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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.8194 of 2011

and

M.P.No.2649 of 2018

and

M.P.No.1 of 2011

- 1.B.Shanthilal
- 2.B.Gyan Prakash
- 3.D.Leela Kumari
- 4.Manjula
- 5.Sumathi
- 6.B.Padmakumar
- 7.Rekha

... Petitioners

Vs

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings, Chennai - 600 003.
2. The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Municipal Administration &
Water Supply Department,
Fort St. George, Chennai - 600 009.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records in Letter (D) No.98 dated 22.02.2011 on the file of the 2nd respondent and quash the same as illegal, arbitrary and unjustifiable and direct the respondents to release the property bearing Door No.78/85, Big Street, (Veera Ragava Mudali Street), Triplicane, Chennai - 600 005 in R.S.No.2329 to an extent of 3850 sq.ft. to the petitioners.

For Petitioners : Dr.A.Thiyagarajan Senior Counsel
for M/s.S.Ramesh Kumar

For Respondent 2 : Mr.M.R.Gokul Krishnan
Government Advocate



For Respondent 1 : Mrs.Karthika Ashok
Standing Counsel

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O R D E R

This writ petition is filed to issue a Writ of Certiorarified Mandamus to call for the records in Letter (D) No.98 dated 22.02.2011 on the file of the 2nd respondent and quash the same as illegal, arbitrary and unjustifiable and direct the respondents to release the property bearing Door No.78/85, Big Street, (Veera Ragava Mudali Street), Triplicane, Chennai - 600 005 in R.S.No.2329 to an extent of 3850 sq.ft. to the petitioners.

2. The case of the petitioners is that their father namely Budhmal Jain purchased the property bearing Door No.78/85, Big Street, (Veera Ragava Mudali Street), Triplicane, Chennai 600 005 comprised in R.S.No.2329 to an extent of 3850 sq.ft. by the registered sale deed dated 19.07.1972 (hereinafter called "subject land"). Initially, the subject land was acquired by the second respondent by G.O.Ms.No.757 dated 08.04.1971 and G.O.Ms.No.2796 dated 23.11.1972. Therefore, the petitioners' father challenged the same and after repeated requests the second respondent issued G.O.Ms.No.222 dated 06.11.1995 directing the first respondent to re-convey the subject land on collection of a compensation of Rs.31,958/- (Rupees Thirty One Thousand Nine Hundred and Fifty Eight only). In pursuant to the said Government Order the petitioners' father requested the first respondent to re-convey the said property. It was not considered and their father filed writ petition before this Court in W.P.No.4143 of 1996 for direction directing the respondents to implement the said Government Order.

3. Pending writ petition, the second respondent issued G.O.Ms.No.90 dated 11.04.1997 thereby cancelling the earlier G.O.Ms.No.222 dated 06.11.1995. Therefore, the petitioners' father challenged the same and filed a writ petition before this Court in W.P.No.10349 of 1997 and the same was allowed by setting aside the G.O.Ms.No.90 dated 11.04.1997 by an order dated 15.09.1999 and directing the respondents to release the subject land to the petitioners within a period of four weeks .

4. Aggrieved by the same, the first respondent preferred writ appeal in W.A.No.2484 of 1999 and the same was also



dismissed by the Hon'ble Division Bench of this Court dated 14.06.2007. However, while dismissing the writ appeal the Hon'ble Division Bench of this Court granted liberty to the first respondent to pursue the matter with the second respondent to take appropriate decision, if the land is still required for public purpose. Thereafter, the second respondent also filed writ appeal challenging the order passed by the learned single Judge in W.A.No.515 of 2000 and the same was disposed of by this Court by an order dated 13.09.2010.

5. While pending the writ appeals the petitioners' father died and the petitioners were impleaded as respondents in the writ appeals. After the order passed in the writ appeal, the second respondent called upon the petitioners for personal inquiry by the letter dated 12.07.2010. The petitioners appeared and submitted their objections. However, the second respondent passed the impugned order, rejecting the request for re-conveyance of subject land of the public property and retain the acquired subject land for construction of Corporation Middle School.

6. The learned senior counsel Dr.A.Thiyagarajan appearing for the petitioners submitted that the subject land is only 3850 sq.ft. (140 feet length and 27-1/2 feet breadth). Therefore, it is not suitable for construction of the said School. In this regard, the Government of Tamil Nadu appointed an inquiry Commission headed by Justice.Thiru.K.Sampath, retired Judge of this Court to inquire into the incident of fire accident in Sri Krishna Aided Primary School at Kumbakonam. The Commission submitted its findings and recommendations which are issued vide G.O.Ms.No.131 dated 10.08.2008.

7. As per the said Government Order the minimum size of the class room should be 6m x 6m or 400 sq.feet. for minimum student strength not exceeding 40 and the thickness of the walls shall not be less than 23 cms. Now according to the respondents to build up the four class rooms in ground floor and four class rooms in first floor. The present land is not sufficient for construction of school premises.

8. He further submitted that this Court set aside the G.O.Ms.No.90 dated 11.04.1997 and directed the respondents to re-convey the land to the petitioners within a period of four weeks from the date of receipt of a copy of this order as per the terms of G.O.Ms.No.222 dated 06.11.1995. In fact, after the re-conveyance Government Order the petitioners forwarded the



award amount by way of Demand Draft and the same has been returned. Therefore, the petitioners duly complied the conditions imposed in the G.O.Ms.No.222 dated 06.11.1995 passed for re-conveyance of the subject land.

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9. The Hon'ble Division Bench of this Court while dismissing the writ appeal gave liberty to the second respondent to pursue the matter with the Government to take appropriate decision in the matter, if the impugned land is still required for public purpose. Therefore, the second respondent ought not to have canceled the re-conveyance order that to without following the procedure to acquire the land afresh, since the cancellation of re-conveyance order was confirmed by the Hon'ble Division Bench of this Court.

10. The learned counsel for the first respondent filed counter and submitted that though the subject land is not feasible for construction of School Premises according to the G.O.Ms.No.131 dated 10.08.2008, the subject land can be utilized for some other public purposes such as home for homeless orphans, those who are staying in platforms without any proper residence.

11. She further submitted that the petitioners were duly called for personal inquiry and after hearing them and considering their objections the second respondent passed an order thereby rejecting the request of re-conveyance of the subject land. She also submitted that as per the directions issued by the Hon'ble Supreme Court of India for every one lakh population one night shelter has been formed. Therefore, the Greater Chennai Corporation Area, 38 new shelters apart from existing ones, have to be formed. In order to implement this welfare scheme the subject land is also included for Constructing Night Shelter for homeless poor by the Council Resolution dated 20.02.2019 vide Resolution No.140 of 2019 allocating the subject property for utilization of Night Shelter building. Therefore, the subject property is most wanted for the public purpose and needed of public utility.

12. The second respondent filed counter, stating that on the requisition of the first respondent, the second respondent vide G.O.Ms.No.757 dated 08.04.1971 have issued notification under section 4(1), declaration under Section 6 and draft direction issued under Section 7 of the Land Acquisition Act to acquire the property admeasuring 3850 sq.ft. at Door No.85, Old No.78, Big Street, Triplicane, Chennai for construction of



Corporation Middle School. In pursuant of the same, the award was passed on 08.10.1973.

13. While that being so, the said property was purchased by the petitioners' father before passing the award and after publication of notification under Section 4(1) of the Act. The land was taken possession by the first respondent as early as on 29.10.1980 and the present the land is in possession of the Chennai Corporation and is classified as Corporation Private Land. However, the father of the petitioners obtained orders in G.O.Ms.No.222 dated 06.11.1995 to re-convey the said land on collection of compensation amount.

14. After considering the request made by the first respondent again the second respondent vide G.O.Ms.No.222 dated 06.11.1995 canceled the order of re-conveyance. However, it was challenged by the petitioners' and the same was allowed in the writ petition and also confirmed by the Hon'ble Division Bench of this Court.

15. While confirming the order passed in writ petition, the Hon'ble Division Bench of this Court had given liberty to the second respondent to pursue the matter with the Government and to take appropriate decision, if the impugned land is still required for public purpose. Therefore, the petitioners were called for personal inquiry and they also submitted representations with objections. The objections were duly considered by the second respondent who passed the impugned order in this writ petition.

16. Heard, Dr.A.Thiyagarajan, learned Senior counsel for M/s.S.Ramesh Kumar for the petitioners, Mrs.Karthika Ashok, learned standing counsel for the first respondent and Mr.M.R.Gokul Krishnan, learned Government Advocate for the second respondent.

17. Originally, the subject land was acquired for the purpose of construction of Corporation Middle School. Before passing of the award, the subject land was purchased by the petitioners' father on 19.07.1972. On his request by the G.O.Ms.No.222 dated 06.11.1995 the second respondent ordered to re-convey the subject land to the subsequent purchaser namely the father of the petitioners herein on collection of compensation amount of Rs.31,958/- (Rupees Thirty One Thousand Nine Hundred and Fifty Eight only). It is also to be noted that



there shall be no interest on the refund of compensation. In fact, the Collector of Madras had sent the communication to the second respondent stating that the first respondent in its resolution dated 27.05.1995 in Resolution No.716 of 1995 resolved to accept the decision of the Government to re-convey the subject land to the existing land owner. Therefore, on the strength of the same the second respondent passed an order of re-conveyance.

18. However, without conducting any inquiry the second respondent passed an order in G.O.Ms.No.90 dated 11.04.1997 thereby, cancelling the G.O.Ms.No.222 dated 06.11.1995. It was challenged by the petitioners' father and this Court allowed the writ petition. It was challenged by the respondents herein in writ appeals in W.A.No.2486 of 1999 and W.A.No.515 of 2000. The Hon'ble Division Bench of this Court while dismissing the writ appeal, gave liberty to the second respondent to pursue the matter with the Government to take appropriate decision in the matter, if the impugned land is still required for public purpose. It is also observed as follows:

"At this juncture, we make it clear that we are not going into the merits or demerits of the order of reconveyance, much less the cancellation of reconveyance, as it is a settled law that after the acquisition proceedings the land vests with the Government and the Government has got every right to take appropriate decision in the matter either to reconvey the land or to refuse reconveyance, but the pertinent issue that arises for our consideration in this appeal is having taken a decision to cancel the reconveyance of land granted to the petitioner, whether the Government can dispense with the issue of notice before cancellation of reconveyance? Answering in negative."

19. Admittedly, while passing the order to cancel the re-conveyance the petitioners' father has not been served with any notice and no inquiry was conducted. Therefore, the Hon'ble Division Bench of this Court had given liberty to the second respondent, if the impugned land is still required for public purpose to take appropriate decision. Therefore, the second respondent ought to have issued notice to the petitioners while passing the order to set aside the order of re-conveyance.



20. A perusal of the records, reveal that the petitioners had sent representation on 21.12.2010. In the said representation they referred that they have been called for personal inquiry by a letter dated 06.07.2010 to be conducted on 12.07.2010. On that date they appeared and represented to release their subject land. Thereafter, the second respondent also challenged the order passed by the learned Single Judge in W.A.No.515 of 2000 and the same was also dismissed by an order dated 13.09.2010. Thereafter, the second respondent never issued any notice to the petitioners and without conducting any inquiry, passed the impugned order, thereby rejecting the request for re-conveyance of the subject land.

21. It is made clear that once the order of re-conveyance is passed in G.O.Ms.No.222 dated 06.11.1995, and the second respondent intended to cancel the re-conveyance order, the petitioners are entitled to have notice and inquiry by way of personal appearance. Therefore, it is a clear violation of principles of natural justice and the impugned order cannot be sustained against the petitioners.

22. In view of the above, the Letter (D) No.98 dated 22.02.2011 on the file of the 2nd respondent is quashed as the same is illegal, arbitrary and unjustifiable. The respondents are directed to release the property bearing Door No.78/85, Big Street, (Veera Ragava Mudali Street), Triplicane, Chennai - 600 005 in R.S.No.2329 to an extent of 3850 sq.ft. If at all the second respondent requires the subject land for public purpose and intends to cancel the re-conveyance order passed in G.O.Ms.No.222 dated 06.11.1995, the second respondent is directed to issue notice to the petitioners and call for objections if any, thereafter, conduct an inquiry after giving opportunity of hearing to the petitioners and pass orders on merits in accordance with law.

23. Accordingly, this writ petition is allowed. No order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings, Chennai - 600 003.

2. The Secretary,
Municipal Administration &
Water Supply Department,
Fort St. George, Chennai - 600 009.

+1cc to Mr.S.Ramesh, Advocate, S.R.No.45685

+1cc to Mrs.Karthikaa Ashok, Advocate, S.R.No.45801

+1cc to the Government Pleader, High Court, Madras, S.R.No.45876

W.P.No.8194 of 2011
and M.P.No.2649 of 2018
and M.P.No.1 of 2011

SJ(CO)
SU(27/10/2021)