



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.10098 and 3401 of 2019

and

W.M.P.Nos.10667 and 3685 of 2019

Annai Lourd Trust

Rep. by founder trustee/Secretary of the Annai Lourd Schools,
D.Varghese, having office at
No.1, School Road, Rajiv Gandhi Nagar,
Pattabiram, Chennai-600 072.

...Petitioner in W.P.No.10098 of 2019

Annai Lourd Educational Trust

Represented. by D.Varghese, the founder trustee/Secretary of
the Annai Lourd Schools, having office at
No.1, School Road, Rajiv Gandhi Nagar,
Pattabiram, Chennai-600 072.

...Petitioner in W.P.No.3401 of 2019

Vs.

1. The Secretary to the Government of Tamil Nadu
Revenue Department,
Fort St. George, Chennai-600 009.
2. The Collector
Collector's Office, Thiruvallur.
3. The Tahsildar,
Avadi Taluk Office, Chennai-600 054

...Respondents in all W.Ps

Prayer in W.P.No.10098 of 2019:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari Mandamus to call for records of the 3rd respondent dated 30.07.2016 in Na.Ka.05/2016/A1 and quash the same.



Prayer in W.P.No.3401 of 2019:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 2nd respondent for passing the orders for permanent allotment of the land measuring 0.80 acres in part of S.No.210 (T.S.No.16) and S.No.239 (T.S.No.13) for the petitioner school play ground purposes within time frame stipulated by this Hon'ble Court in accordance with law.

For Petitioner : M/s.S.V.Ramamurthy
For Respondents : Mr.M.R.Gokulakrishnan
Government Advocate

C O M M O N O R D E R

While one of the writ petition has been filed by the petitioner for quashment of the impugned order in and by which the land, which the petitioner had been using had been taken away from it, the other writ petition is filed for permanent allotment of the land measuring 0.80 acres in part of S.No.210 (T.S.No.16) and S.No.239 (T.S.No.13) for the utilisation of the petitioner as school play ground purposes within time frame stipulated by this Court.

2.The case of the petitioner is that the petitioner trust is running a school namely, Annai Lourd Elementary School, High School and Higher Secondary School, which is a recognised private aided Christian Minority School. The petitioner school is using the adjacent land situated in Survey No.210 and 239 as play ground for their school and also the Poovirundhavalli Tahsildar, vide letter dated 16.11.2011, gave permission to the petitioner Trust to use the above said land as play ground for the petitioner's school. It is the further averment of the petitioner that the petitioner Trust administering and maintaining the entire school affairs, and also the building and they are also paying the requisite tax to the Government regularly. The petitioner filed a writ petition in W.P.No.3401 of 2019 seeking direction to the 2nd respondent to allot the land in Survey No.210 and 239 for the utilisation of the petitioner school to be used as play ground purpose in which this Court directed the parties to maintain status quo and the petitioner is utilising the said land as playground for the petitioner school till date. Thereafter, the petitioner filed suit in O.S.No.165/2013 for permanent injunction restraining the respondents therein from interfering with the peaceful enjoyment of the land by the petitioner and the said suit was decreed in



favour of the petitioner vide order dated 05.12.2013 and the respondents therein were restrained and directed not to interfere with the enjoyment of the land by the petitioner's school. In the above scenario, the 3rd respondent passed the impugned order dated 30.07.2016 as if the petitioner is an illegal encroacher of the said land and no allotment can be made in favour of the petitioner's school, since the said land is classified as Eri-ulvoy. Challenging the said order, these Writ petitions are filed.

3.The learned counsel appearing for the petitioner submitted that the petitioner trust is using the land in Survey No.210 and 239 as play ground for their school for the past 30 years and the petitioner trust made a representation to the Thiruvallur Collector on 09.10.2018 for permanent allotment of the above said land measuring 0.80 acres for being used as playground for the school. However, till date, no order has been passed. He further submitted that the petitioner is not insisting for patta for his personal need or for the construction of any building in the place, but the petitioner is only seeking permission for permanent allotment of the said land for being utilised for the school children towards sports and other extra-curricular activities. Though vide letter dated 16.12.2011, the revenue authorities had allotted the said land as play ground for the petitioner school and permanent injunction had also been granted by the competent court not to interfere with the possession of the school with respect to the said lands, the 3rd respondent has passed the impugned order. Therefore, he submits that it would suffice, if this Court issue direction to the 3rd respondent to allot the said land for being utilised as playground by the petitioner school.

4. The learned counsel appearing for the respondents submitted that the disputed land is classified as Eri-ulvoy and Odai Poramboke and more than 100 persons have constructed buildings on the said land due to which the said land lost its characteristic as Eri-ulvoy. The petitioner school has been enjoying the said land, situate 350 metres away for more than 3 decades and the said land, being a water body, as per the directions of this Court, the water bodies have to be maintained without changing its characteristics. He further submitted that as per the Revenue records, the said land is a water body and assigning or alienating the same in favour of the petitioner school is completely prohibited by the Government in G.O.Ms.No.41 (Per) Revenue Department dated 20.01.1987 and also the Division Bench of this Court has repeatedly passed orders to remove encroachments in the ulvoy and Eri-ulvoy and the



Government order G.O.Ms.No.1135 Revenue Department dated 17.03.1962 also, therefore, the permission given by the then Tahsildar is wholly impermissible. Any assignment or alienation would be against the orders of this Court. He also submitted that the entire Villingambakkam village also falls under the belt area. Accordingly, he prays for dismissal of these writ petitions.

5. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

6. It is the admitted case of the parties that the land to which claim is made by the petitioner for allotment for the purpose of playground for children studying in the petitioner school belongs to the Government, as it is a poramboke land classified as eri-ulvoy. It is the case of the respondent that the said land is a water body even as per the entries in the revenue records. The abovesaid stand that the said land is a water body is not disputed by the petitioner. However, it is the claim of the petitioner that the land, which has been under its utilisation for more than three decades, be allotted it for the purpose of the school children for using the same for extra-curricular and other activities.

7. It has been the consistent view of this Court that no encroachment should be made on water bodies and that the water bodies have to be maintained in proper manner so that the storage of water in the said water bodies is done during the rainy season and that the said storage would replenish the ground water table, which in turn would be useful to the people of the locality during peak summer. Water is the source of life for each and every human being on earth and the precious and heavenly commodity, which comes in the form of shower should be safely and securely stored for it to be used during periods of crisis. However, with scant regard to the necessity to maintain the water bodies, large scale usurpation of such lands is made by influential persons, to the detriment of the common man, thereby, the lifeline of the citizens gets affected.

8. In the case on hand, a water body has been in utilisation by the petitioner as a playground for about three decades and permanent injunction has also been granted by the judicial forum restraining the respondents from interfering with the utilisation of the lands by the petitioner. Without proper application of mind and also looking at the revenue records, the order would have been passed by the Court and, in fact, this



Court would also go to the extent of rendering a finding that the fact that the said land is a water body would not have been properly placed before the court by the respondents therein, which has resulted in such an order being passed granting permanent injunction.

9. Be that as it may. Once it has come to the notice of this Court that the said land, to which claim for allotment is made, is a water body, which is the characteristic of the lands as per the revenue records, it is but necessary for this Court to give an affirmative direction to the respondents to maintain the said water body and bring it back to its original position, so that the characteristic of the said land as a water body is maintained.

10. It is the case of the respondents that encroachments have been made to the said lands and construction of houses, numbering about 100 have already taken place in the water body. Any encroachment on the water body has been time and again deprecated by this Court through its various orders and any deviation from implementation of the said order would be nothing but an act of contempt of the orders passed by this Court. It is the duty of the respondents to strictly adhere to the directions issued by this Court insofar as maintenance of water bodies are concerned and in the said backdrop, the respondents are duty bound to maintain the said lands as water body after removing the encroachments, that have mushroomed on the said lands.

11. In the aforesaid backdrop, while this Court is not inclined to accede to the request of the petitioner for a direction to allot the lands in favour of the petitioner and is inclined to dismiss this petition, however, in the larger interest of justice, this Court deems it just, necessary and appropriate to direct the respondents to cause notice to such of those persons, who have encroached upon the said lands by making constructions, within a period of four weeks from the date of receipt of a copy of this order and on receipt of the reply, take action in accordance with law forthwith to remove the said encroachments and further the respondents are directed to restore the water body back to its original state by maintaining its characteristic as is reflected in the revenue records. This Court further directs the 1st respondent to take appropriate disciplinary action against the then Tahsildar, who had given permission to the petitioner trust to utilise the Eri-ulvoy situated in survey No.210 and 239 for being utilised as a playground, if still in service, when it is the admitted case of



the respondents as is reflected in the revenue records that the said land is a water body.

12. For the reasons aforesaid, this Court is not inclined to interfere with the impugned order passed by the 3rd respondent dated 30.07.2016 and, accordingly, this writ petitions are dismissed with the aforesaid observations and directions. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

SKT/GLN

To

1. The Secretary to the Government of Tamil Nadu
Revenue Department,
Fort St. George, Chennai-600 009.
2. The Collector
Collector's Office, Thiruvallur.
3. The Tahsildar,
Avadi Taluk Office, Chennai-600 054

+2 Ccs to Mr.S.V. Ramamoorthy, Advocate sr 60421

+1 CC to The Government Pleader sr 61492.

W.P.Nos.10098 and 3401 of 2019
and
W.M.P.Nos.10667 and 3685 of 2019

RSI (CO)
SP(27/01/2022)