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W.P.Nos.9864 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.9864 of 2015 &
WMP.23420 of 2022

Royapuram Cemetery Road Merchants Sangam
Represented by its President
No.31/2 B.C. Press Road
Royapuram, Chennai-13.

...Petitioner

Vs.

- 1.The Government of Tamil Nadu
Represented by its Secretary
Revenue Department,
Fort St. George, Rajaji Salai
Chennai-9.
- 2.The District Collector
Fort St. George, Rajaji Salai
Chennai-9.
- 3.Commissioner of Land Administration
Department of Land Administration
Ezhilagam, Chepauk
Chennai-5.

...Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of mandamus directing the Respondents herein to construct a shopping complex in the remaining portion of Survey Nos.80 and 882/2 Tondiarpet Village Fort-Tondiarpet Taluk Chennai District after construction of the manimandapams and lease the same to the members of the Petitioner Sangam on a priority basis.



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For Petitioner : Mr.Jagannath for
: Mr.A.Jenasenan
For Respondents : Mr.S.Silambannan
Additional Advocate General for
: Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

Heard Mr.Jagannath, learned counsel for Mr.A.Jenasenan, learned counsel on record for the petitioner and Mr.S.Silambannan, learned Additional Advocate General for Mr.Yogesh Kannadasn, learned Special Government Pleader.

2. This writ petition is filed by Royapuram Cementery Merchants Sangam and is defended on various grounds. A preliminary submission made is to the effect that the writ petition is not maintainable, since it is has been filed by a Sangam.

3. I find some force in this objection seeing as the registration of the Sangam was on 23.04.1977 and even according to the affidavit filed by the petitioner, the registration has lapsed as on date. That apart, even on merits, I am not inclined to accept the contentions of the petitioner for the reasons set out in the paragraphs to follow.

4. The lis relates to a property comprised in S.Nos.8 and 882/2,



Tondiarpet Village, Fort-Tondiarpet Taluk, Chennai District located at Door No.1 to 6 and 92, Cemetery Road, Royapuram admeasuring a total extent of 5 grounds and 1000 sq. ft(property/property in question). The petitioner claims to be a sub-lessee of the original allottees though no evidence in this regard has been placed before the Court.

5. According to the State, the petitioners are encroachers who have trespassed upon the property and have been running shops in the premises without any authority whatsoever to have done so. The lease granted to the original allottees expired in 1977 but the members of the petitioner sangam continued to squat upon the premises till their eviction in 2014 for the reason that the building was declared unstable and not fit for occupation.

6. According to the petitioner, the members have been remitting rent and this would establish their claim to carry on business in the premises. Be that as it may, the building in the property in question came to be demolished in 2014 with the assurance given to them by the respondents, according to the petitioner, that upon construction of a new superstructure they would be accorded priority to carry on business therein.

7. It is an admitted position that thereafter, the State has constructed manimandapams in honour of Tv.Jeevarathinam and Singaravelar in a portion of the property in question. Since there has been no move thereafter to abide by



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the alleged undertaking given by the respondents to re-build the shopping complex and house the petitioners therein, the present writ petition has come to be filed, wherein the petitioner seeks mandamus directing the respondents to construct a shopping complex in the remaining portion of the property in question after construction of the manimandapams and accord the previous shop owners priority in allotment.

8. Learned counsel would rely upon G.O.Ms.No.133 dated 09.05.2013, which refers to the property in question and also makes a reference to a statement by the Hon'ble Speaker of the Tamil Nadu Legislative Assembly on 21.01.2012, concerning the property in question. It had been said that in the area where 42 shops had earlier existed, manimandapams be constructed and in the balance space shops be constructed and the previous owners be accorded priority in allotment. This, according to the petitioner, would bind the State and their case should be considered sympathetically in light of their long occupation of earlier shops.

9. Per contra, learned Additional Advocate General would point out that G.O.Ms.No.133 dated 09.05.2013, is of no benefit to the petitioners seeing as at para 5 thereof, the proposal of the authorities accepted by the Government relates only to transfer of land of an extent of 3226 sq. ft and 4810 sq.ft, amounting in total 8036 sq. ft. of land, to the Department of Information and



Public Relations for the construction of manimandapams. Thus, according to him, the State has never accepted any proposal/suggestion for re-building of the shopping complex.

10. There is thus, and there never appears to have been, any proposal by the respondents to construct anything other than manimandapams in the land in question. This also finds support from the counter filed by the respondents which, is in line with the status report filed in July 2022.

11. R2/District Collector, Chennai has confirmed in the status report that there is only a extent of 3705 sq. ft of Government poromboke land that remains after the construction of minimandapams that were ordered to be constructed under G.O.Ms.No.133 dated 09.05.2013. Out of the remaining 4994 sq. ft of land, a hotel currently functions upon land admeasuring an extent of 1289 sq. ft., and a civil suit in C.S.No.1090 of 2009 is pending in regard to the same.

12. Paragraph 4 to 6 of the statutes report reads as follows:

4. It is respectfully submitted that in G.O.Ms.No.116, Revenue Department, dated 02.05.1940, an extent of 05 Grounds an d1030 Square feet of Government lands in S.No.80 and 882/2 in Tondiarpet Village, Tondiarpet Taluk (Erstwhile – Fort – Tondirpet Taluk) were leased out for residence or shop purpose to the three individual subject to the payment of lease rent of Rs.500/- per annum for 10 years from 02.05.1940 as follows:

NAME OF LESSEE	S.NO.	EXTENT	
		GROUND	SQ. FT



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NAME OF LESSEE	S.NO.	EXTENT	
Thiru. R. UmramullSowcar	80 part	02	1167
Tmt. Leela Bai Mehta	80 part	00	2093
Thiru.R.JawarthrajSowcar	882/2	02	0170
		05-1030	

5. It is respectfully submitted that in violation of conditions of lease, the original lessees had constructed buildings thereon and sub-let to the 42 shoppers belonging to the writ petitioner's Royapuram Cemetery Road Merchants Sangam. The writ petitioners were only encroachers. Moreover, the original lessees have refused to remit the Lease Rent and Municipal Tax to Government on the plea that their tenants (the writ petitioners herein) were not paying the Rent to them regularly, resulting in huge arrears of payments of lease rent and consequent Revenue loss to the Government. In G.O.Ms.No.2730, Revenue dated 11.12.1980, the Government have terminated the above lease with effect from 31.10.1978. AS the lessees had filed several cases in the High Court of Madras against the resumption of lands, the lease had been cancelled completely by the Government in G.O.Ms.No.248 Revenue Department dated 18.03.1995. Subsequently, the portions of lands leased out to them were taken possession on 26.07.2004, 23.06.2005 and 04.07.2005.

6. It is submitted that, In G.O.Ms.No.133, Revenue (LD4(1) Department, dated 09.05.2013, the Government have ordered to transfer of an extent of 3226 Sq.ft. and 4810 Sq.ft of lands totaling 8036 Sq.ft. of land, classified as Government Poramboke – Revenue Department, in Block No.16 & 4, R.S.No.882/2 and R.S.No.80 respectively in Tondiarpet Village to Department of Information and Public Relations for construction of Manimandam in memory of Tv.Jeevarathinam and Singaravelar. In the balance extent of 4994 Sq. ft. a hotel under the name and style “Hotel Pandiaya” is running in an extent of 1289 Sq. ft as per court case pending in C.S.No.1090/2009.

13. My predecessor has sought the stage of pendency of the original suit

and the Registry has filed a report on 28.07.2021 to the effect that the suit was

transferred to the City Civil Court on 25.07.2019. The matter was returned to



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the High Court for non-availability of Exhibit-P21 in the case bundle, which still remains untraceable.

14. Nothing further need be said in this regard as it would have no bearing in the disposal of this writ petition. Quite apart from the writ petition not being maintainable, I also find no merit in the prayer of the petitioner in light of the discussion as above.

15. This writ petition is dismissed. No costs.

08.12.2022

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Index : Yes/No

Speaking Order/Non speaking Order

To

1.The Government of Tamil Nadu
Represented by its Secretary
Revenue Department,
Fort St. George, Rajaji Salai
Chennai-9.

2.The District Collector
Fort St. George, Rajaji Salai
Chennai-9.

DR.ANITA SUMANTH,J.

Ska

3.Commissioner of Land Administration



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Department of Land Administration
Ezhilagam, Chepauk
Chennai-5.

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