



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.13742 of 2010 and

MP(MD) No. 2 of 2010

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Sadakathullah Appa College,
Represented by its
Secretary and Correspondent,
T.E.S Fathu Rabbani,
S/o Seyadu Rowther,
Rahmath Nagar,
Tirunelveli.

Petitioner

Vs.

- 1.The Special Commissioner,
Town and Country Planning Department,
Chennai - 2.
- 2.The District Collector (cum) The President,
Local Planning Authority,
108, Trivendrum Road,
Tirunelveli - 2.
- 3.The Secretary and Member,
Local Planning Authority,
108, Trivendrum Road,
Tirunelveli - 2.
- 4.Rahmath Nagar Welfare Association,
(Registered Society under Regn.No.39 of 2000,
Through its Secretary,
Dhanasekaran, S/o Paramasivan,
89/K, 40 Feet road,
Rahmath Nagar,Tirunelveli - 11,
Tirunelveli District.

Respondents

(R4 is impleaded vide Court order dated 13.02.2017, in WMP(MD) No.1 of 2013)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second and third respondents herein in their proceedings in Resolution No.11, dated 30.06.2010 and quash the same and further forbearing the respondents herein from interfering with the right of the petitioner's College, over the land in S.No.738, Rahmath Nagar, Palayamkottai, Tirunelveli.



For Petitioner : Mr.M.Vallinayagam
For R1 to R3 : Mr.A.Baskaran
Additional Government Pleader
For R4 : Mr.V.Kannan

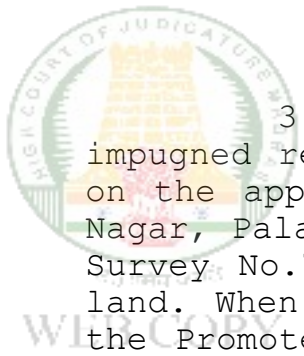
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O R D E R

This writ petition is filed by the Secretary and Correspondent of Sadakathullah Appa College, Rahmath Nagar, Tirunelveli as against the Resolution No.11, dated 30.06.2010 and quash the same and for consequential relief restraining the respondents from interfering with the rights of the petitioner College over the land in Survey No.738, Rahmath Nagar, Palayamkottai, Tirunelveli.

2.In the impugned Resolution, the third respondent/the Secretary and Member, Local Planning Authority, Tirunelveli passed a Resolution, directing the petitioner College to hand over a land within the campus of the College, which is equivalent to an extent of 40 feet and 60 feet roads, detached from 70 feet road in east west direction, having total area of 10,900 sq.mtr (269 cents) and 7090 sq.mtr (175 cents) allocated for OSR to a total extent of 17,990 sq.mtr, to the Corporation for the purpose of carrying out a public welfare Scheme. Aggrieved over this Resolution, the present writ petition is filed.

3.Mr.M.Vallinayagam, learned Senior Counsel appearing for the petitioner College submits that the land in Survey No.738 of Palayamkottai Village was originally a Tank by name "Nari Illanthaikulam Tank". The said Survey No.738 is situated adjacent to the petitioner College. The Tank became disused. Since the land in S.No.738 lies adjacent to the College, the petitioner College made an application to the Government, seeking assignment of the land, for the purpose of expansion of the College. The Government initially permitted the College to enter possession of the entire land in Survey.No.738 for construction of buildings for hostel and college, pending finalization of alienation proposal, vide G.O.Ms.No.2071, Revenue ((L1) Department, dated 21.07.1972. Accordingly, 3 acres of land has been assigned in Survey No.738, for the purpose of expanding the College, on payment of land tax and the remaining 28.52 acres of land has been assigned free of land tax. Thus, the original character of the land in Survey No.738 had been changed by sub dividing the same into 738/1 and 738/2. Ever since the assignment, the land in Survey No.738 belongs to the petitioner College under law and also the name of the petitioner College has been entered in all revenue records. It is pertinent to note that neither the conversion of the land from the character of Tank nor the assignment of the land in Survey No.738 in favour of the petitioner College has been questioned or challenged by any one till date. Therefore, the land in Survey No.738 was a Tank till 1972 and since then the same is the property of the petitioner College.



3.1.The learned senior counsel further submits that the impugned resolution has been passed by the third respondent, based on the approved layout of the year 1968. The Promoters of Rahmath Nagar, Palayamkottai obtained an approval by citing that the land in Survey No.738 as well as a road crossing the land are also their land. When the land in Survey No.738 was a tank in the year 1968, the Promoters of Rahmath Nagar, who are not having any right over the land is not entitled to prepare the layout citing this land as a road. He further submits that a Society, by name, Consumer Protection Council filed a writ petition in W.P.No.9710 of 2005, on the file of this Court to issue a writ of Mandamus, directing the authorities to remove the construction made by the petitioner College, which was shown as road in the layout and also remove all the encroachments and take over the land earmarked for public purpose in the layout. The main contention of the petition in W.P.No.9710 of 2005 is that the petitioner College encroached upon the entire tank measuring about 31 acres and has constructed a compound wall covering the tank within its boundary, thereby preventing the public access to the said tank. The main contention in the said writ petition is that since the land in Survey No.738 having been classified as tank and belonging to the Government, no private party can be permitted to use the same for other purpose, other than storing water. The petitioner College defended the writ petition that the lands in Survey No.738 was already alienated to the College, by Government orders and the now College is in possession of the lands and constructed buildings. The said writ petition was dismissed by the Principal Seat of this Court on 02.03.2007, with the following observations:-

12.So far as the Rahmath Nagar is concerned, there is an approved layout, which is sought to be modified by the fifth respondent. There is factual dispute with regard to the existence of roads passing through S.No.738 of Palayamkottai Village. According to the fifth respondent, the alleged roads were wrongly shown in the layout of Rahmath Nagar and actually no road is passing through the said survey number and the fifth respondent is exclusively using the same for college and hostel purposes as per the Government orders.

13.In view of the factual disputes, we are not in a position to go into the matter. The appropriate planning authority is directed to consider the issue and pass necessary orders, after hearing the parties in accordance with law. We are not expressing any opinion as to whether there are roads passing through S.No.738, Palayamkottai Village or not, and also not expressing any opinion as to whether the approval of layout of Rahmath Nagar of the year 1968, modified in the year 1978 is valid or not. If there is any finding by the appropriate authority that

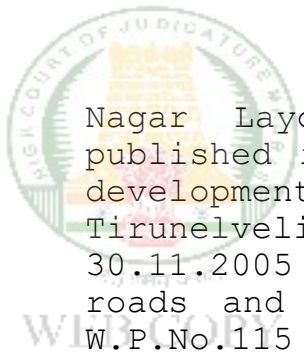


there were roads, which were allegedly encroached, it is open to the petitioner to move the appropriate authority in accordance with law"

3.2.The learned senior counsel further submits that consequently, this resolution was passed by the third respondent, after providing an opportunity to the petitioner and the fourth respondent and the same is under challenge in this writ petition. The learned senior counsel has framed his point that the land in Survey No.738 was alienated to the petitioner College, vide Government Orders in G.O.Ms.No.2071, Revenue (L1) Department, dated 21.07.1972 and G.O.Ms.No.360, Revenue Department, dated 10.06.1983 and the College has also put up buildings in the land. The road claimed by the fourth respondent Association is running in middle of the College, which would affect the entire atmosphere of the College. He further submits that the land was originally classified as 'Kulam' and the Promoters of Rahmath Nagar are not having any authority to draw a plan citing the road in the middle of the water body and cannot claim any right over the land, based on the approval granted by the Town and Country Planning Authority, without proper assignment of the land to the promoters of Rahmath Nagar. The approval granted by the Town and Country Planning authority in the year 1968 is only a technical approval, based on the layout submitted by them and it will not confer any right over the property by the fourth respondent. The learned senior counsel draws the attention of this Court that as per Section 38 of Tamil Nadu Town and Country Planning Act, 1971, even if any land reserved, allotted or designated for any purpose specified in a Regional plan, master plan, detailed development plan or new town development plan covered by such notice or such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation. The learned counsel has also relied on the following judgments in order to substantiate his contentions.

- ***Pillayar P.K.V.K.N Trust through Ramanathan Vs.Karpaga N.N.U.S. Rep by Secretary and others***, reported in (2010) 9 SCC 344.
- ***Raju S.Jethmalani and others Vs.State of Maharashtra and others***, reported in, (2005) 11 Supreme Court Cases 222.

4.Mr.A.Baskaran, learned Additional Government Pleader appearing for the respondents 1 to 3 submits that Rahmath Nagar layout was approved in the year 1968 in reference No.LPH/DTP/15/68 and further it was revised in the year 1978 as LPR(TK) 45/78 by the Director of Town & Country Planning. The layout provides for several roads ranging from 80 feet width to 30 feet width and there is a 70 feet breadth road running through the middle of the said layout in west direction through Survey No.1, 702, 738, 735 and also there is another 60 feet road in the north south direction coming across the 70 feet road of Rahmath Nagar. The area shown as road in Rahmath



Nagar Layout in S.No.738 belonging to College Management is published in the Gazette Notification as mentioned in the detailed development plan. He further submits that the Commissioner, Tirunelveli Corporation sent a notice to the petitioner on 30.11.2005 to remove the encroachment in the lands allocated for roads and public purpose. The petitioner filed writ petition in W.P.No.115 of 2006 and prayed for issuing a writ of mandamus directing the respondents 1 to 4 therein to modify the layout approved under No.LPH/DTP.No.15/68 and LPR(TK) 45/78 in S.No.696 to 742 of Palayamkottai (Rural Village), Tirunelveli Corporation, by deleting the portion of land shown as road in S.No.738, Palayamkottai (Rural Village). He further submits that the Secretary/Sadakathullah Appa College in their letter dated, 07.08.2009 denoted that they have no objection to hand over 10 cents of land in the west of Survey No.738, for construction of water tank for public purpose and through this letter, the Secretary of the College has given his consent to the corporation to take over the land for the construction of water tank for the welfare of public. But the petitioner did not hand over the same. Therefore, the authorities decided to take over the land, which is allocated for the public purpose and a meeting was also held on 11.08.2010 before the District Collector of Tirunelveli. The College Management stated that they would reply after the management meeting on 17.08.2010. But there was no reply after the management meeting. The handing over of the exact area to the corporation may divide the college into two parts. Hence, the authorities asked the Management of the College to hand over the land, which is equivalent to 17,990 sq.mtr (4.44 acres) belonging to the College.

4.1.The learned Additional Government Pleader further submits that this Resolution has been passed pursuant to the orders passed by this Court in W.P.No.9710 of 2005, wherein, it was held as follows:-

"10.The point in issue is whether the fifth respondent is in lawful possession of the lands in Survey No.738 and whether there were roads in the layout at Rahmath Nagar and the fifth respondent put up construction by obstructing the roads.

11.It is not in dispute that by G.O.Ms.No.2071, Revenue Department, dated 21.07.1972, the fifth respondent was given possession of the lands to an extent of 31.52 acres in S.No.738 of Palayamkottai Village for construction of College building and hostel, pending finalization of alienation proposals. According to the learned senior counsel for the fifth respondent, alienation was made by the Revenue Department. The Government has given possession of the said lands for educational institution, which admittedly is a public purpose. Though the fifth respondent college constructed college building and hostel and college is



functioning for the past several years, long prior to formation of the petitioner society in the year 1996, the Government having given possession of the lands to the fifth respondent and the same having been utilised by constructing college building and hostel, the petitioner has no locus standi to maintain this writ petition, particularly when the Government order giving possession is not questioned. The allegation made by the petitioner that the tank poromboke cannot be allowed to be encroached by anyone is not sustainable in view of the fact that re-classification was made by the Revenue Department and the fifth respondent was given possession of the lands to construct the College building and hostel."

4.2.He further submits that as against the proceedings, dated 16.07.2010 and the Resolution dated 30.06.2010, the petitioner is having an effective remedy of statutory appeal under Section 101 of the Tamil Nadu Town and Country Planning Act, 1971.

5.Mr.V.Kannan, learned counsel appearing for the fourth respondent/Rahmath Welfare Association submits that the writ petition itself is not maintainable, when there is an effective alternate remedy available to the petitioner, under the Act. He further submits that Rahmath Nagar was approved in the year 1968 itself, whereas, the petitioner College was established only by purchasing the lands from the approved layout of Rahmath Nagar. The layout was approved by the competent authority/ the third respondent herein and that was not challenged by the petitioner at any point of time. The petitioner College has encroached the land in Survey No.738 and also the lands in adjacent Survey Nos.700 to 703 of Rahmath Nagar approved layout, which were originally reserved for public purpose. Based on this approved layout, more than 1000 people have purchased plots, constructed houses by investing huge amount. But they have been prevented from access to the main road, due to the encroachment made by the petitioner College. The learned counsel disputed that the subject land is a water body. If it is a water body, it cannot be converted or alienated. Though the petitioner College claims that the land in Survey No.738 was alienated to the petitioner, there is no proceedings to that effect. G.O.Ms.No.2071, Revenue (L1) Department was only a permission for enter upon the land pending alienation proceedings and the petitioner has not placed any other Government orders alienating these lands in favour of the petitioner College. In the absence of any specific order with regard to the alienation of the lands to the petitioner College by the Government, the petitioner College is not having any right to hold these lands. If the contention of the petitioner is accepted that it was a water body, then there cannot be any alienation without conversion of the land. No such orders to that effect is placed before the Court. Therefore, the petitioner's Association



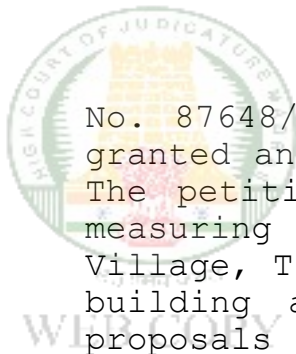
representing the majority of the common public, who purchased the lands pursuant to the approved layout are entitled for a road and since this petitioner is an encroacher, they are not having any right over the land in Survey No.738. Hence, this writ petition is liable to be dismissed.

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6.This Court considered the rival submissions made and also perused the materials placed on record.

7.This writ petition is filed by Sadakathullah Appa College, Rahmath Nagar, Tirunelveli, as against the Resolution dated 30.06.2010 of the third respondent, directing the College Management to hand over a portion of the land equivalent to an extent of 17990 sq.mtr in Survey No.738, Rahmath Nagar to the Corporation for the purpose of carrying out a public welfare Scheme. This Resolution was passed by the third respondent, pursuant to the directions of this Court in W.P.No.9710 of 2005, dated 02.03.2007. The Division Bench of this Court dismissed a similar writ petition filed by the Consumer Protection Council, Rahmath Nagar, Tirunelveli with certain observations as stated supra. Thereafter, the third respondent passed this Resolution to hand over the land, which was alienated, allocated for public purpose to a total extent of 17990 sq.mtrs. The third respondent has also passed a Resolution in D.No.361/2002 TVL, dated 09.04.2002, wherein, a request was made by the petitioner herein to remove the 70 feet road. Resolution was passed based on the application of this petitioner that the land in Survey No.738, to an extent of 31.52 acres was already assigned to the petitioner College, vide G.O.2071 Revenue (L1), dated 21.07.1972 and the College has taken over the land and put up fencing and this 70 feet road approved in approved layout LP/R TK 45/78 is running in the middle of the College and also not having any important use and recommended for removing this road from the approved layout. The petitioner College has filed a writ petition for a direction for implementation of the resolution dated 09.04.2002 in W.P.No.115 of 2006. In the meantime, the above Public Interest Litigation was filed by the Consumer protection Council in W.P.No.9710 of 2005 and the Division Bench reheard the matters together and ordered for posting of all these matters before the Principal Seat. Thereafter, by order dated 02.03.2007, W.P.No.9710 of 2005 was dismissed by this Court. However, the stage of the other writ petition filed by the petitioner in W.P.No.115 of 2006 could not be ascertained.

8.The petitioner claims that the land in Survey No.738 was a water body assigned to the petitioner's College for its expansion. This was disputed by the fourth respondent that it is not a water body and it is only a Government poromboke land and never assigned to this petitioner. The order referred by the petitioner is only an enter upon permission, pending assignment proposals and it would not give any right to the petitioner to enjoy the property as that of an assignment. The Board of Revenue by proceedings RT No.2561 E 345 of 1972, made a recommendation for cancellation of Government memo



No. 87648/A1/64/53, Revenue, dated 04.11.1971 and a permission was granted and to assign the land in favour of the petitioner college. The petitioner college, who was permitted to enter upon the land measuring an extent of 31.52 acres in Survey No.738, Palayamkottai Village, Tirunelveli Taluk and District for construction of College building and hostel building pending finalization of alienation proposals by G.O(Ms) No. 2071, Revenue (L1), dated 21.07.1972. This placement order has been approved by the Government in the year 1975, as per G.O.Ms.No.324, Revenue Department, dated 17.02.1975 and for fixing the land revenue to be paid by the College. For fixing the land tax, the Government passed a Government order in G.O.Ms.No.360, Revenue Department, dated 10.06.1983, fixed the land tax for 3 acres, which are used as hostel and staff quarters among the total 31.52 acres and waived the remaining 28.50 acres of land used for general purpose with a rider that it would be taxed depending upon the usage. Admittedly, the remaining land was used for general activities of the College. From this Government order, it could be inferred that the lands in S.No.738, Palayamkottai Village was already alienated to the College. Without disputing the earlier Government Order referred supra, the third respondent is not entitled to pass the impugned resolution and therefore it is liable to be quashed.

9.In view of the foregoing discussions, this writ petition is allowed and the impugned Resolution No.11, dated 30.06.2010 of the third respondent is quashed. The respondents are at liberty to approach the Government for modification of the earlier Government Orders with regard to the un-assessed land in Survey No.738. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD II)

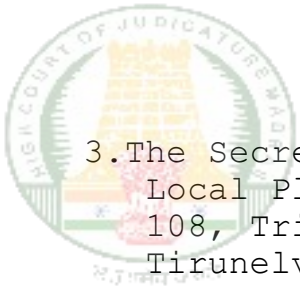
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Sub Assistant Registrar(CS)

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To

- 1.The Special Commissioner,
Town and Country Planning Department,
Chennai - 2.
- 2.The District Collector (cum) The President,
Local Planning Authority,
108, Trivendrum Road,
Tirunelveli - 2.



3.The Secretary and Member,
Local Planning Authority,
108, Trivendrum Road,
Tirunelveli - 2.

+1 CC to M/s.V. KANNAN, Advocate (SR-22464[F] dated 29/04/2022)

+1 CC to M/s.SPL. GP (SR-22939[F] dated 29/04/2022)

+1 CC to M/s.D. NALLATHAMBI, Advocate (SR-23092[F] dated 02/05/2022)

Order made in
W.P(MD)No.13742 of 2010 and
MP(MD) No. 2 of 2010
28.04.2022

SS(23/06/2022) 9P 7C