1991. Though the said land has been gifted, the third respondent has not taken any steps so far to establish such Park.

4. In 2009, a part of the petitioner's land in Survey No.1708/1B was acquired by the National Highways Authority of India for laying Four Way lane, for which, the petitioner was paid compensation. In the meanwhile, the petitioner transferred 5044 sq.ft of vacant site to his wife from the remaining land of 1.47 acre in Survey No.1708/1B situated adjacent to Park, by a registered settlement deed dated 02.07.2009. After getting Building Plan Approval from the third respondent on 19.05.2010, construction had been made and house tax has also been remitted. Thereafter, when the petitioner measured his land, he found that the part of the land assigned to his wife forms part of the land allotted for Park and construction has been inadvertently made on the said land. Hence, the petitioner sent a letter to the respondents 1 to 3 for exchanging equal extent of his land, for equal value, in the same Survey No.1708/1B, which forms a contiguous part of the gifted land, for the land inadvertently assigned to his wife. However, the third respondent did not take any action. Hence, the petitioner filed W.P (MD).No.11867 of 2011 seeking for a direction to the respondents to consider his representation dated 13.08.2011 and pass appropriate orders. In the meanwhile, the petitioner has also cancelled the settlement deed made in favour of his wife and exchange deed was made between the petitioner and the third respondent herein vide <https://hcservices14courts008.in/hcservices2012> dated 20.04.2012 transferring 4539 sq.ft of the



petitioner's vacant land in Survey No.1708/1B for Park and the third respondent accepted the exchange deed in Resolution No.993 dated 27.04.2012, as there was a precedent execution of such deed. The petitioner restored the Park land in full, which made W.P(MD). No.11867 of 2011 as infructuous.

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5. Thereafter, at the instance of the former president of Vadakadu Valliyoor Town Panchayat, the fourth respondent registered complaint in Crime No.201 of 2014, instead of verifying the allegations levelled by one Sankaranarayan as if the petitioner's wife has got house construction plan approval in a fraudulent manner and also the petitioner has received the compensation fraudulently. The petitioner got anticipatory bail from the Sessions Court, Tirunelveli in that case.

6. While so, in Crl.O.P.(MD)No.7439 of 2014 filed by one G.Subha, this Court directed the Vigilance and Anti Corruption Authorities to conduct preliminary enquiry and if the complaint discloses commission of offences, register FIR and proceed with the investigation in accordance with law. Without considering the fact that exchange deed was executed to restore the park land, the Vigilance and Anti Corruption Authority has got transferred Crime No.201 of 2014 on the file of the fifth respondent to the Vigilance and Anti Corruption Wing and reassigned Crime No.4 of 2014 against the third respondent and the former Panchayat President.

7. Thereafter, pursuant to the order of this Court dated 19.07.2017 W.P.(MD)No.10282 of 2014, the petitioner submitted a representation dated 07.08.2017 to the third respondent. The third respondent issued a notice of appearance on 11.10.2017. As per the direction of the third respondent, the petitioner submitted a representation with a calculation statement and thereby expressed his willingness to pay the additional/excess amount of Rs.88,580/- as demanded by the third respondent and take action to close Crime No.201 of 2014.

8. Thereafter, the third respondent issued a memo dated 08.01.2018 and refused to receive the compensation amount stating that the criminal case has been filed, which is pending in Crime No.4 of 2014 on the file of the Vigilance and Anti-corruption Department. The petitioner made a representation that the compensation amount due to Park land has been wrongly paid by the fourth respondent to the petitioner and he was ready to repay the amount without any loss to the Panchayat and Crime No.4 of 2014 is not related to compensation, whereas it relates to the Exchange Deed.

9. The petitioner submits that the actual compensation amount may be ascertained and also he is willing to pay the excess sum together with interest at 6% per annum. According to the

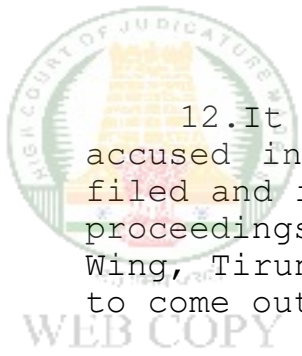
<https://hccservices.mca.gov.in/hccservices/>



the Bank together with 6% interest.

10. The respondent has filed a counter affidavit stating that it is true that layout was formed to an extent of 2.71 acres out of 4.18 situated in Survey No.1708/1B in Vadakku Valliyoor Town Panchayat. The third respondent has decided to establish the Park in the reserved place and based on which, the third respondent and his officials, while conducting spot inspection, found that the land gifted by the petitioner to Town Panchayat was acquired by the National Highways Department for expansion of Four Track Road in NH-7 and in the remaining portion, the petitioner has constructed pucca building and the said construction was done without the knowledge of the Town Panchayat and the house stands in the name of the wife of the petitioner based on the settlement deed. Thereby, the petitioner has intentionally created forged documents and executed a settlement deed dated 02.07.2009 in favour of his wife namely Mallika Rajan. Taking advantage of the fact that the third respondent did not change the title in the revenue records with regard to the place given to the Town Panchayat as Open Space Reservation, the petitioner has created forged document and executed a settlement deed to an extent of 5044 sq.ft and when the third respondent questioned the same, the petitioner has replied that he has owned the land nearby the gifted land. Under these circumstances, the fourth respondent has acquired some part of the land for the purpose of laying Four Way Track from the petitioner and the petitioner has received compensation from the fourth respondent by suppressing the material facts by way of misrepresentation of his side and that the petitioner has done all these with ill-intention and ulterior motive. Once the petitioner has executed a gift deed in favour of the third respondent, thereafter, he has no right or title over the said gifted property.

11. The third respondent opposing the contention of the petitioner submitted that when the third respondent measured his house and land on 03.08.2011, he found that a part of the land has been assigned to the petitioner's wife, which was allotted for Park. The petitioner, in order to conceal his act, cleverly sent a representation to the respondents 1 to 3 by his letter dated 13.08.2011 to accept the transfer of equal extent of his land in same Survey number, which bears same value, in exchange for the land inadvertently assigned to his wife. However, the petitioner has cancelled the settlement deed and exchange deed executed between him and the third respondent vide Doc.no.1881 of 2012 dated 20.04.2012. Therefore, W.P(MD).No.11867 of 2011 was dismissed as infructuous. Knowing the entire facts, the petitioner has received the compensation for the land acquired by the National Highway and intentionally created false and forged document for getting amount and suppressing the material facts before the fourth respondent, when the said land was already handed over to the Town Panchayat, the petitioner has no title over the property.



12. It is pertinent to note that the petitioner is also an accused in Cr.No.4 of 2014 and charge sheet alone has got to be filed and if the compensation is accepted, it will affect the entire proceedings pending on the file of the Vigilance and Anti-Corruption Wing, Tirunelveli and it would be a wrong precedent to the petitioner to come out on benefit of doubt.

13. Heard both sides.

14. The fact that the petitioner formed a housing layout namely, "Rajamalli Nagar" to an extent of 2.71 acres (out of 4.18 acres) of his land in Survey No.1708/1B in Vadkku Valliyoor Town Panchayat and the layout was approved in the proceeding dated 17.09.1991 of the Director of Town and Country Planning, Chennai and the proceedings dated 06.01.1992 of the third respondent Vadakku Valliyoor Town Panchayat. The petitioner handed over the vacant land of 13620 sq.ft (reserved site for Park) to the third respondent by a gift deed dated 30.12.1991. It is not in dispute that in the portion of the gifted land, a building has been constructed to an extent of 5044 sq.ft in Survey No.1708/1B. Thereafter, there was an exchange deed, which has also been accepted by the third respondent. It is also not in dispute that the compensation amount has also been received by the petitioner for the land acquired by the Government.

15. It is no doubt that the land belongs to the petitioner. As rightly pointed out by the respondents, the petitioner, in order to gain, cheated everyone and played fraud on everyone and received compensation. When it came to light, in order to pretend to be *bona fide*, he refused the compensation and repaid the said amount and expressed his willingness to give any portion of his land in the same survey number and subsequently, exchange deed was also executed. The intention of the petitioner clearly shows his *mala fide*.

16. If these kind of persons were allowed to accept money, certainly it would create bad picture and every body will come to the conclusion that they can cheat the Government. It is also not in doubt that the excess payment of compensation was repaid by the petitioner and the same was accepted by the criminal Court, which acquitted the petitioner. Since the money value is come down, money deposited by the petitioner can be taken by the third respondent without prejudice to the right of the parties. Criminal Court, which is going to try the matter will have to go in the question on the actual facts and do not decide the issue on the ground that the money has been paid and there is no criminal intention.

17. This Court has not compromised and convinced at any stage, and a criminal will have to be brought to book. Hence, this Court is of the view that a logical conclusion needs to be arrived, more so, to come out on technicalities on the ground that the amount is



going to be paid only pursuant to the order of this Court. This Court reiterates that the payment of money is acceptable by the third respondent with regard to the incident in question and the petitioner has to face the trial, and payment and acceptance cannot be a ground to hold 'not guilty'.

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18. Pursuant to the order of this Court, the petitioner has deposited the excess compensation amount in the State Bank of India, Valliyoor Branch. The State Bank, Valliyoor Branch, in which, the amount is lying, is directed to release the amount to the Government/concerned authority on receiving a copy of this order, within a period of two weeks.

19. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

20. Before parting with this, this Court is of the view that criminal case need to be taken to the logical end and hence, speedy progress is expected.

Sd/-

Assistant Registrar (ADII)

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Sub Assistant Registrar(CS)

rmk

To

1. The District Collector,
Tirunelveli District, Tirunelveli-9.
2. The Assistant Director (Panchayats),
Tirunelveli Collectorate, Tirunelveli-9
3. The Executive Officer,
Vadakku Valliyoor Town Panchayat,
Radhapuram Taluk, Tirunelveli District.
4. The Competent Authority and
Special District Revenue Officer (LA-NH), Tirunelveli.
5. The Sub-Inspector of Police,
Valliyoor Police Station,
Valliyoor, Radhapuram Taluk, Tirunelveli District.
6. The Branch Manager, State Bank of India, Valliyoor Branch.

+1CC to M/s.A.Thirumurthy, Advocate SR.No.27131 dated 23.12.2020

W.P (MD) No.8525 of 2018
23 .12.2020

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