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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2021

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.3000 OF 2017

AND

W.M.P.NOS.2883 AND 2884 OF 2017

D.Selvaraj

... Petitioner

.Vs.

1. The State of Tamil Nadu
Rep. by its Principal Secretary,
Home Department (Prison 4),
Fort St. George,
Chennai - 600 009.

2. The Revenue Divisional Officer,
Vellore.

... Respondents

PRAYER:-

Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for records relating to order of the 1st respondent made in Letter No.42714/Sirai 4/2016 dated 09.12.2016 to quash the same and to consequently direct the respondents to re-convey the lands situate in Thorappadi Village, Vellore District and comprised in Survey No.36/1 measuring 1.02 acres, S.No.37/2 measuring 1.00 acres and S.No.41/2 measuring 0.77 acres in all admeasuring 2.79 acres thereto by accepting the amount paid as compensation with accrued interest thereon.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.Richardson Wilson
Government Counsel



ORDER

The prayer sought for herein is for a writ of certiorarified mandamus calling for records relating to order of the first respondent made in Letter No.42714/Sirai 4/2016 dated 09.12.2016 to quash the same and to consequently direct the respondents to re-convey the lands situate in Thorappadi Village, Vellore District and comprised in Survey No.36/1 measuring 1.02 acres, S.No.37/2 measuring 1.00 acres and S.No.41/2 measuring 0.77 acres in all admeasuring 2.79 acres thereto by accepting the amount paid as compensation with accrued interest thereon.

2. The petitioner's forefathers land at S.No.36/1, 37/2 and 41/2 at Vellore had been acquired for the expansion of Vellore Central Prison in the year 1943 and there had been an award passed in this regard on 06.08.1943, therefore, the acquisition proceedings came to be concluded.

3. However, in this context, it is the case of the petitioner that, they are the legal heirs of the original owners whose land had been acquired for the aforesaid purpose, and had given representation in the year 2006 on the ground that, the land in question acquired for expansion of Jail purpose at Vellore had not been utilised or it had been kept unutilised for several years and to re-convey the same, they made such representation on 20.02.2006.

4. Since the said representation had not been considered, they filed W.P.No19103 of 2006, where, an order was passed on 23.06.2006. Thereafter, further writ petition in W.P.No.1075 of 2008 also was filed, where also an order has been passed on 11.01.2008. Despite these orders passed by this Court, the representation of the petitioner since has not been considered, they again approached this Court by filing writ petition in W.P.No.34482 of 2015, where, an order had been passed on 26.11.2015.

5. Since the said order also, according to the petitioner, had not been complied with, at that time they filed contempt petition in Contempt Petition No.1844 of 2016, where, after having recorded the submissions made by the Government side that, the representation of the petitioner had been disposed of, the said contempt petition was closed. Subsequently, in pursuance of the same, a communication by proceedings dated 19.12.2016 passed by the first respondent has been issued, where, the request of the petitioner, after detailed consideration, has been rejected. Challenging the said order passed by the first respondent dated 19.12.2016, the present writ petition has been filed with the aforesaid prayer.

6. Heard Mr.L.Chandrakumar, learned counsel appearing for



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the petitioner, who would submit that, the land in question though was acquired in the year 1943 for the Jail expansion at Vellore Central Prison, no such expansion had been undertaken and the land in question had been still kept as vacant land or abandoned land as no such activities and no utility had been made on behalf of the respondents or Jail Authorities, therefore, such unutilised land can be re-conveyed to the petitioners and when considering the aforesaid aspects, since the present impugned order dated 19.12.2016 was passed mechanically, as if that the land in question has been put in usage by the respondents, as claimed by them, the said order, which is impugned herein, is untenable and unacceptable as it does not support with any material facts, hence, the learned counsel seeks indulgence of this Court to set aside the said order and issue a mandamus to the respondents to re-convey the land to and in favour of the petitioner.

7. Heard Mr. Richardson Wilson, learned Government Counsel appearing for the respondents, who would submit that, the land in question in three survey numbers, as has been mentioned in the impugned order, has been utilised by the Jail Authorities and in this regard, the learned Government Counsel appearing for the respondents has relied upon the counter affidavit filed on behalf of the respondents, where, the following has been stated.

"7. With regard to paragraph (8) of the report of the Advocate Commissioner it is submitted that the land in survey Nos. 36/1, 37/2 and 41/2 are not put into any usage is not correct. It is submitted that a Petrol retail outlet has been commissioned in collaboration with Indian Oil Corporation in survey No 41/2 and it is now successfully being run with assistance of prison inmates from 22.02.2019. During the visit of the Advocate Commissioner, it is submitted that due to scarcity of water and failure of monsoon crops could not be cultivated in the vacant land on the above survey numbers, so it may look like a barren land.

8. It is further submitted that Government in G.O. (Ms) No. 2367 Home (Pri-IV) Department, dated: 05.12.2018 have ordered to establish Open Air Prison in all Central Prison Campus. In this connection it is stated that as per rule 795 of the Tamil Nadu Prison Manual Vol. II, the objective of Open Air Prison is:

1. to relieve the congestion in walled prisons
2. to train prisoners in proper methods of agriculture for their future rehabilitation
3. to make prisoners self sufficient in agricultural



production

4.to give a certain amount of freedom on trust to well behaved prisoners

5.to further the principles of minimum custody and treatment.

Further the necessity for opening an Open Air Prison is to engage the convicts in Open Air Prisons without having to keep the prisoners far away from their relatives or friends. The prisoners who are accustomed to agricultural works can also keep in touch with the works in true aspect of rehabilitation. Further, the prisoners in the Open Air Prisons are granted extra remission at the rate of one day per one working day in addition to two days remission. Opening an Open Air Prison is to facilitate the prisoners who are having good conduct. It is submitted that, vast area of land is necessary to establish an Open Air Prison. Hence the land in survey no.36/1, 37/2 and 41/2 is essential for the establishment of Open Air Prison.

9.It is further submitted that it is proposed to construct 24 quarters for Additional Superintendent/ Assistant Jailors / Administrative Officer / Office Superintendents/Assistant/Junior Assistant and typist of Central Prison, Vellore in the land, and the plan and estimate have been received from Tamil Nadu Police Housing Corporation. The proposal will be sent to Government for approval. After getting approval from the Government, the construction work will be executed in the above survey lands. Now, maize crop have been raised in the land. The photograph of paddy is enclosed herewith."

8. By relying upon these averments, the learned Government Counsel would submit that, the land in the said three survey numbers had been put in use where already there has been a proposal to have an Open Prison and this has been envisaged because as per the Jail Manual, certain methods of agriculture for their future rehabilitation, Prisoners have to be undertaken in order to make the Prisoners self sufficient in agricultural production and also to give certain amount of freedom on trust to the well behaved Prisoners, these kind of open space is necessary for Jail Authorities. Therefore, for the best utility and for further expansion including the construction of 24 quarters for Additional Superintendent etc. of the Jail Authorities, the land in question is very much required, therefore, the question of re-conveyance of the said land to the



petitioner does not arise as it has been put in use or it has been making use for future activities or expansion activities of the Jail Authorities. Therefore, the learned counsel would submit that, stating the said reason since the impugned order has been passed, it is to be sustained and therefore, the learned Government Counsel seeks dismissal of this writ petition.

9. I have considered the said submissions made by the learned counsel appearing for the petitioner as well as the learned Government Counsel appearing for the respondents and have perused the materials placed before this Court.

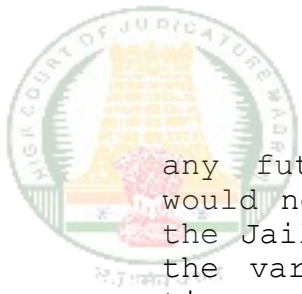
10. Insofar as the land in question is concerned, it had been acquired in long back i.e., 1943 and the land acquisition proceedings also had been concluded then itself and thereafter, after 40 or 50 years, the legal heirs of the original owners, who are the present petitioner seem to have made representation after representation to the respondents or Jail Authorities to re-convey the land as that the land in question acquired from the petitioner's forefathers had not been utilised so far for the purpose for which it has been acquired.

11. However, the fact remains that, as has been culled out from the counter affidavit filed by the respondents, which have been quoted herein above, the land in question, as mentioned in the three survey numbers, had been put in use for various activities of the Jail Authorities and also for future expansion.

12. Moreover, if a Central Prison is located in a particular area where already construction had been made for the purpose of confinement of convicts and other related activities of housing and for having office places for the Jail Authorities, it has not been confined only with that activities. Therefore, for other related activities to run the Jail successfully that too a massive Central Prison i.e., Vellore Central Prison, vast extent of land is required.

13. In view of the periodical development of infrastructure, the land cost of private land has enhanced to multi fold and therefore, insofar as the expansion work of any Government institution like Central Prison, certainly an extent of land should be kept ready for future expansion.

14. If the arguments of the petitioner is accepted that, certain land in the survey numbers, which, according to the petitioner, were acquired from the forefathers of the petitioner, had been kept as vacant land for all these years and are to be re-conveyed or returned back to the petitioner, for



any future activities of Jail Authorities, definitely there would not be any availability of piece of land. In order to run the Jail, that too a Central Jail, in a successful manner as per the various guidelines issued by the Government from time to time as well as per the provisions of the Jail Manual, these kinds of lands are essentially required for future expansion also.

15. Moreover, as per the provisions of Sections 101 of the 2013 Act also, as has been interpreted by the Hon'ble Supreme Court in the authoritative pronouncement of the Constitution Bench Judgment reported in (2020) 8 SCC 129 in the matter of Indore Development Authority Vs. Manoharlal and others, the Hon'ble Supreme Court specifically has dealt with Section 101 of the 2013 Act in the following terms.

"360. It was submitted that Section 101 provides for return of unutilized land under the Act of 2013. Section 101 provides that in case land is not utilized for five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government. Section 101 reads as under:

"101. Return of unutilized land.-- When any land, acquired under this Act remains unutilized for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.

Explanation.-- For the purpose of this section, "Land Bank" means a governmental entity that focuses on the conversion of Government-owned vacant, abandoned, unutilized acquired lands and tax-delinquent properties into productive use."

361. Section 24 deals with lapse of acquisition. Section 101 deals with the return of unutilized land. Section 101 cannot be said to be applicable to an acquisition made under the Act of 1894. The provision of lapse has to be considered on its own strength and not by virtue of Section 101 though the spirit is to give back the land to the original owner or owners or the legal heirs or to the Land Bank. Return of lands is with respect to all lands acquired under the Act of



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2013 as the expression used in the opening part is "When any land, acquired under this Act remains unutilized". Lapse, on the other hand, occurs when the State does not take steps in terms of Section 24(2). The provisions of Section 101 cannot be applied to the acquisitions made under the Act of 1894. Thus, no such sustenance can be drawn from the provisions contained in Section 101 of the Act of 2013. Five years' logic has been carried into effect for the purpose of lapse and not for the purpose of returning the land remaining unutilized under Section 24(2)."

16. Therefore, even under Section 101, it cannot be expected by the petitioner that, the land in question can be re-conveyed on the ground of not utilising the land.

17. Moreover, on factual matrix also, the aforesaid averments made by the respondents reveals that, the land in question has already been put in use for expansion activities of the Jail Authorities and in this regard, their future plan to establish an Open Air Prison is also on the cards. Therefore, for such activities, these kinds of lands are very much required, hence, the plea raised by the petitioner that the land in question had been kept idle without utilising the same, cannot be accepted.

18. In that view of the matter, this Court feels that, absolutely nothing flawed on the part of the respondents in passing the impugned order dated 09.12.2016, therefore, this Court feels that, the said order can very well be sustained.

19. In the result, this Writ Petition fails, hence, it is liable to be dismissed and accordingly, it is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Sgl



To

1. The Principal Secretary,
The State of Tamil Nadu,
Home Department (Prison 4),
Fort St. George,
Chennai - 600 009.

2. The Revenue Divisional Officer,
Vellore.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.32876

+1cc to the Government Pleader, S.R.No.33547

W.P.NO.3000 OF 2017

GPL(CO)
PBS/23/08/2021