

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2021

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.24903 of 2017

and

W.M.P.Nos.18390 of 2018 & 26290 of 2017

E.Balamurugan
S/o.M.Erusan

...Petitioner

Vs.

1.State of Tamil Nadu,
Rep.by its Secretary to Government,
Adi-Dravidar Welfare Department,
Fort St.George, Chennai - 600 009.

2.The District Collector of
Vellore District, Vellore.

3.The Special Tahsildar,
(Land Acquisition),
Adi-Dravidar Welfare,
Vellore, Vellore District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents not to take any coercive proceedings with regard to the acquisition of the petitioner's land in S.No.219/2 to an extent of 0.19.0 hectares with constructions thereon in Sembedu Village, Vellore Taluk.

For Petitioner : Mr.K.V.Sajeev Kumar

For Respondents : Mr.M.Elumalai
Additional Government Pleader

O R D E R

This writ petition is filed for issuing a writ of mandamus directing the respondents not to take any coercive proceedings with regard to the acquisition of the petitioner's land in S.No.219/12 measuring to an extent of 0.19.0 hectares with constructions thereon in Sembedu Village, Vellore Taluk.

2. This is the third writ petition filed by the petitioner and all are almost identical. The petitioner states that he is the owner of an extent of 0.19.0 hectares in S.No.219/2012. The ownership over the land is not in dispute. When a notice under Section 4(2) was issued to the petitioner to acquire the land under the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, the petitioner's father had preferred a writ petition in W.P.No.8907 of 2001 for issuing a writ of certiorari to quash the notice issued under Section 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme, Act 31 of 1978. The said writ petition was disposed of with the following lines:-

"7. On a careful consideration of the reasons stated above, it appears that the acquisition proceedings initiated by the third respondent were stayed on the basis of an interim order granted by this Court as early as 11.04.2001 and thereafter, no further proceedings were been initiated by the authorities. Under such circumstances, it is just and necessary for this Court to issue necessary direction to the authorities to proceed further in the matter of Land Acquisition proceedings. The respondents 1 to 3 are hereby directed to proceed with the land acquisition proceedings by following necessary procedures as contemplated in the Land Acquisition Act."

3. The petitioner and another person filed independent writ appeals and this Court dismissed the writ appeals. This Court, by common order disposed of two writ petitions namely the one filed by the petitioner's father and another writ petition filed by one Ravi. As against the order in W.P.No.7027 of 2001 filed by one L.Ravi, the writ appeal came to be filed by the writ petitioner in Writ Appeal No.1289 of 2009 and the same was also dismissed by this Court. Apprehending that the land owner was likely to be forcibly dispossessed, another writ petition came to be filed in W.P.No.12743 of 2017 alleging that some coercive steps were being taken by the respondents for acquiring the land without due process of law. The present writ petition is also filed on the pretext that there is a serious threat of dispossession. The fact that the petitioner is the absolute owner of the property is not in dispute. The fact that the petitioner is in physical possession of the property is also not in dispute. The petitioner has raised his objections, when a show cause notice was issued to the petitioner under the Provisions of Tamil Nadu Acquisition of land for Harijan welfare Scheme Act, Act 31 of 1978. Stating that the petitioner is eking his livelihood by doing agricultural work in the land and that the petitioner would be thrown in the middle of street, the present writ petition is filed apprehending that the petitioner

would be dispossessed forcibly without following due process of law.

4. When the petitioner filed the earlier writ petition challenging the acquisition proceedings, this Court found that no further proceedings was initiated by this authorities for acquiring the land. Though liberty was given to the respondents to proceed with the acquisition, the official respondents 1 to 3 in the earlier writ petition were directed to follow due process of law as contemplated and as per the relevant statute. From the counter affidavit, it is seen that before this Court, except the reference to the notice issued under Section 4(2) of Act 31 of 1978, there is no indication whether the acquisition proceedings were continued later or not.

5. In such circumstances, this Court presumes that the acquisition proceedings initiated earlier was not pursued. Therefore, the petitioner being the owner of land is entitled to be in possession as absolute owner of the property. Though the land was notified as one required for public purpose to provide house sites to Adi-Dravidar, there is no reference to any further proceedings either under the Act 31 of 1978 or under any other enactment. In such circumstances, the petitioner is entitled to be in possession till such time the respondent initiate and complete acquisition proceedings in the manner known to law. The petitioner in the affidavit in support of the petition has stated that the respondents are disturbing the physical possession of the property and that they had made an attempt to dispossess the petitioner from the subject land. The petitioner cannot seek a direction from this Court restraining the respondents from initiating or taking steps to acquire the land under the relevant enactment. If the respondents initiate acquisition proceedings either under the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act 1978 or any other enactment, the petitioner can challenge the proceedings and cannot approach this Court directing the respondents not to take any proceedings under the Land Acquisition Act. This Court, cannot direct the respondents not to perform their duties as contemplated under any of the enactment. If the petitioner's apprehension is that the respondents are trying to dispossess him from the land without due process of law, it may be open to the petitioner to seek appropriate remedy to protect their lawful possession before the Civil Court. When this Court has earlier disposed of the writ petition filed by the writ petitioner with a specific direction, this Court is of the view that the writ petition is unnecessarily filed. However, having regard to the stand in the counter affidavit, this Court is inclined to dispose of the writ petition in the following lines:

The respondents shall not interfere with the lawful possession of the petitioners in respect of the petitioner's

land in S.No.219/2012 in Sembudu Village, Vellore Taluk, otherwise than due process of law. It is open to the petitioner to challenge the acquisition, if any ,before this Court, if it is not in accordance with law on any valid ground.

6. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Secretary to Government,
State of Tamil Nadu,
Adi-Dravidar Welfare Department,
Fort St.George, Chennai - 600 009.

2.The District Collector of
Vellore District, Vellore.

3.The Special Tahsildar,
(Land Acquisition),
Adi-Dravidar Welfare,
Vellore, Vellore District.

+1 Cc to Mr.K.V.Sajeev Kumar, Advocate sr 38991.
+1 Cc to The Government Pleader sr 4348.

सत्यमेव जयते

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RSI (CO)
SP(15/03/2021)

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