



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.3146 of 2011

and

W.M.P.Nos.1, 2, 3 & 4 of 2011

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|----|---|-----------------|
| 1. | N.Gurusamy | |
| 2. | Tmt.Rajalakshmi | |
| 3. | Tmt.N.Nageshwari | |
| 4. | P.N.Kumaravelu | ... Petitioners |
| | Vs. | |
| 1. | The District Collector,
Coimbatore District,
Coimbatore. | |
| 2. | The Tahsildar,
Coimbatore North Taluk,
Balasundram Road,
Coimbatore. | |
| 3. | The Revenue Inspector,
Thudiyalur Village,
Thudiyalur Post,
Coimbatore. | |
| 4. | The Executive Engineer/Administrative Officer,
Tamilnadu Housing Board,
Tatabad,
Coimbatore-12 | |
| 5. | The Executive Officer,
Veerakeralam Town Panchayat,
Veerakeralam,
Coimbatore-07 | |
| 6. | Mr.A.Nagaraj | ... Respondents |



Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent pertaining to his proceedings in Na.Ka.No.843/2011/A1 and quash the order dated 16.01.2011 and consequently direct the respondents 1 to 3 to restore the fence around our land at their cost and to pay appropriate damages.

For Petitioners	: Mr.U.Karunakaran
For Respondents R1 to R3	: Mr.M.Murali, Government Advocate
For Respondent R4	: Dr.R.Gowri
For Respondent R5	: Mr.R.Murali
For Respondent R6	: Mr.K.Chozhan

O R D E R

The petitioner has filed this writ petition for quashment of the 2nd respondent's proceedings dated 16.01.2011 and consequently direct the respondents 1 to 3 to restore the fence around the petitioner's land at their cost and to pay for appropriate damages.

2. It is the case of the 1st petitioner that, after the demise of his father, the property devolved on the petitioners, which was devolved on his father by way of partition. It is the further averment of the petitioners that they are in continuous possession and enjoyment of the property.

3. It is the further averment of the petitioners that G.O. Ms. No.102, Housing & Urban Development dated 15.2.1984 was issued to acquire a large extent of 25.57 acres of land in Veerakeralam Village, including the lands of the petitioners for the purpose of formation of Anna Nagar Neighbourhood Scheme. The said acquisition proceedings were challenged in W.P. No.11686/1990 by the petitioners therein, including the father of the 1st petitioner herein and the same was allowed on 06.12.1991. It is the further averment of the petitioners that possession of the property continued to be with the 1st petitioner throughout.

4. It is the further averment of the petitioners that S.F.No.20/1 was sold by an agent by making misleading statement that Survey No.20/3, belonging to the petitioners was a pathway, which prompted the petitioner to take legal action and with the help of the law enforcing agency, after establishing his title and possession to the property, fence was erected by the petitioner.

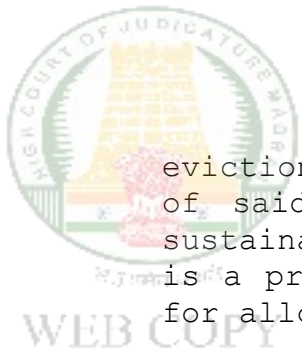


5. While that being so, the notice for enquiry was issued to the 1st petitioner by the 5th respondent with regard to an order passed by this Court W.P. No.26038/09 was filed by the 6th respondent, in which petition, the petitioner was not a party, pursuant to which, the 1st petitioner attended the enquiry and filed the documents to substantiate his title and possession of his property. However, on 29.12.2010, without informing the petitioners, the notice was issued by the 3rd respondent and the fence was removed after taking a photograph. When the petitioners, came to know that the whole act is on the basis of the allegations made by the 6th respondent with regard to the property of the petitioner being a pathway, he made a representation to various officials to investigate the matter.

6. However, on 14.1.2011, notice was served by the officers of the 2nd respondent stating that the land in S.F. No.20/3 belonged to the Housing Board through acquisition proceedings and in the said notice it was mentioned that notice under Sections 6 and 7 of the Tamil Nadu Land Encroachment Act were issued to the petitioners. However, no notice was issued to the petitioners. The order has been passed by the 2nd respondent that notice, has already been issued to the petitioners and without giving any opportunity of hearing to the petitioners, respondents 2 to 4, with men and machineries, had removed the entire fence the existed around the property of the petitioners.

7. It is the further averment of the petitioner that the petitioner in W.P. No.26038/09 is a real estate agent and he has filed the petition with misleading statements only to obtain favourable orders and respondents 2 to 4, without ascertaining the factual aspects and without proper verification of records, had acted in passing the impugned order and removed the fence erected by the petitioner. It is the further averment of the petitioners that no land acquisition proceedings at the behest of Tamil Nadu Housing Board had taken place in the land belonging to the petitioners and no material to substantiate the same, has also been filed by the respondents. In spite of the diligent act of the petitioners, the impugned order has been passed, which has been assailed by filing the present writ petition.

8. The learned counsel for the petitioners submitted that though the 2nd respondent claims that the disputed property belongs to the 4th respondent/Housing Board and issued notice against the petitioners under Sections 6 & 7 of the Tamil Nadu Land Encroachment Act, the 4th respondent has to initiate the



eviction proceedings as against the petitioners and initiation of said acquisition proceedings by the 2nd respondent is not sustainable. It is further submitted that the disputed property is a private land belonging to the petitioners. Hence, he prays for allowing the petition.

9. The learned counsel appearing for the fourth respondent submitted that originally, the disputed lands were acquired under the Land Acquisition Act for formation of Anna Nagar Neighbourhood Scheme and the lands were notified under Section 4(1) of Land Acquisition Act and draft declaration under Section 6 of the Land Acquisition Act was also approved by the Government for acquisition of the lands, following which, award was also passed and the amount of compensation was also deposited under Section 31(2) of the said act before the Civil Court and the possession was taken over by the Tamil Nadu Housing Board on 27.09.1988. Thereafter, the impugned order was passed by the 2nd respondent. Hence, it makes clear that the petitioners are not vested with the disputed land and the same was confirmed by the Division Bench of this Court. Further, it submitted that Writ Appeal Nos.1213 & 1214/1993 were filed by the Government against the order passed by this Court on 25.07.1990 and the same was allowed on 28.03.2001. Hence, the prayer sought for by the petitioners cannot be granted.

10. On a perusal of the materials available on record, it reveals that originally, the properties belonging to the petitioners were acquired under the Land Acquisition Act for formation of Anna Nagar Neighbourhood Scheme. Aggrieved by the same, the petitioners' father along with others, filed a Writ Petition in W.P.No.11686 of 1990 before this Court and the same was allowed on 06.12.1991. Against which, the 4th respondent filed Writ Appeals in W.A Nos.1213 & 1214/1993 before this Court and the same were allowed, following which, the impugned order was passed by the 2nd respondent. However, it is noticed that the 4th respondent/Housing Board has to invoke the provisions of Housing Board Act against the petitioners, whereas the Revenue Officials/2nd respondent invoked the provisions of Tamil Nadu Land Encroachment Act which is not sustainable.

11. In view of the above facts, the impugned order passed by the 2nd respondent is set aside and the present Writ Petition is allowed. However, liberty is granted to the 4th respondent/Housing Board to initiate the eviction proceedings under Housing Board Act against the encroachers.



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12. Accordingly, this writ petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Coimbatore District,
Coimbatore.
2. The Tahsildar,
Coimbatore North Taluk,
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Coimbatore.
3. The Revenue Inspector,
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Thudiyalur Post,
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4. The Executive Engineer/Administrative Officer,
Tamilnadu Housing Board,
Tatabad,
Coimbatore-12
5. The Executive Officer,
Veerakeralam Town Panchayat,
Veerakeralam,
Coimbatore-07

+1cc to Mr.U.Karunakaran, Advocate SR.No.12204

+1cc to the Government Pleader SR.No.12323

W.P.No.3146 of 2011

and

W.M.P.Nos.1, 2, 3 & 4 of 2011

SKM(CO)

GN(29/03/2022)