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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.6064 OF 2014

AND

M.P.NO.1 OF 2014

K.S.R.Educational & Charitable Trust,
Represented by its Secretary Mr.Srinivasan,
No.47, -A, Kumaresapuram,
Kozzhikkal Natham Road,
Tiruchengodu- 637211
Namakkal District,
Tamilnadu.

... Petitioner

Vs.

1. The Secretary,
Revenue Department,
Fort.St.George,
Chennai.
2. The District Collector,
Office of the District Collector,
Namakkal.
3. The Thasildar,
Thasildar Office,
Tiruchengodu,
Namakkal District.
4. Revenue Inspector,
Thookavadi Village,
Thiruchengodu.

... Respondents



Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent made in Na.Ka 21075/2007 dated 20.1.2014 and quash the same and direct the 1st respondent to consider the representation made by the president of the petitioner institution in his letter dated 10.4.2008.

For Petitioner : Mr.K.S.Jeyaganeshan

For R1 to R4 : Mr.K.M.D.Muhilan
Government Advocate

O R D E R

(Through Video Conferencing)

The writ on hand has been instituted challenging the order, dated 20.01.2014, passed by the 3rd respondent, which is an attachment notice.

2.The petitioner states that they are running an educational Institution in their patta land. In a portion of the Government Poramboke land situated nearby the Institution, there were encroachments also. The petitioner has only laid a pipeline for the passage of water and they have covered the same so that it does not cause any hygienic problem for the students studying in the Dental College, Arts College and Hostels. 'Mattaparai' which is classified as 'Government Poramboke' land in a particular area, cannot be utilized for any other purposes. The petitioner has to place a small fence to stop the unlawful entry of anti-social elements entering into the petitioner's Institution through the unused 'Mattaparai' to the Hostel and to stop water seepage in that locality. Thus, they are not encroachers, in fact, they have put up fencing for the purpose of preventing anti-social elements from entering into the Institution.

3.The petitioner has stated that they have submitted a letter on 10.04.2008 to the 1st respondent to convey the said Government Poramboke land in favour of the petitioner and they are ready to purchase the land by paying a consideration.



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However, the authorities have not considered, and the said letter of the year 2008 is still pending. Under these circumstances, the attachment notice impugned has been issued by the Tahsildar. Thus, the petitioner is constrained to move the present writ petition.

4.The learned counsel for the petitioner mainly contended that the petitioner Institution has not encroached any Government Poramboke land, contrarily, they have put up fencing in order to prevent anti-social elements. The learned counsel for the petitioner relied on the letter, dated 25.03.2008, sent by the District Collector, Namakkal, to the Accountant General (Audit), Chennai - 18. Though it is an internal communication between the District Collector and the Accountant General, the petitioner has relied on the said letter by contending that the letter was communicated based on the report submitted by the Tahsildar. The observations made in the said letter are in favour of the petitioner. Thus, the representation of the year 2008 has to be considered and the 1st respondent may convey the land to the petitioner in view of the fact that the petitioner is ready to pay the sale consideration.

5.The learned Government Advocate, appearing on behalf of the respondents, disputed the contentions raised by the petitioner by stating that the letter of the year 2008 was considered and in view of the Audit objection, no further action has been initiated. However, the fact remains that the subject land is still under the classification as 'Government Poramboke' and vests with the Government. It is contended by the learned Government Advocate that the petitioner have encroached the Government land and constructed fencing and illegally enjoying the Government land. Further, they have laid pipelines without getting proper approval from the competent authorities. Such illegality cannot be condoned.

6.In view of the fact that the petitioner relied on the letter, dated 25.03.2008, sent by the District Collector to the Accountant General, this Court has directed the respondent to conduct field inspection and verify the Revenue records and file a Status Report. Pursuant to the interim order, the 3rd respondent/Tahsildar filed a Status Report. The Status Report reveals that the petitioner remitted the Lease Penalty amount of Rs.5,32,890/- on 01.10.2014. Pursuant to the orders of this



Court, field inspection was conducted by the respondents 3 and 4 and following findings are given :

"i)The land in Survey No.221/6 measures a total extent of 0.27.50 hectares (68 cents) is classified as Vellavari (Channal) poramboke, out of which land measuring 62 ½ cents remain as a vacant land and 5 ½ cent of land has been encroached by the petitioner institution.

ii)The land in Survey No.209/2 measures a total extent of 1.16.00 hectares (2 acre and 86 cents) is classified as Karadu out of which 1 acre and 40 cents of lands have been encroached and the remaining extent of land comprises rocks.

iii)The land in Survey No. 208/3 measures a total extent of 0.33.0 hectares (81 ½ cents) is classified as Ettari, Mataparai, Vandipathai, cart track out of which 0.55 cents of land have been encroached and the remaining lands consists of vacant land as also roads.

5.The field map depicting the encroached lands as also the remaining extent of land in the aforesaid Survey Numbers is enclosed along with this status report."

7.The Status Report filed by the 3rd respondent confirms that the petitioner has encroached the Government Poramboke land. However, the petitioner has submitted an application to convey the land in their favour. However, sale of Government land is a policy decision to be taken by the competent authorities of the Government. The Court cannot issue any direction to convey the Government land in favour of any individual. Public interest is of paramount importance while dealing with the Government lands. Government lands are to be utilized for public purposes and it cannot be sold without considering the public interest involved. However, such a decision is to be taken administratively by the authorities of the Government and therefore, the Court cannot issue any such direction for the purpose of sale of Government land in favour of the private entities.



8.The amount of Rs.5,32,890/- paid on 01.10.2014 pertains to the arrears to be demanded for the period from 2003 to 2006. For the subsequent period, the rent/penalty/damages are yet to be paid by the petitioner. Therefore, the said amount paid pertaining to the arrears of the year 2003 to 2006 cannot be a ground to consider the application at this length of time. However, encroachments can never be allowed for a longer period, as the Government lands are to be protected by the competent authorities. The authorities are bound to take a decision in this regard either to convey the land or to evict the encroachers. Contrarily, they cannot be a spectator in respect of such encroachments made in the Government lands.

9.This being the factum established, the respondents are at liberty to take a decision for the purpose of considering the representation, as expeditiously as possible, failing which, eviction proceedings are to be initiated for evicting the encroachers from the Government land and utilize the Government land for public purposes.

With these clarifications, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

jeni/mkn

To

1. The Secretary,
Revenue Department,
Fort.St.George,
Chennai.
2. The District Collector,
Office of the District Collector,
Namakkal.



3. The Thasildar,
Thasildar Office,
Tiruchengodu,
Namakkal District.

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4. The Revenue Inspector,
Thookavadi Village,
Thiruchengodu.

+1cc to Mr.K.S.Jeyaganeshan, Advocate, S.R.No.56110

+1cc to the Government Pleader, S.R.No.57139

W.P.No.6064 of 2014

RSI(CO)

RLP(17/11/2021)