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W.P.No.5168 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2022

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.5168 of 2015

and

M.P.No.1 of 2015

M/s.Lena Talkies, Chidambaram
Rep. by its Partner,
S.P.Koil Street,
Chidambaram – 608 001,
Cuddalore District.

...Petitioner

VS.

1. The Sub Collector,
Chidambaram.
2. The Commissioner,
Chidambaram Municipality,
Chidambaram.
3. The Assistant Divisional Engineer,
Highways Department,
Chidambaram.
4. The Tahsildar,
Chidambaram,
Cuddalore District.

...Respondents



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Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 1st respondent in Na.Ka.No.A1/2950/2014 dated 12.02.2015 in respect of lands in Survey No.563/7 and 566/2 of Chidambaram Town, and quash the same and forebear the respondents herein from, in any manner, interfering with the peaceful possession and enjoyment of the petitioner in respect of lands in Survey No.563/7 of an extent of 5,073 sq.feet and Survey No.566/2 of an extent of 820 sq.feet in Chidambaram Town assigned in favour of the petitioner.

For Petitioner : Mr.A.R.L.Sundaresan, SC,
for M/s.A.L.Ganthimathi

For Respondents : Mr.T.K.Saravanan, GA, for R1 & R2
: Mr.S.Balamurugan, GA, for R3

ORDER

The petitioner has filed this Writ petition seeking issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in respect of the proceedings bearing Na.Ka.No.A1/2950/2014 dated 12.02.2015, quash the same and to consequently, forebear the respondents from, in any manner, interfering with the peaceful possession and enjoyment of the petitioner in respect of subject lands assigned in favour of the petitioner.



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2. The case of the petitioner is that the petitioner is running two Cinema Theatres under the name and style of Lena Talkies at Chidambaram, and another theatre under the name and style of Vaduganathan Talkies and the above said theatres were constructed on patta lands. While so, pursuant to the application made by the petitioner's father, seeking assignment of lands for the purpose of providing approach road to the newly constructed theatre, the Government, after careful consideration, issued a Government Order in G.O.Ms.No.3072 Revenue Department dated 03.10.1970, issuing direction for assignment of an extent of 5,073 sq.feet of land in T.S.No.563/1, classified as Bhattai and an extent of 820 sq.ft., in T.S.No.566, classified as Road, in favour of the petitioner's father, after reclassifying the same as Natham and sub divided the same as S.No.563/7 and 566/2 and necessary assignment order was issued in favour of the petitioner's father, by the Tahsildar, Chidambaram, vide proceedings dated 06.10.1976 and subsequently the revenue entries were made in favour of the petitioner's father and the petitioner's father became the absolute owner of the said lands. While such being the case, the Chidambaram Municipality



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approached the Government, seeking cancellation of assignment made in favour of the petitioner's father, however, the same was rejected, which also provoked the petitioner's father to file a suit against the Chidambaram Municipality in O.S.No.468 of 1976 on the file of District Munsif, Chidambaram, and the same was decreed in favour of the petitioner's father on 20.12.1977, aggrieved by which, the Municipality preferred an appeal in A.S.No.45 of 1978 on the file of Subordinate Judge, Chidambaram, which was also dismissed on 18.06.1979. Challenging the same, the Municipality filed Second Appeal before this Court in S.A.No.699 of 2022 and the same was also dismissed on 01.10.1992, confirming the orders made in O.S.No.468 of 1976 & A.S.No.45 of 1978 in favour of the petitioner's father. While so, there were several allegations made against the petitioner's family as if they had violated the conditions imposed in the assignment order, and though the same were refused by the petitioner and his family and have also sent replies refusing the same, however, without considering the same, 1st respondent issued a purported Show Cause notice dated 12.02.2015, as if the petitioner's family have violated the conditions imposed in assignment order and created encroachment in the assigned land



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by constructing a compound wall. Hence, challenging the said notice, the present Writ petition is filed.

3. Learned counsel for the petitioner submitted that the assignment order was issued in favour of the petitioner's father pursuant to the Government Order in G.O.Ms.No.3072 Revenue Department dated 03.10.1970, however, if at all there is any violation made by the petitioner, the State Government has to take appropriate action, instead of which, the District Collector has issued the notice to the petitioner, which is not sustainable. He further submitted that, the petitioner himself has stated in his affidavit that they have not utilised the assigned lands for any other purpose other than using the same as a pathway to the theatre and have constructed a compound wall on the boundary of the property in order to prevent the same from private encroachments and to safeguard their right and possession over the disputed property. While so, stating the same as an act of encroachment done by the petitioner is not sustainable. Further, he fairly submitted that, the disputed property will be used only as a pathway to the theatre in the future also, without any violation of conditions imposed in



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the assignment order. Hence, he prayed for appropriate orders.

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4. Learned Government Advocate submitted that the Town Surveyor has surveyed the subject land and submitted a report stating that the petitioner had constructed a 10 feet height wall in the assigned land, which is a clear violation of the conditions imposed in the Conditional assignment and thereby, it is necessary to evict the encroachment made by the petitioner on the said Government Natham Lands comprised in S.No.563/7 and 566/2, measuring an extent of 0.047 sq.m., and 0.0077 sq.m., respectively, hence, based on the said report, the 1st respondent issued a notice dated 08.12.2014 to the petitioner to appear in person on 17.12.2014 along with the supporting documents and accordingly, the petitioner appeared and submitted his written statement and certain document. On perusal of the same, it was found that, contrary to the conditions stipulated in the assignment order, the petitioner constructed a compound wall in the assigned lands and as per the records, the said lands are classified as "Government Natham Vacant Land" and the land which is required for extension of road is under the encroachment made by the petitioner. He



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further submitted that the assigned lands should be used only for pathway, however, the petitioner has constructed a compound wall and it is a clear violation of conditions in the conditional assignment. Hence, the 1st respondent issued the present notice to the petitioner to evict the encroachment on or before 20.02.2015, failing which the encroachments will be evicted and the cost will be recovered from the petitioner. He further more submitted that, near the subject lands, there is a Vaikkal called "Khan Sahib Vaikkal" and during the rainy season, the rain water flows to Town Drainage through the encroached lands and hence the patta with regard to the said lands cannot be issued to any one. Hence, he prayed for dismissal of this Writ petition.

5. Heard learned counsel on either side and perused the materials available on record.

6. Admittedly, the Tahsildar, vide assignment order dated 06.10.1976, assigned the subject lands in favour of the petitioner's father for the purpose of providing approach road to the newly constructed theatre in his patta land, pursuant to orders issued by the Government in G.O.Ms.No.3072



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Revenue Department, dated 03.10.1970 and the proceedings of the District Collector dated 03.02.1976. Further, it is also not disputed that, originally the disputed lands are classified as 'Bhattai' and 'Road' and the same was subsequently reclassified as Natham in order to assign the same in favour of the petitioner's father. The major objection of the learned Government Advocate is that, the petitioner has constructed a compound wall in the assigned lands, which is a violation of the condition imposed in the Assignment order, while so, learned counsel for the petitioner contented that, the petitioner has put up a compound wall in the said lands, only in order to prevent the same from the private encroachments and the same cannot be termed as encroachment made by the petitioner and it will in no way be a violation of the conditions imposed.

7. From the careful consideration of the arguments advanced by the learned counsel on either side, this Court is of the view that, mere putting up of compound wall in the subject land with an intention to prevent the same from private encroachment and to maintain the assigned lands as pathway and as approach to the theatre will in no way change the characteristics of



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the lands and the said act cannot be termed to be an encroachment, more so, the land has been assigned to the petitioner by the Government for the purpose of usage as a pathway. It is not the case of the respondents that the said land is not used as a pathway to the theatre. Such being the case, the stand of the respondents that the compound wall put up on the assigned land is a violation of conditions of assignment is nothing but a figment of imagination contrived by the respondents for issuing the present show cause notice claiming encroachment. Further, as the petitioner himself filed a reply affidavit stating that the assigned lands are only used for the purpose of providing approach road to the theatre in their patta land and the same will not be put to any personal use or other. For better appreciation, the relevant portion is extracted hereunder:

"5. I submit that this has not put the property which was assigned to the petitioner for any use other than using it as a pathway to the theatre. Only for the purpose of protecting the said land from encroachment by the others, compound wall has been constructed on the boundary of the property which was assigned to the petitioner. Once the land has been assigned to the petitioner on collection of double the market value, it is open to the petitioner to protect the said land from being encroached by any third person and to safeguard the right and possession in respect of the property. Petitioner has not put up any construction over the said



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lands or use it for any other purpose. The only allegation against the petitioner is that a compound wall has been put up on the boundary of the said land. The same is not violation of any condition."

8. In view of the above, this Court has no hesitation to interfere with the order impugned in this Writ petition and the same is set aside and the writ petition is allowed with the above observations and directions. No costs. Consequently, connected Miscellaneous petition is closed.

28.09.2022

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Index : Yes/No

Speaking order : Yes/No

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10/12



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