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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2021

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.17509 of 2021
and W.M.P.Nos.18610 and 18611 of 2021

1.H.Abibullah
2.H.Ramathulla
3.Hamanullah

... Petitioners

Vs.

1. The Government of Tamil Nadu,
Tamil Nadu Highways Department,
Represented by its Secretary,
St. George Fort, Chennai.
2. The Divisional Engineer (Highways),
Construction and Maintenance C&M,
City Roads Division,
Saidapet,
Chennai - 15.
3. The Assistant Divisional Engineer (Highways),
Construction and Maintenance (Tambaram Division),
Tamil Nadu Highways Department,
Opposite to Velachery Railway Station,
Velachery, Chennai - 600 042.
4. Chennai Metro Rail Limited,
Admin Building, CMRL Depot,
Ponnamallee High Road,
Koyambedu,
Chennai - 600 107.
5. The Land Acquisition Officer/
District Revenue Officer,
Chennai Metro Rail Project,
2nd floor, Admin Building,
CMRL Depot,
Ponnamallee High Road,
Koyambedu,
Chennai - 600 107.



6. The District Collector,
Chengalpet District,
Chengalpet.

7. The Tahsildhar,
Tambaram Taluk,
Chengalpet District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a writ of Mandamus to direct forbearing the respondents authorities from acquiring or taking away the petitioner's land classified as "Grama Natham" comprised in old Survey No.262/1 part, newly sub divided as Survey No.452/14 of Medavakkam Village, Tambaram Taluk, Chengalpet and the building constructed therein in Door No.1/1092, Medavakkam main road, Periyar Nagar, Velakkal, Medavakkam, Chennai 601302 without following the due process of law.

For Petitioners : Mr.N.Premkumar

For Respondents : Mr.V.Veluchamy for R1, R6 and R7
Mr.Jayesh B. Dolia for R4 and R5

ORDER

This writ petition has been filed for a mandamus to forbear the respondents Authorities from acquiring or taking away the petitioner's land classified as "Grama Natham" comprised in old S.No.262/1 part, newly sub divided as S.No.452/14 of Medavakkam Village, Tambaram Taluk, Chengalpet and the building constructed therein in Door No.1/1092, Medavakkam Main Road, Periyar Nagar, Velakkal, Medavakkam, Chennai - 601 302.

2.The case of the petitioners is that he has constructed a house bearing S.No.262/1, New S.No.452/14 of an extent of 2135 sq of Medavakkam village and the residential house belongs to the petitioner and his brothers Mr.Abibullah and Mr.Amanullah and the said property has been settled by the petitioners father viz., Mr.Mohammed Hanif under the Settlement Deed dated 20.06.2005 vide Document No.4306 of 2005.

3.The petitioners submits that originally the property belongs to the family members who were in continuous possession and enjoyment of the property by constructing a small tile roofed house and a hut in the said land since the year 1980, the petitioners have also obtained electricity connection to their house and lived along with the family members in that Tile roof house for more than 2 decades and their father, Mr.Mohameed Hanif has settled the said land along with a small tile roofed



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9. The petitioners submit that immediately on 14.12.2021, they have made a representation by enclosing all their title deeds, planning permission, Tax receipts of their property to the District Collector and the Land Acquisition Officer of Chennai Metro Rail Limited stating that their land has been classified as "Grama Natham" in the Revenue Records and it is well settled by the Court of law that "Grama Natham" land is not a Government land and it is not vested with the Government and



the Government has no right to evict persons who are in occupation of lands classified as Grama Natham in the Revenue Records by invoking the provisions of the Tamil Nadu Land Encroachment Act, 1905, or any other enactment and it is always open to the Government to acquire the lands by paying compensation, if they are needed for any public purposes.

10.The petitioners submit that in the letter dated 14.12.2020 that their adjacent land owners whose land in S.No.452/6, 15 etc classified as "Grama Natham" were issued acquisition notice dated 11.11.2020 calling them show causing their objection for acquiring the said adjacent land and their land cannot be acquired without following due process of law and without payment of compensation and they cannot discriminate by denying the compensation for their land.

11.The petitioners further submit that they have also made further representation to the Chennai Metro Rail Limited dated 11.02.2021 and 02.07.2021 by enclosing the Title Documents, Tax Receipts, Thuya Chitta Adangal in respect of their land newly sub divided as New S.No.452/14 of Medavakkam Village / Old S.No.262/1part and further requesting the Chennai Metro Rail Limited to furnish them the details of the land to be acquired for formation of Velakkal Station by the Chennai Metro Rail in their land.

12.According to the petitioners, the letter dated 06.07.2021, the Special Tahsildhar, Chennai Metro Rail Limited has sent a letter to the Tahsildar, Tambaram to furnish the Revenue Records in respect of their land.

13.According to the petitioners, Adangal Extract for S.No.261/1 of Medavakkam Village for the period from 1980 to 2020 (fasli year 1390 to 1420) reflecting their father's name as owner and in possession of the land in S.No.261/1 of Medavakkam Village and their lands were classified as "Grama Natham".

14.The petitioners submit that on 01.07.2021, some of the persons claiming under Tamil Nadu Highways Department marked in the middle of their property alleging that part of their property is required to be acquired for widening of Mount-Medavakkam Main road into 4 ways and immediately, they made a representation dated 02.07.2021 to the Highways Department/the third respondent herein that already Chennai Metro Rail is required their land for construction of Velakkal Metro Station in Corridor-5-41 and their land cannot be acquired twice by the different Authority for different purpose and it is also not valid in law and further requested to furnish them the details of their land to be acquired for Widening of Mount - Medavakkam Main road into 4 ways and their land cannot be acquired without following due process of law and without payment of compensation and their possession and enjoyment of their land cannot be disturbed.



15.The petitioners further submit that it is always open to the Government to acquire the lands by paying compensation, if they are needed for any public purpose by enclosing the copy of the order dated 11.10.2018 made in W.P.Nos.26234 & 26237 of 2018 and order dated 25.01.2021 made in W.P.No.4742 of 2013 and they further requested the Highways Department/the third respondent herein that their possession and enjoyment of their land cannot be disturbed further and their land cannot be taken away under any guise of acquisition without following the due process of law.

16.According to the petitioners, the third respondent had issued a letter dated 24.07.2021 stating that any encroachment in non patta lands adjoining the highways road of Mount-Medavakkam Road, can be taken up as per Highways Act for road widening and in response to the said letter, they have given reply dated 07.08.2021 stating that Tamil Nadu Highways Act contemplates to issue notice before taking any land (patta/non patta lands) under various provisions of the Act and Highways Act does not authorize any Authority to take any land without issuing any notice and their land has been classified as "Grama Natham" in the Revenue Records and "Grama Natham" land is also patta land and "Grama Natham" is not Government land and it is not vested with Government as settled by Court of law and further stating that their land is also not highways land.

17.The petitioners have no other alternative remedy except to approach this Court under Article 226 of the Constitution of India. Hence, the writ petition filed.

18.The learned Government Advocate appearing for the respondents 1, 6 and 7 has filed a counter. The relevant paragraphs of the counter is extracted hereunder:

"As such, the said land stand classified as "Gramanatham" in the Land Records. It is pertinent to point out that in an instant case, while the Land Encroachment Act was again invoked for eviction of encroachment on a Gramanatham land, the land owner filed W.P.No.22984 of 2011. The said Writ Petition in W.P.No.22984 of 2011 was allowed by the Division Bench of the Hon'ble High Court on 13.09.2013. But, aggrieved on the said order, the CMRL authorities filed appeal before the Supreme Court of India. The Hon'ble Supreme Court had passed the following order:

"Having heard learned counsel for the parties, we are of the considered opinion that the respondent No.1 should take appropriate civil action or any other action, as is permissible under law, to establish that



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he is the owner of the land within eight weeks from today. The amount that is lying before the High Court in deposit should be kept in deposit and the same shall be dealt with on the basis of the result of the action taken by the respondent No.1, before the appropriate forum, be it clearly stated that the Civil Court or any other authority while deciding with regard to the nature of the land or right and title of respondent No.1, should not be influenced by any of the observations that have been delineated by the High Court in the impugned order.

Needless to say that as the respondent No.1, was prosecuting the case, the benefit of section 14 of the limitation Act, 1963 shall be extended to him if the Civil Suit or any other action is initiated within a period of eight weeks.

If respondent No.1, does not take any action, the amount shall be refunded to the depositors. In case, it is initiated within the time stipulated hereinabove, the limitation shall be given by the respondent No.1 to the Registry of the High Court and thereafter the said amount shall be kept in a fixed deposit in a nationalized bank.

Moreover, the said W.P.No.4742 of 2013 was disposed on 25.01.2021 with the following order:

"This Court has repeatedly held that the property classified as Grama Natham does not become the property of Government. When it is admitted before this Court that the property is in enjoyment of the petitioner for his residential purpose, this Court accepts the case of the petitioner that he is entitled to exercise his ownership or right over the property as against the Government or any other agencies of Government. Once the property is recognised as the property of the petitioner, the property cannot be deprived of such land otherwise than by due process of law. Article 300 A of constitution gives protection to every individual to protect his possession and enjoyment. Though the State holding power of eminent domain, can acquire the land belonging to any private individual, if required for any public purpose, the respondents cannot claim any right over the property of the petitioner without initiating any proceedings for acquisition. Having regard to the facts admitted, the respondents cannot presume ownership in favour of Government and contend that the property can be taken



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even without resorting to any acquisition or other lawful means to get possession. Even an encroacher cannot be dispossessed without following due process. In such circumstances, this Court is unable to appreciate the stand taken by the respondents. The respondents can initiate any proceeding under the appropriate enactment to acquire the land belonging to the petitioner. It is open to them to do so and take possession in the manner prescribed in law after giving just compensation to the petitioner for the acquired land. Without following any procedure, this Court cannot permit the respondents to interfere with the enjoyment of the lands by the petitioner. As a result, the writ petition is allowed. However, it is open to the respondents to initiate any acquisition proceedings. In case, the respondents initiate acquisition proceedings, it can be done only after issuing notice to the petitioner, who is the owner of the property.

19. Heard learned counsel for the petitioners and the learned Government Advocate for the respondents 1, 6 and 7 and the learned counsel for the respondents 4 and 5 and perused the materials available on record.

20. In view of the above facts and circumstances of the case and considering the submission made by either side, this Court is of the view that Grama Natham land only can be used for residential purpose and the said land cannot be used for commercial purpose. If it is a residential houses in the Grama Natham land, the Authorities shall follow due process of law and by paying adequate compensation or if it is commercial building in the Grama Natham land, the Authorities can proceed further as per the law established thereunder.

21. With the above observations and direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

pam/skr



To

1. The Secretary,
Government of Tamil Nadu,
Tamil Nadu Highways Department,
St. George Fort, Chennai.
2. The Divisional Engineer (Highways),
Construction and Maintenance C&M,
City Roads Division, Saidapet, Chennai - 15.
3. The Assistant Divisional Engineer (Highways),
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6. The District Collector,
Chengalpet District, Chengalpet.
7. The Tahsildhar,
Tambaram Taluk, Chengalpet District.

+1cc to Mr.N.Premkumar, Advocate, S.R.No.51697

W.P.No.17509 of 2021

NR(CO)
CT 04/01/2022