

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.12.2020
Delivered on : 19.01.2021

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.24817 of 2005

and

W.P.M.P.No.27177 of 2005

Young Men's Christian Association
Rep. by its President
Ootacamund - 643 001.
Nilgiris.

... Petitioner

Vs

1.The District Collector of
Nilgiris at Uthagamandalam,

2.The Tahsildar
Udhagai.

3.Lakshmaya @ K.Mani
(R-3 is impleaded vide Order
dated 11.08.2019)

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the proceedings of the first Respondent dated 25.06.2005 in RC.U3.No. 15664/2002 and quash the same.

For Petitioner : Mrs.AL.Ganthimathi

For Respondents : Mr.G.K.Muthukumar

Spl. Govt. Pleader for R1 & R2.

Mr.I.Abrar Md. Abdullah for
Mr.K.K.Senthilvelan for R-3

O R D E R

An order dated 25.06.2005 of the District Collector, Nilgiris, to resume the lands that were assigned to the Petitioner is challenged in this writ petition.

2. The Petitioner is part of a global association founded on 06.06.1844 with its head quarters in Geneva, Switzerland. The Udhagamandalam (Ootacamund) chapter was established in June 1886. The object of the Association is to provide free education, maintain hospitals, counselling centres, libraries, playgrounds, etc. with a view to develop the human body, mind and soul. The then British Government issued a miscellaneous patta whereby lands ad-measuring an extent of about 1.73 acres in Survey No.1773 were assigned in favour of the Petitioner. For this purpose, G.O. No.623, Revenue Department, dated 15.02.1920, was issued. The assignment was subject to the condition that the lands shall be used for an institution, hostel and playground with secretary quarters and for no other purpose without the previous sanction of the local Government or of the Collector of the District.

3. Pursuant to the grant, it appears that the Association constructed a marriage hall, training centre, hostel facilities, games rooms, etc. in the year 1920. These buildings were periodically renovated and reconstructed. In the year 1984, special permission was obtained from the District Collector and the municipal authorities to build the Secretary's Quarters. A portion of the aforesaid lands was uneven as it was on a slope. In order to make use of the said lands, the Petitioner requested for permission in 1999 to construct a community hall, library, gymnasium, book centre and hostels. Such permission was granted by proceedings dated 05.05.2000 of the District Collector. Subsequent thereto, once again, on 24.04.2003, the Petitioner applied for permission to build new buildings, including a commercial complex. Although the Petitioner claims that permission was granted, such claim is strongly refuted by Respondents 1 and 2 and there is no evidence on record that permission was granted. In any case, the Petitioner proceeded to construct a commercial complex with shops, which have been let out to tenants. It claims that the income from the commercial complex was used for the fulfillment of the objects and purposes of the Petitioner Association.

4. In these circumstances, the Petitioner received a show cause notice dated 09.03.2005 from the first Respondent stating that buildings were constructed by deviating from the sanctioned plan and that a commercial complex was constructed without permission inasmuch as permission was granted only to construct a library, community hall, gymnasium, etc. Therefore, the Petitioner was called upon to show cause as to why the land should not be resumed by the Government. Upon receipt of such show cause notice, the Petitioner issued a reply on 28.03.2005 pointing out that the Association constructed the shopping complex after obtaining the approval of the Government and the AAA Committee. It was also stated that the building was

inspected by the local government authorities, and was assessed to property tax. Such property tax is being paid and the income is used only for the purpose of financing the social and charitable objects of the Petitioner Association. It was further pointed out that the Petitioner Association is providing employment to youth and is running schools where free education is provided. According to the Petitioner, in spite of receiving the aforesaid reply, the first Respondent issued the impugned proceedings dated 25.06.2005 whereby the Respondents took the decision to resume the lands. The present writ petition was filed in these facts and circumstances.

5. I heard Mrs.AL.Ganthimathi, the learned counsel for the Petitioner; Mr.G.K.Muthukumar, the learned Special Government Pleader for Respondents 1 and 2; and Mr.I.Abrar Md. Abdullah, the learned counsel for Respondent 3.

6. Mrs.Ganthimathi submitted that the lands that are subject matter of resumption were granted to the Petitioner Association on 15.03.1920. By referring to the proceedings of the Deputy Tahsildar, she pointed out that a miscellaneous patta was granted to the Petitioner and this was for the purpose of establishing an institution with a hostel, playground and secretary quarters. She also pointed out that it could be used for any other purpose with the previous sanction of the local Government or the Collector of the District. She also referred to the proceedings dated 17.04.1984 of the District Collector pertaining to the permission granted for the construction of the Secretary's Quarters. By referring to the proceedings of the District Collector dated 05.05.2000, she pointed out that the grant is not merely a licence or permission to use but that there was transfer of title to the Petitioner Association. With further reference to the said proceedings dated 05.05.2000, she pointed out that permission was granted to construct a community hall, library, gymnasium, book centre, hostels and training centres on the sloped lands after levelling the same.

7. By drawing reference to a letter dated 21.04.2003 from the Petitioner Association to the District Collector, she pointed out that the Petitioner Association requested for permission to construct a 1000 square foot youth hostel and 2000 square foot shopping complex in the low lying sloped area. In response thereto, she pointed out that the District Collector, by communication dated 30.06.2003, called upon the Petitioner Association to submit an application to the Commissioner of Udthagamandalam Town by providing necessary information. On this basis, she contended that the Petitioner Association did request for permission to construct the commercial complex. While she conceded that such permission was not granted, she pointed out that the Petitioner Association had constructed buildings for

various social purposes and such buildings were in use for the stated purposes for a considerable period of time.

8. In such circumstances, she submitted that the decision of Respondents 1 and 2 to resume the entire land is arbitrary and completely unreasonable. In this connection, she pointed out that the lands were granted to the Petitioner on condition that the Government may resume the land, wholly or in part, in the event of infringement of any of the conditions. Thus, the very terms of grant recognize that the resumption could be in part. In the present facts and circumstances, she contends that even if the Petitioner had violated the terms of grant as regards the construction of the commercial complex, the interest of justice warrants that only partial resumption should be resorted to especially in view of the fact that the Petitioner is running a school for the under privileged, hostels for working men, library and other facilities which sub-serve a social purpose. In support of the contention that the lands are being utilized substantially for social welfare purposes, she referred to the site map and pointed out that the commercial complex occupies a small portion of land which is away from the main building, school, hostel and playground, etc. She also pointed out that about 150 to 200 students are presently studying in the school which is situated on these lands and that about 23 persons are staying in the hostel. For all these reasons, she submitted that the impugned order is liable to be interfered with.

9. On the contrary, Mr.G.K.Muthukumar submitted that the grant was made without receiving any consideration. Consequently, the grant was subject to stringent conditions relating to the use of the lands. In particular, the grant was subject to the condition that the land should not be used for any purposes other than those stated in the grant and that the lands could be resumed by the Government, wholly or in part, if there is an infringement of any of the conditions. In the present case, he points out that the admitted position is that the Petitioner Association was granted permission to construct the Secretary's Quarters on 17.04.1984 and the community hall, library, gymnasium, book centre and hostels on 05.05.2000.

10. As regards the construction of the commercial complex, the request for approval was rejected. In spite of such rejection, the Petitioner Association acted in blatant disregard of the conditions of grant and constructed the commercial complex. He further submitted that, after constructing the commercial complex, the Petitioner Association compounded the illegality by letting out 30 shops in the commercial complex to third party lessees and thereby created third party rights and derived substantial income from such shops. He also pointed out that permission was applied for and obtained in respect of the

construction of buildings ad-measuring about 286.69 square metres but the actual constructed area was 403.52 square metres. Thus, he pointed out that the infringement is grave and on multiple counts.

11. He also submitted that due process was followed by first issuing a show cause notice on 09.03.2005 and that the impugned order was issued after considering the reply dated 28.03.2005 from the Petitioner. As such, the principles of natural justice were duly complied with. His next contention was that the first and second Respondents are fully justified in resuming the lands in full and that the Petitioner is not entitled to request for partial resumption either on the ground of equity or on the ground of proportionality. In support of this contention, he referred to and relied upon the following judgments which are set out below along with context and principle:

(1) Excel Crop Care Limited v. Competition Commission of India and others (2017) 8 SCC 47 (Excel Crop Care), wherein the Hon'ble Supreme Court examined the doctrine of proportionality in the context of the imposition of a penalty on the basis of total turnover as opposed to relevant turnover. In particular, he pointed out that the Hon'ble Supreme Court concluded that proportionality involves the balancing of competing interests, namely, the harm caused to society by the infringer, on the one hand, and, on the other, the right of the infringer to not be subjected to disproportionate punishment.

(2) Management of Coimbatore District Central Co-operative Bank v. Secretary, Coimbatore District Central Co-operative Bank Employees Association and others (2007) 4 SCC 660 (Management of Coimbatore Central District Co-operative Bank), wherein the Supreme Court considered the doctrine of proportionality in the context of the imposition of punishment in a domestic enquiry against workmen. In that context, the Hon'ble Supreme Court held that the doctrine of proportionality is applicable only if there is perversity or if the Court is of the view that no reasonable person would have imposed the punishment under challenge.

(3) Andhra Pradesh State Financial Corporation v. GAR Re-Rolling Mills and others (1994) 2 SCC 647, wherein, at paragraph 18, the Court examined the scope for interference on the ground of equity in the context of proceedings under the State Financial Corporations Act, 1951, and concluded that there is no equity in favour of the defaulting party which justified interference by the Court in exercise of equitable jurisdiction under Article 226.

(4) Charanjit Lamba v. Commanding Officer, Southern Command and others (2010) 11 SCC 314. In this case, in the context of the imposition of the punishment of dismissal, the Hon'ble Supreme Court concluded that the doctrine of proportionality

flows from the requirement of reasonableness and, therefore, is dependent on the factual matrix in each case.

12. The learned counsel for the third Respondent submitted that the Petitioner Association entered into a registered lease deed dated 23.03.1998 with the third Respondent. Pursuant thereto, the third Respondent has been regularly remitting the monthly rent to the Petitioner. While the original lease period was for 10 years, the lease deed provides for an extension of lease by mutual consent and the lease has been extended in the present case. He also pointed out that the leased property extends to 0.48 and 4/16 acre out of the total extent of 1.73 acres. He also pointed out that the District Collector of Nilgiris had informed the Secretary of the Petitioner Association by communication dated 13.11.1986 that the Petitioner Association should request for and obtain a sale deed by paying a sum of Rs.15,00,000/- per acre, if it is intended to construct shops and residential accommodation on 0.60 acres of the lands. He also pointed out that O.S.No.53 of 2019 was filed by the lessee against the Petitioner Association and that an interim injunction not to interfere with the lessee's possession was granted by order dated 12.09.2019, which is still in force. Therefore, he contends that the impugned proceedings are liable to be quashed on account of the fact that the lessee was not put on notice or provided a reasonable opportunity before deciding to resume the lands.

13. I considered the submissions of the learned counsel for the respective parties and examined the materials on record.

14. The first question that arises for consideration is whether the Petitioner Association infringed the conditions of grant. The miscellaneous patta was issued to the Petitioner Association under proceedings dated 15.03.1920 of the Deputy Tahsildar, Ootacamund, subject to the following condition:

"(1) The land shall be used for an institute and hostel and playground with secretary quarters and for no other purpose, no building except a compound wall shall be erected on the portion to be set apart for the playground without the previous sanctions of the local Government or of the Collector of the District."

The said grant also provides for resumption in the event of infringement of the conditions of grant by stipulating as under:

"(4) The Government may resume the land wholly or in part, in the event of the infringement of any of these conditions or if resumption is considered necessary in the public interest."

In case of resumption, it provides for the payment of compensation and the relevant clause is as under:

"(5) In the event of such resumption or in the event of acquisition by Government of the land, wholly or in part the compensation payable shall not exceed the initial cost or the value at the time of resumption or acquisition, which have been erected in accordance with condition (1) above."

15. Upon perusal of the aforesaid clauses, the following is clear:

(i) There are restrictions with regard to the use of the land. The land was permitted to be used for setting up an institute, hostel, playground and secretary quarters. If it is to be used for any other purpose, the previous sanction of the local Government or of the District Collector is necessary.

(ii) In case the above condition is infringed, the Government has the power to resume the land wholly or in part.

(iii) Such power of resumption may also be exercised if it is necessary in public interest even where there is no infringement.

(iv) In the event of resumption, whether wholly or in part, compensation is payable subject to the condition that it shall not exceed the initial cost or the value at the time of resumption as regards buildings that were erected in accordance with the condition relating to permitted land use.

16. The actions of the Petitioner Association should be tested against the aforesaid conditions. Upon perusal of the documents on record, it is clear that the Petitioner Association obtained permission on 17.04.1984 to construct the Secretary's Quarters from the District Collector. Likewise, the Petitioner Association obtained permission on 05.05.2000 from the District Collector for the purpose of constructing a community hall, library, gymnasium, book centre and hostels. As regards the construction of a commercial complex, it appears that permission was requested for from the District Collector on 21.04.2003. From the documents filed by the third Respondent, it also appears that permission had been requested earlier on 04.12.1985 and that the District Collector informed the Petitioner Association that such permission would be granted only if the lands for such purpose were purchased at the rate of Rs.15,00,000/- per acre. Upon analysis of the aforesaid, it is clear that permission was not obtained with regard to the

construction of a commercial complex. Therefore, the undisputed position is that the construction of the commercial complex infringes the condition relating to the use of the land.

17. This leads to the question as to whether the first Respondent was justified in issuing the impugned order of resumption. From the clause relating to resumption in the proceedings dated 15.03.1920, it is clear that such resumption may be of the whole or part of the lands. Accordingly, it remains to be considered as to whether the decision to resume the entire lands is sustainable. The learned Special Government Pleader contended that the official Respondents are entitled to resume the land in full given the nature of the infraction by the Petitioner Association. In order to substantiate this contention, he pointed out that a commercial complex was constructed without permission. In addition, he pointed out that the Petitioner Association had obtained permission to construct a building ad-measuring about 286.69 square metres but the actual constructed area was 403.52 square metres. Therefore, there was a second violation as regards the extent of construction. The third violation relates to entering into a lease deed with the third Respondent and permitting the third Respondent to sublet the shops to about 30 occupants. As a result of these violations, the learned Special Government Pleader submitted that the official Respondents are now saddled with the burden of evicting the third parties who are in possession. Therefore, he submits that it would be most unjust and inequitable if the official Respondents are permitted to resume only the land on which the commercial complex has been constructed.

18. On the other hand, the contention of Mrs.AL.Ganthimathi is that the lands were granted to the Petitioner Association as early as in 1920 and have been used for 100 years mainly for social welfare purposes. Even today, there are about 150 students in the free school, which is functioning on the said lands, and about 23 persons are staying in the hostel. In such circumstances, even assuming without admitting there was an infringement, she submitted that only partial resumption should be permitted.

19. Upon considering the rival contentions in light of the terms and conditions of grant, in my view, there is no doubt at all that the infringement by the Petitioner Association is grave. The lands were granted to the Petitioner on a "without cost" basis so as to enable the Petitioner Association to undertake social welfare activities in public interest on a purely non-commercial basis. Upon perusal of the registered lease deed dated 23.03.1998, it is evident that the Petitioner Association put a third party in possession as early as in 1998.

In these facts and circumstances, the contention of the learned Special Government Pleader that the resumption of only the land on which the commercial complex was constructed would be unjust and inequitable to the Government is liable to be accepted. Nevertheless, is a full resumption justifiable? While undertaking judicial review of administrative action, the principal test is *Wednesbury* reasonableness. Over time, the doctrine of proportionality emerged as a facet of reasonableness and has come to be firmly established in Indian jurisprudence as held by the Hon'ble Supreme Court in *Management of Coimbatore District Central Co-operative Bank* and reiterated in several judgments thereafter. There are, nonetheless, two distinct strands of the doctrine of proportionality: (i) in the context of testing the reasonableness of restrictions on fundamental rights; and (ii) in the context of imposition of punishment or penalty for violating the law or other requirements and conditions. In the former context, in *Modern Dental College and Research Centre v. State of Madhya Pradesh* (2016) 7 SCC 353, four principles were set out as regards the application of the doctrine of proportionality. One of these principles is whether a less restrictive measure could have been adopted. While this test is valid in the context of determining whether a restriction on fundamental rights is reasonable or not, it would not be relevant in the present context.

20. As stated earlier, the doctrine of proportionality, albeit as a facet of reasonableness, was extended to other areas of public law including the imposition of penalty by the Competition Commission as exemplified in the judgment of the Hon'ble Supreme Court in *Excel Crop Care*. Paragraphs 92-93 of this judgment, which deal with the application of the doctrine of proportionality, are set out below:

"92. Even the doctrine of "proportionality" would suggest that the court should lean in favour of "relevant turnover". No doubt the objective contained in the Act viz. to discourage and stop anti-competitive practices has to be achieved and those who are perpetrators of such practices need to be indicted and suitably punished. It is for this reason that the Act contains penal provisions for penalising such offenders. At the same time, the penalty cannot be disproportionate and it should not lead to shocking results. That is the implication of the doctrine of proportionality which is based on equity and rationality. It is, in fact, a constitutionally protected right which can be traced to Article 14 as well as Article 21 of the Constitution. The doctrine of proportionality is aimed at bringing out "proportional result or proportionality stricto

sensu". It is a result-oriented test as it examines the result of the law in fact the proportionality achieves balancing between two competing interests: harm caused to the society by the infringer which gives justification for penalising the infringer on the one hand and the right of the infringer in not suffering the punishment which may be disproportionate to the seriousness of the Act.

93. No doubt, the aim of the penal provision is also to ensure that it acts as deterrent for others. At the same time, such a position cannot be countenanced which would deviate from "teaching a lesson" to the violators and lead to the "death of the entity" itself. If we adopt the criteria of total turnover of a company by including within its sweep the other products manufactured by the company, which were in no way connected with anti-competitive activity, it would bring about shocking results not comprehended in a country governed by Rule of Law. Cases at hand itself amply demonstrate that the CCI's contention, if accepted, would bring about anomalous results. In the case of M/s Excel Crop Care Ltd., average of three years' turnover in respect of APT, in respect whereof anti-competitive agreement was entered into by the appellants, was only Rs 32.41 crores. However, as against this, CCI imposed penalty of Rs 63.90 crores by adopting the criteria of total turnover of the said company with the inclusion of turnover of the other products as well. Likewise, UPL was imposed penalty of Rs 252.44 crores by CCI as against average of the three years' turnover of APT of Rs 77.14 crores. Thus, even when the matter is looked into from this angle, we arrive at a conclusion that it is the relevant turnover, i.e. turnover of the particular product which is to be taken into consideration and not total turnover of the violator."

21. More recently, in the context of a circular issued by the Reserve Bank of India (the RBI), the Hon'ble Supreme Court relied upon the doctrine of proportionality in Internet and Mobile Association of India v. Reserve Bank of India (2020) 10 SCC 274. In this recent judgment, the doctrine of proportionality was relied upon in the context of the prohibition of transactions in crypto-currencies or virtual currencies by RBI-regulated entities. Once again, this is an illustration of the doctrine of proportionality in a restriction

of fundamental rights scenario. Based on the aforesaid survey of precedent, there is a little doubt that the doctrine of proportionality applies across the spectrum of judicial review of administration action, albeit in a distinct manner as regards the two strands discussed above. Based on the aforesaid discussion, the decision of the official Respondents should be examined by applying the standard of Wednesbury reasonableness, i.e. whether the impugned decision is within the spectrum of reasonable responses or is grossly disproportionate.

22. In the present case, the documents on record disclose that the Petitioner Association was given a perpetual assignment by granting a miscellaneous patta, as opposed to a lease or assignment for a limited term, and, pursuant thereto, has been in occupation of the lands for about 100 years. Subsequent to the grant of permission, Secretary's Quarters, community hall, library, gymnasium, etc. were constructed on such lands over a period of time. There is a functioning school which is said to have about 150 students. There is also a functioning hostel with about 23 residents. As per the site map, the commercial complex occupies a small area. With regard to the third Respondent/lessee, he has no right to object to the resumption per se but would be entitled to due process before dispossession. A registered lease deed was executed in 1998 and no action was taken by the official Respondents until now. Even the commercial complex appears to have been built a long time ago, and the claim of the Petitioner Association that it has been paying property tax has not been effectively refuted. The assignment of 15.03.1920 envisages a partial resumption as an option. When all these facts and circumstances are considered cumulatively, in my view, the impugned order for resumption of the entire 1.73 acres is not justifiable and is grossly disproportionate notwithstanding the gravity of the infringement. Consequently, the impugned order is set aside so as to enable the official Respondents to initiate fresh proceedings by taking into account the requirement of reasonableness and proportionality.

23. While deciding upon the extent of and the specific portions of land for resumption, the official Respondents are directed to take into consideration the fact that there is a functioning school, a functioning hostel and other facilities with a public purpose on these lands, and ensure the least possible disruption. Nonetheless, without disregarding reasonableness and proportionality, it is made clear that the official Respondents are entitled to resume such extent and portions as are commensurate with the infraction and public purpose requirements, and this order should not be construed as limiting such right of resumption to the lands on which the commercial complex was constructed. This order is also without

prejudice to and does not preclude or restrain action by the appropriate authorities as regards deviations from the sanctioned plan by the Petitioner Association, whether with regard to the constructed area or of any other aspect.

24. In the result, this writ petition is allowed and the impugned order dated 25.06.2005 is quashed. However, the matter is remanded to the official Respondents to initiate fresh proceedings for resumption by taking into account the observations contained in this order. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

rrg

To

1.The District Collector of
Nilgiris at Uthagamandalam,

2.The Tahsildar
Udhagai.

+1 cc to M/s.A.L.Gandhimathi Advocate sr2423

+1 cc to the Government Pleader sr3507

W.P.No.24817 of 2005

gmr(co)
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