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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P. Nos.1395 & 1396 of 2012

and

M.P. Nos.1 & 1 of 2012

WP.No.1395 of 2012

Tiruchengode Agricultural Producers'
Co.op.Marketing Society Ltd.,
Rep. by its Joint Registrar / Special Officer,
Siva.Muthukumaraswamy,
No.9, Kutcheri Street,
Velur Road,
Tiruchengode 637 211

... Petitioner

Vs

- 1.The District Collector,
District Collector's Office,
Namakkal District,
Namakkal
- 2.The District Revenue Officer,
Namakkal District,
Namakkal
- 3.The Revenue Divisional Officer,
Tiruchengode
- 4.R.Radhakrishnan
- 5.K.S.Palaniappan
- 6.M.Mani
- 7.The Assistant Commissioner / Executive Officer,



Arulmighu Vinayagar Thirukoil &
Arulmighu Mariamman Thirukoil,
Sengodampalayam, Tiruchengode Taluk,
Namakkal District

(R5 & 6 impleaded vide court order dated
13.02.2014 in MP.No.2 of 2012 in
WP.No.1395 of 2012)

(R7 impleaded vide court order dated 02.03.2018
in MP.No.1 of 2014 in WP.No.1395 of 2012) ... Respondents

Prayer :- Writ Petition is filed under Article 226 of the
Constitution of India praying to issue a writ of certiorari
calling for the records of the first respondent pertaining to the
proceedings in Na.Ka.No.21522 / 2010 (H-2) dated 02.01.2012 and
quash the same.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel
for Mr.P.Valliappan

For Respondents

For R1to3 : Mr.M.R.Gokul Krishnan,
Government Advocate

For R4 : Mr.R.Radhakrishnan
(party in person)

For R5 & 6: Mr.B.Kumar,
Senior Counsel
for Mr.S.P.Yuvaraj

For R7 : Mr.M.S.Palaniswamy

WP.No.1396 of 2012

Tiruchengode Agricultural Producers'
Co.op.Marketing Society Ltd.,
Rep. by its Joint Registrar / Special Officer,
Siva.Muthukumaraswamy,
No.9, Kutcheri Street,
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1.The District Collector,
District Collector's Office,
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2.The District Revenue Officer,
Namakkal District,
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3.The Revenue Divisional Officer,
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Arulmighu Vinayagar Thirukoil &
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(R7 impleaded vide court order dated 02.03.2018
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Prayer :- Writ Petition is filed under Article 226 of the
Constitution of India praying to issue a writ of mandamus
directing the respondents 1 to 3 to remove the encroachments in
the property comprised in old survey Nos.115/2 & 116, new
T.S.Nos.8,9 & 10, Kailasampalayam Village, Tiruchengode Taluk,
Namakkal District forthwith.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel
for Mr.P.Valliappan

For Respondents
For R1to3 : Mr.M.R.Gokul Krishnan,
Government Advocate

For R4 : Mr.R.Radhakrishnan



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(party in person)

For R5 & 6: Mr.B.Kumar,
Senior Counsel
for Mr.S.P.Yuvaraj
For R7 : Mr.M.S.Palaniswamy

COMMON ORDER

The writ petition in WP.No.1395 of 2012 is filed to issue a certiorari calling for the records of the first respondent pertaining to the proceedings in Na.Ka.No.21522 / 2010 (H-2) dated 02.01.2012 and quash the same. The writ petition in WP.No.1396 of 2012 is filed to issue a writ of mandamus directing the respondents 1 to 3 to remove the encroachments in the property comprised in old survey Nos.115/2 & 116, new T.S.Nos.8,9 & 10, Kailasampalayam Village, Tiruchengode Taluk, Namakkal District forthwith.

2. The case of the petitioner in WP.No.1395 of 2012 is that the petitioner requested the Government to arrange to initiate acquisition proceedings under the emergent provisions of the Land Acquisition Act and arrange to deliver the possession of the property for the urgent and inevitable needs of the Society. On the request of the petitioner Society, to an extent of 4.76 acres comprised in survey Nos.115/2 and 116 situated at Kailasampalayam Village, Tiruchengode was identified and issued Gazette notification No.428 dated 10.09.1991. After following the procedure, the land was acquired and award has been passed in Award No.1 of 1994-1995 dated 31.05.1994. The land was acquired for the purpose of construction of additional godown, marketing yards, etc for the petitioner Society. Thereafter the petitioner Society also paid a sum of Rs.11,35,650/- by two instalments dated 26.03.1985 and 02.03.1992. At that juncture, the persons who claimed to be the administrators of the temple called Mariamman Temple at Sengodampalayam and Vinayagar Temple at T.Kailasampalayam challenged the acquisition proceedings before this Court in WP.No.18429 of 1992 and by order dated 07.12.1999, this court dismissed the writ petition. Aggrieved by the same, they also filed writ appeal in WA.No.154 of 2000 and the same was also dismissed by the Hon'ble Division Bench of this Court by order dated 13.07.2001. Therefore, the acquisition proceedings



became final and the subject land had been taken possession by the acquisition authority and handed over to the petitioner Society on 09.12.2000 under ROC.No.19611/2000A6. However, in Form No.11, it was indicated that there was a tiled house, thatched house, borewell and a Vinayagar Temple. The alleged Vinayagar Temple and borewell were not in existence at the time of notification and only in the interregnum, it was put up by encroachers . The petitioner repeatedly sent several representations to the respondents 1 to 3 herein to remove the encroachments. However, while pending the said request for removal of encroachment, the petitioner received the impugned order in this writ petition dated 02.01.2012 whereby the first respondent requested to send proposal for recommendation to the Government to pass orders under Section 16-B of the Land Acquisition Act.

3. Mr.AR.L.Sundaresan, Senior Counsel appearing for the petitioner submitted that once the land acquisition proceedings were completed, possession of the subject property was handed over to the petitioner Society as early as on 09.12.2000. The said land was acquired for the purpose of construction of godown and marketing yards, etc for the petitioner Society. When the petitioner Society intended to construct godown and other buildings, the so called persons who claimed to be the administrators of the Vinayagar Temple objected and also encroached two cents of land and put up small temple. Therefore, they could not able to put up any construction in the acquired land. In fact, they repeatedly requested the respondents to remove the encroachments in the subject property. Therefore, the petitioner also filed writ petition in WP.No.1396 of 2012 for direction directing the respondents 1 to 3 herein to take appropriate action to remove the encroachments in the subject property.

4. Mr.B.Kumar, Senior Counsel appearing for the respondents 5 and 6 submitted that the impugned order in this writ petition is only communication between the first respondent and the third respondent. It is nothing but requesting the third respondent to send proposal for recommendation to pass orders by the Government under Section 16-B of the Land Acquisition Act. He further submitted that the purpose for which the land was acquired has not been utilised by the petitioner and the possession of the subject property is also with them and as such



the entire acquisition proceedings have been lapsed.

5. Mr.M.S.Palaniswamy, the learned counsel for the seventh respondent representing Arulmighu Mariamman Temple and Vinayagar Temple filed counter affidavit and submitted that the subject lands are used by the entire villagers for celebrating the annual festivals of both the temples. The entire villagers used to congregate on festival days in the subject property for worshipping the God enshrined Arulmighu Vinayagar Temple. Therefore, the subject land is under the usage of religious purposes and also the temple land is protected and guarded by the Government. In fact, in the second appeal in SA.No.1726 of 1992 it was upheld that the subject land of T Kailasampalayam Village belong to Arulmighu Vinayagar Thirukoil at Kailasampalayam and Arulmighu Mariamman Thirukoil at Sengodampalayam. However, the acquisition notice was not served to the HR& CE Department at the time of acquisition of the subject land, and no physical possession has been taken over from the temple authorities and they are in possession and enjoyment of the entire subject property.

6. The fourth respondent Mr.R.Radhakrishnan, party in person is present and submitted that the entire land belongs to Arulmighu Vinayagar Thirukoil at Kailasampalayam and Arulmighu Mariamman Thirukoil at Sengodampalayam and he is being one of the worshipper of the said temples objected the entire acquisition proceedings. Though the land was acquired and physical possession of the subject land has not been taken over and not utilised for the purpose for which the land was acquired on the request of the petitioner herein.

7. Heard, Mr.AR.L.Sundaresan, Senior Counsel appearing for the petitioner, Mr.M.R.Gokul Krishnan, Government Advocate appearing for the respondents 1 to 3, the fourth respondent Mr.R.Radhakrishnan (party in person), Mr.B.Kumar, Senior Counsel appearing for the respondents 5 & 6, and Mr.M.S.Palaniswamy, the learned counsel for the seventh respondent.

8. On perusal of the impugned order dated 02.01.2012, revealed that the first respondent directed the third respondent to send a proposal to cancel the acquisition of land for the reason that the land is not used for the purpose for which it was acquired. Even then, it was served to the petitioner and the

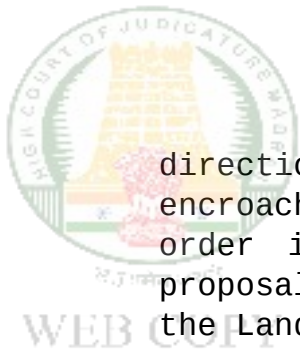


parties concerned.

9. Whether the land belongs to the HR&CE Department or the administrators i.e. the persons who challenged the acquisition proceedings in WP.No.18429 of 1992 or the respondents 5 and 6 is not an issue in this writ petition, since the subject land was already acquired and award has been passed in Rc.No.1 of 1994-1995 dated 31.05.1994. On perusal of the records, the petitioner is being the requisition body have deposited the entire award amount and paid total compensation amount to the tune of Rs.11,35,650/- by two instalments on 26.03.1985 and 02.03.1992. The land acquisition proceedings was already challenged by the administrators of the Vinayagar Thirukoil in WP.No.18429 of 1992 and the same was dismissed and confirmed by the Hon'ble Division Bench of this Court in WA.No.154 of 2000 dated 13.07.2001. In respect of the very same subject property, there was a suit filed by the petitioner in OS.No.862 of 1982 on the file of the Principal Sub Court, Salem for declaration and permanent injunction and the same was decreed by the judgment and decree dated 31.01.1992. Aggrieved by the same, the defendants have preferred appeal suit in AS.No.67 of 1992 and the same was dismissed and again, they filed second appeal in SA.No.1726 of 1992 and the same was also dismissed by the judgment and decree dated 27.02.2004. Thus, the subject property was declared in favour of the petitioner in WP.No.18429 of 1992. Therefore, this Court need not to decide the ownership of the subject land since already the entire land was acquired on behalf of the petitioner Society and attained finality.

10. The only point for consideration is that the first respondent directed the third respondent to send proposal to cancel the acquisition proceedings under Section 16-B of the Land Acquisition Act.

11. The learned Senior Counsel appearing for the petitioner also produced photographs which revealed that the entire land is kept vacant and a small temple is situated in the subject land. Thus it is clear that no construction has been put up by the petitioner and the land is still lying vacant. Therefore, the petitioner had sent so many representations to the respondents 1 to 3 herein to initiate appropriate action to remove the encroachments in the subject land. In fact, they also filed the other writ petition in WP.No.1396 of 2012 seeking



direction directing the respondents 1 to 3 herein to remove the encroachments in the subject property. Therefore, the impugned order is nothing but directing the third respondent to send proposal for recommendation to pass orders under Section 16-B of the Land Acquisition Act, 1894.

12. In view of the above discussion, the impugned order cannot be sustained and it is liable to be set aside and this Court deem it fit to direct the first respondent to conduct enquiry with regard to sending proposal to the Government to pass orders under Section 16-B of the Land Acquisition Act. Accordingly, the impugned order dated 02.01.2012 is set aside. The first respondent is directed to issue notice to the petitioner and the persons interested over the subject land within a period of two weeks from the date of receipt of copy of this order and after giving them opportunity of hearing and conducting fresh enquiry and pass orders on merits and in accordance with law to send proposal to the Government for passing orders under Section 16-B of the Land Acquisition Act, within a period of twelve weeks thereafter. It is made clear that all the parties are at liberty to submit relevant documents to substantiate their respective contentions. Further, the first respondent is directed to make physical inspection of the subject property, if required.

13. With the above directions, both the writ petitions are disposed of. Consequently, connected miscellaneous petitions are closed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
District Collector's Office,
Namakkal District,
Namakkal



2.The District Revenue Officer,
Namakkal District,
Namakkal

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3.The Revenue Divisional Officer,
Tiruchengode

4.The Assistant Commissioner / Executive Officer,
Arulmighu Vinayagar Thirukoil &
Arulmighu Mariamman Thirukoil,
Sengodampalayam, Tiruchengode Taluk,
Namakkal District

+2cc to Mr.P.Valliappan, Advocate, S.R.No.53314
+1cc to Mr.S.P.Yuvaraj, Advocate, S.R.No.52868
+1cc to Mr.M.S.Palaniswamy, Advocate, S.R.No.52869
+1cc to the Government Pleader, S.R.No.53127

W.P. Nos.1395 & 1396 of 2012

GJ(CO)
SB(11/11/2021)