



WEB COPY

Cont.P.No.144 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 30.09.2021

Orders Pronounced on : 25.10.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Cont.P.No.144 of 2016

Dr.Chellarani David,
M/s.Grace Hospital,
No.5/57, M.T.H.Road,
Nemilicheri,
Tirunindravur 602 024

... Petitioner

Vs.

1. Thiru Dharmendra Pratap Yadav,
Secretary to Government,
Housing & Urban Development Department,
Fort St.George, Chennai – 600 009.

2. A.Karthik,
Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irwin Road,
Egmore, Chennai – 600 008.

... Respondents

This Petition filed under Section 11 of the Contempt of Court Act, to punish the respondents for their willful disobedience of the order of this Court dated 07.01.2013 in W.P.No.23349 of 2012.

For Petitioner : Mr.C.Franco Louis



For Respondents : Mr.S.Silambanan
Additional Advocate General
Assisted by
Mr.M.R.Gokul Krishnan
Government Advocate (for R-1)
: Mr.P.Wilson
Senior Counsel for
Mr.P.S.Ganesan
Standing Counsel for CMDA
(for R-2)

O R D E R

This Contempt Petition has been filed for disobedience of the order passed by this Court dated 07.01.2013 in W.P.No.23349 of 2012, thereby disposing of the writ petition recording the agreement entered between the petitioner and the respondents.

2. The petitioner agreed that her land ad-measuring 24.7 cents in S.No.167/2A can be acquired and she is willing to take possession of 24.7 cents of land on the 50 meter corridor of ORR on payment of the reasonable amount fixed by the Government /CMDA for setting up a Hospital/Nursing Home. It should be done within nine months period from the date of that order. The land to be allotted is within Nemlicherry Village.

3. The petitioner is a Doctor and she started hospital in the name and style of M/s.Grace Hospital situated at Nemilicherry Village, Thiruvallur District comprised in S.No.167/2A (part) ad-measuring an extent of 0.10.0 hectares. However, the said land was under acquisition proceedings and as



such, the petitioner challenged the acquisition proceedings in W.P.Nos.9784 & 9785 of 2002. While disposing the said Writ Petitions, by order dated 21.04.2011, the petitioner was directed to give a detailed representation seeking either exclusion of the land acquired or for allotment of alternative site. It shall be considered by the respondents either the release of the land in favour of the petitioner or alternative accommodation, within a period of eight weeks. However, the said order was challenged in W.A.Nos.2247 & 2248 of 2011 and by judgment dated 12.06.2012, the Hon'ble Division Bench of this Court dismissed the appeals and observed that it is for the Government to consider the representation of the petitioner on its own merits and that does not mean that the request of the petitioner should be summarily rejected. However, by order dated 31.07.2012, the request of the petitioner was rejected and the same has been challenged in W.P.No.23349 of 2012 which was disposed by this Court by order dated 07.01.2013, which is under the contempt proceedings.

4. The learned counsel for the petitioner contended that even though the respondents failed to allot any land as directed by this Court, after filing the contempt petition, there are several interim directions issued by this Court. Even then, the respondents did not take any steps to comply with the order passed by this Court. While pending the contempt petition, the second respondent involved in activities with the respective allotment of suitable



land for construction of hospital. On competition of so many tasks the CMDA awarded the study to M/s.L & T Ramboll Consulting Engineers Ltd., on 16.07.2013 and exclusive study Review Committee was constituted to review and monitor the study consisting of drawing members from stake holding department and academicians. The consultant has submitted the draft final report on 25.07.2014 and the same was reviewed by the Study Review Committee on 16.09.2014. As directed by this Court on 18.03.2016, the personal hearing was held in the presence of the petitioner, petitioner's husband and their counsel. In the said meeting, to explore the possibilities of allotment of alternative site to the hospital, was discussed and the petitioner's husband gave a plan mentioning S.No.362 of Thandarai Village. However, on inspection of the said property, it was found that the said site does not have any access and not feasible for construction of the hospital. As directed by this Court by order dated 28.02.2016, the second respondent requested the District Collector, Thiruvallur to furnish the details of the Government lands and Village nearer to ORR project. It was found that the site in S.No.5/1 situated at Nemilichery Village, Poonamallee Taluk, Thiruvallur District, which is classified as Kalam Poramboke, is suitable land for construction as an alternative land to be allotted to the petitioner. Hence, it was requested to alienate the said land comprised in S.No.5/1 to the second respondent for public purpose and the second respondent will



pay the necessary land cost. Subsequently, the second respondent will allot suitable portion of the land to the petitioner. Thereafter, the second respondent wrote a letter to the petitioner's husband on 12.05.2016 and requested their willingness for the above site. On receipt of the same, by the letter dated 03.06.2016, the petitioner communicated as follows:-

“From

*Dr.Chellarani David
No.5/57 M.T.H.Road,
Nemilicheri, Tirunindravur – 602 024.*

To

*The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irwin Road,
Egmore, Chennai – 600 008.*

Sir,

*Sub: CMDA-ORR Division-Outer Ring Road Project-
Personal hearing held with the petitioner on 06.05.2016 at
the Chamber of the Secretary, H&UD, Chennai – Examining
the alternate land-Reg.*

*Ref: 1. High Court of Madras, Order dated 07.01.2013 in
W.P.No.23349 of 2012.
2. A hearing held on 06.05.2016 at the chamber of the
Secretary, H& UD, Chennai.
3. The Member Secretary, CMDA – Letter
No.ORR/9454/2011, dated 12.05.2016.*

*This has reference to your letter No.ORR/9454/2011, dated
12.05.2016 which I received on 19.05.2016, calling for my
willingness on identification of an alternate land for allotment as
per Hon'ble High Court of Madras, Order dated 07.01.2013 in*



It is stated that a land has been identified in Survey No.5/1 of Nemilichery Village, Poonamalli Taluk, Thiruvallur District which is classified as "KALAM PORAMBOKKU" as per Revenue Records.

I understand that the total extent of Survey No.5/1 of Nemilichery Village is about 1.5 acres.

The road abetting Survey No.5/1 is a narrow road (in some places about 20 feet and some places even less than that) leads to Nemilichery Railway Crossing which is not open frequently due to heavy train traffic.

My hospital namely Grace Hospital in Survey No.167/2 at Nemilichery Village, Poonamalli Taluk, Thiruvallur District was abetting on 120 feet M.T.H.Road – National Highway 205.

Grace Hospital with 35 beds + Operation Theatre, ICU, Labour Room which was demolished by CMDA had RCC pile Foundation and Column for Ground + 3 floors structure and had to stop with Ground Floor alone, in lieu of CMDA's Land Acquisition notice.

Grace Hospital stood on 44 cents of land on Madras Thiruthani High Road (MTH Road-National Highway 205) prior to its demolition.

I am willing to accept 24.7 cents land or more that would be allotted in S.No.5/1 Nemilichery Village, Poonammallee Taluk, Thiruvallur District subject to me being able to construct a Special Building namely Hospital inclusive of Trauma care, abetting a minimum of 10m wide road. Please note that there is a big village garbage dumping yard in S.No.5/1, Nemilichery Village and this may be considered before allotment.

<https://hcservices.ecourts.gov.in/hcservices/> I am attaching some of the photograph showing the width of the



road abetting on Survey No.5/1 of Nemilicheri Village.”

WEB COPY

5. Accordingly, the petitioner expressed her willingness to accept 24.7 cents of land or more, that would be allotted in S.No.5/1 situated Nemilicheri Village, Poonammallee Taluk, Thiruvallur District, subject to her being able to construct a Special Building viz., Hospital inclusive of Trauma care, abetting a minimum of 10m wide road. Thereafter, the second respondent proceeded the Government for land alienation process. The Government had allotted the said land in favour of the second respondent, vide G.O.(Ms) No.257, Revenue and Disaster Management Department, Land Disposal Wing, LD5(2) Section, dated 16.07.2018 and further requested the second respondent to pay the land value of Rs.43,57,525/- to the Government. Accordingly, the second respondent has paid the entire amount and had taken possession of the said land, after carrying out survey and sub-divided by the Revenue Officials. The land comprised in S.No.5/1 has been sub-divided as S.No.5/6 to an extent of 24.7 cents and vested with the second respondent.

6. However, the learned counsel for the petitioner contended that after receipt of the willingness letter from the petitioner, the second respondent never provided any sketch for the land to be allotted in favour of the petitioner. Therefore, the petitioner, by letter dated 10.11.2019 to the second respondent, requested for a sketch of the subject land for identification of



the land. Thereafter, by order dated 06.12.2019, this Court directed the second respondent to provide the sketch of the subject land. Only on 27.01.2020, the second respondent furnished the copy of the sketch showing the sub-division as S.No.5/6 in the total extent of 1.5 acres comprised in S.No.5/1. He further submitted that the said land is 7 sided plot with a passage not suitable for construction of the hospital. It is a violation of the order passed by this Court, since this Court specifically directed that the parties to the Writ Petition shall implement the above agreement in the right spirit and in terms agreed between them.

7. In fact, willingness was not sought for the sub-division S.No.5/6 and there was no joint inspection while fixing the land. Therefore, by order dated 09.04.2021, this Court directed the second respondent and the petitioner for joint inspection of the allotted land and further directed the second respondent to file a report satisfying the grievances raised by the petitioner, by representation dated 13.01.2020 and also to consider the request of the petitioner to allot an alternative site. Therefore, the second respondent did not act in the right spirit and the land suitable for construction of hospital. The second respondent purposely curved out a piece of land that would be totally unfit for construction of the hospital. If the second respondent showed the subject land before the petitioner, she would have objected the same and pointed out to the non suitability for the



construction of the hospital with Trauma care. He further submitted that the Primary Health Centre referred by the second respondent is actually not a Primary Health Centre, but it is a Sub Centre. The photographs were also produced and the sub centre is headed by a Nurse. Therefore, there is no Doctor or any specific facility such as operation theatre or X-ray and emergency ward. Hence, it is impossible for any Ambulance to go to the Sub Centre without any facility.

8. Admittedly, the Government have now passed order and the second respondent paid a sum of Rs.43,57,525/- and had taken possession of the subject land comprised in S.No.5/6 to an extent of 24.7 cents.

9. On a perusal of the FMB Sketch produced by the second respondent, it reveals that the width of the road is in front of the allotted site 10 meter. The opening passage of the allotted site is also 10m width. The passage of the site and the said area, will be included in the plot area for calculating permissible limits. Further, the allotted site is situated next to the existing Primary Sub Health Centre. Therefore, the contentions, raised by the petitioner cannot be considered in the Contempt Petition. As directed by this Court, now the second respondent had acquired the land to allot the same in favour of the petitioner. Accordingly, an allotment order for the said land has been issued to the petitioner.



10. Recording the compliance report dated 27.09.2021 filed by the second respondent, the contempt petition is closed. It is made clear that the second respondent is directed to consider the petitioner's request while calculating the permissibility of FSI for the subject property while constructing the hospital. The petitioner is also at liberty to work out her remedy as contended by the learned counsel for the petitioner in the manner known to law.

SD/-
ASSISTANT REGISTRAR(COMM.CASES)

kv

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)
from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

GS/22/11/2021

To

The Secretary to Government,
Housing & Urban Development Department,

Fort St.George, Chennai – 600 009.