



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.01.2022

PRONOUNCED ON : 31.01.2022

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD)No.13278 of 2021

and

W.M.P. (MD)No.10277 of 2021

WEB COPY

O.Muthumayan

... Petitioner

vs.

- 1.The Secretary to Government,
Social Welfare Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner,
Hindu Religious and Charitable Endowments
Department, 119, Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 034.
- 3.The Commissioner,
Most Backward Classes and Denotified
Communities Welfare Department,
Ezhilagam, Chepauk, Chennai - 600 005.
- 4.The District Backward Class Welfare Officer,
District Backward Classes and Minorities
Welfare Department, Collectorate,
Madurai-625 020.
- 5.The District Collector,
Collectorate, Madurai - 625 020.
- 6.The Tahsildar,
Usilampatti Taluk,
Madurai - 625 532.
- 7.The Zonal Deputy Tahsildar,
Taluk Office, Usilampatty Taluk,
Madurai District - 625 532.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to reconvey the land comprised in Survey No.32/2A of Sikkampatti Village, Usilampatti Taluk Madurai District to an extent of 3 acres 06 cents in favour of Sree Kumarasamy Temple, Sikkampatti Village, Usilampatti Taluk.



For Petitioner :Mr.G.Kannan
for Mr.S.Ramsundar Vijayaraj
For Respondents :Mr.N.Satheesh Kumar

O R D E R

WEB COPY This Writ Petition has been filed in the nature of a Mandamus seeking a direction against the respondents to reconvey the lands in S.No.32/2A of Sikkampatti Village, Usilampatti Taluk, Madurai, measuring 3.06 acres to Sree Kumarasamy Temple, Sikkampatti, Usilampatti Taluk, Madurai.

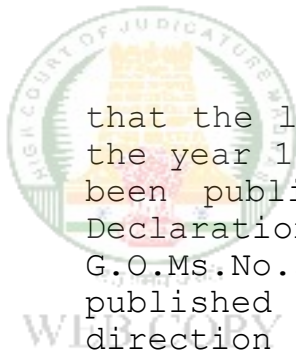
2.In the affidavit filed in support of the Writ Petition, the petitioner claims that he is a devotee of Sree Kumarasamy Temple at Sikkampatti Village, Meikarapatti Panchayat, Usilampatti Taluk, Madurai. The first respondent/Secretary to Government, Social Welfare Department by G.O.Ms.No.2471, Social Welfare Department, dated 06.07.1984, had issued a notification to acquire the lands measuring 3.06 acres belonged to Sree Kumarasamy Temple at Usilampatti for providing house sites to 74 families of Barbers. The acquisition had attained finality and an award was also passed on 31.03.1986 by the Special Tahsildar (ADW) and Land Acquisition Officer, Usilmpatti.

3.The petitioner and six others then filed W.P.No.25083 of 2010 before the Principal Seat of this Court stating that they had given a representation on 18.09.2010 to the respondents for reconveyance in exercise of powers under Section 48-B of Land Acquisition Act. By order, dated 12.01.2011, a learned Single Judge of this Court had directed submission of one more representation and directed examination of the same in manner known to law.

4.The petitioner had given a fresh representation on 24.01.2011 to the fifth respondent/District Collector, Madurai. Thereafter, there were issues relating to the patta granted to about 58 persons and they were cancelled on the ground that the beneficiaries were not actually entitled for grant of patta.

5.In the meanwhile, a suit in O.S.No.32 of 2017 came to be filed by six plaintiffs claiming that the land aforementioned absolutely belonged to them. A written statement had also been filed on behalf of the District Collector and Tahsildar, Usilampatti. It is stated that the award amount had been deposited in Civil Deposit and revenue records were mutated as Backward Class Natham land. Claiming that the respondents are taking steps for physical acquisition of lands, the Writ Petition has been filed seeking re-conveyance of the land to the Temple.

6.A counter affidavit had been filed by the fifth respondent/District Collector, Madurai, wherein, it had been stated



that the lands were acquired under the Land Acquisition Act 1894 in the year 1984. Draft notification under Section 4(i) of the Act had been published in the Government Gazette on 19.12.1984. Draft Declaration under Section 6 of the Act was approved by passing G.O.Ms.No.519, Social Welfare Department, dated 20.02.1986 and published in Government Gazette on 20.02.1986 and later a draft direction was published in Tamil Nadu Government Gazette Extraordinary issue on 14.03.1986. Notices under Section 9(1), 10 and 9(3) of the Land Acquisition Act, were issued on 10.03.1986. An award enquiry was conducted on 16.03.1986.

7.Since the lands belonged to the HR & CE Department, an Inspector from the said department appeared for the enquiry. The compensation was determined at Rs.41,573.95/- and 30% Solatium was added and the total compensation was determined at Rs.54,046.15/-. The amount was deposited under "843.Civil Deposits". Thereafter, the total amount of Rs.55,274.90/- was handed over to the Trustee of Sree Kumarasamy Temple by way of crossed cheque.

8.It was therefore stated that the entire process of land acquisition which commenced in the year 1986 culminated with grant of pattas to eligible families hailing from Barber community. During that process, there were Writ Petitions filed with respect to identification of the beneficiaries.

9.It was stated that the suit in O.S.No.32 of 2017 now pending before the District Munsif Court at Usilampatti was not maintainable, since the land had been acquired and acquisition proceedings have been completed. Thereafter, the Special Tahsildar (Backward Class Welfare) was requested to measure and demarcate the properties and hand over the same to eligible beneficiaries. It had been claimed that the lands cannot be re-conveyed, since it has vested with the Government on the publication of the notification under Section 4(1) of the Land Acquisition Act, 1894 from 19.12.1984. More over, compensation had been determined and paid to the Trustee of the Temple. It had therefore been stated that the Writ Petition should be dismissed.

10.Heard arguments advanced by Mr.G.Kannan, learned Counsel for the petitioner and Mr.N.Satheesh Kumar, learned Additional Government Pleader for the respondents.

11.Mr.G.Kannan, learned Counsel for the petitioner pointed out that the Special Tahsildar, Backward Class and Minority Welfare Department, Madurai, had issued an enquiry notice on 26.07.2021 drawing reference to the earlier Writ Petition filed in W.P.No.25083 of 2010. The learned Counsel stated that though acquisition proceedings are stated to have been completed on paper, the land still remains vacant and it had not been handed over to beneficiaries as claimed.



12.The learned Counsel also stated that the land is the only source of income for the Temple and that the Temple has been in existence from time immemorial and that for the various festivals month after month, the land is used for the benefit of the worshipers and for various functions with respect to the festival. The learned Counsel also stated that the Lord would be taken out in a chariot which passes through the lands and through all the villages in the surrounding area and therefore, urged that the land is very necessary for the benefit of the temple.

13.The learned Counsel justified the locus of the petitioner to file the Writ Petition and placed reliance on the observation of a learned Single Judge of this Court in the case of **S.Sridhar and others vs. the State of Tamil Nadu and others**, reported in **2020 (8) SCC 129**, wherein, the right of a worshiper to file a Writ Petition of similar nature had been upheld and recognised by the Court. The learned Counsel therefore stated that since there has been non utilisation of the land, the Temple is entitled for re-conveyance of the lands which had been acquired.

14.Mr.N.Satheesh Kumar, learned Additional Government Pleader countered and disputed the arguments advanced on behalf of the petitioner and pointed out that the entire land acquisition proceedings had commenced and a notification under Section 4(i) of the Act was published in the Tamil Nadu Government Gazette on 19.02.1984. A Draft Declaration under Section 6 of the Act was approved in G.O.Ms.No.519, Social Welfare Department, dated 20.02.1986 and published in Tamil Nadu Government Gazette, dated 20.02.1986. A draft direction under Section 7 of the Act was approved by the Government and published in Extraordinary issue of the Tamil Nadu Government Gazette, dated 14.03.1986. Notices under Sections 9(1), 10 and 9(3) of the Act were issued on 16.03.1986 and an award enquiry was conducted on 31.03.1986. Since the lands belonged to the HR & CE Department, an Inspector appeared and the award was determined at Rs.41,573.95/- and together with 30% solatium. The total award was determined at Rs.54,046.15/- and deposited in Civil Deposit, "843-Civil Deposit". Thereafter, a crossed cheque was also issued to the Trustee of the Temple for a sum of Rs.55,274.90/-.

15.Later, 74 beneficiaries were also identified and pattas were also issued to them. The learned Additional Government Pleader stated that there were issues with respect to the eligibility of the beneficiaries chosen and in that regard, Writ Petitions were filed. But still, the fact remains that the intention of the Government was only to issue pattas to landless poor, particularly, from Barber community. The process is ongoing and the purpose of the acquisition had been completed and acquisition proceedings had also been ended.



16.It was therefore urged that this Court cannot interfere at this stage and direct re-conveyance of the lands. The learned Additional Government Pleader also stated that the suit in O.S.No.32 of 2017 is not maintainable and the pendency of the same cannot be taken advantage by the petitioner herein or the Government should not be put to any disadvantage by citing the pendency of the civil suit. Steps to measure the lands have been initiated. The learned Additional Government Pleader therefore stated that the Writ Petition should be dismissed.

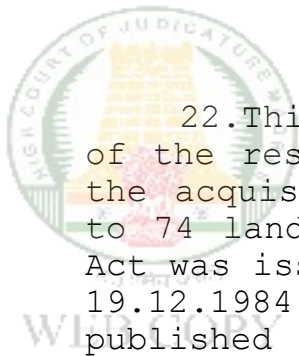
17.I have carefully considered the documents on record.

18.The Writ Petition has been filed by a devotee of Sree Kumarasamy Temple at Sikkampatti Village, Meikarapatti Panchayat, Usilampatti Taluk, Madurai. The petitioner claims right that as a worshipper, he is entitled to seek necessary relief on behalf of the temple seeking re-conveyance of lands, which had been acquired pursuant to the proceedings of the year 1986.

19.The claim of the petitioner is that the Temple had lands in S.No.32/2A at Sikkampatti Village, Usilampatti Taluk Madurai District measuring 3.06 acres. The petitioner had also stated and which statement was vehemently stressed during the arguments advanced by the learned Counsel for the petitioner that the said lands are the only source of income for the Temple. Quite apart from that the lands were used during the Temple festival not only by the worshippers, but also for the chariot of the Lord when taken out through and across several other villages and areas surrounding the Temple. Therefore, it is claimed that the acquisition of the said land had deeply hurt the sentiments of the worshippers. It was also stated that though the land was acquired and proceedings had been initiated, it had not been put to the purpose for which it had been acquired and it had been lying vacant.

20.A Writ Petition came to be filed earlier in W.P.No.5083 of 2010 and a learned Single Judge of the Principal Seat of this Court on 12.01.2011 had permitted to present a further representation and had expressed and hoped that the same would be considered in manner known to law. A representation was also given. It is stated that the petitioner received a notice for an enquiry to be conducted and just before this Writ Petition was filed, attempts were made to measure and demarcate the properties necessitating filing of this Writ Petition.

21.It had also been stated that a suit had also been filed with respect to the same lands, wherein, the plaintiffs therein claimed title to the lands. Written statement had also been filed and the suit is now pending. The petitioner claimed that the acquired lands should be re-conveyed to the temple.

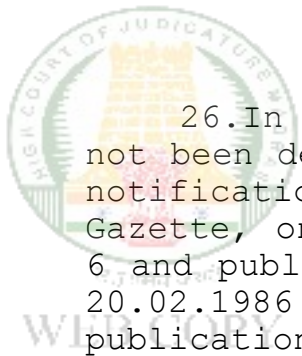


22.This claim of the petitioner to be contrasted with the stand of the respondents, wherein, it had been categorically stated that the acquisition proceedings were initiated to distribute the lands to 74 landless Barbers. A notification under Section 4(i) of the Act was issued and published in the Tamil Nadu Government Gazette on 19.12.1984. Draft declaration under Section 6 was approved and published in Tamil Nadu Government Gazette on 20.02.1986. Draft direction under Section 7 was approved and published in the Extraordinary issue of Tamil Nadu Government Gazette on 14.03.1986 and notices under Sections 9(2), 10 and 9(3) of the Act were also issued on 16.03.1986. Finally, an enquiry was conducted on 31.03.1986 and since the lands belonged to the HR & CE Department, an Inspector from the said Department also appeared for the enquiry. Compensation was determined at Rs.41,573.95/- and by adding 30% solatium, final compensation was determined at Rs.54,046.15/-.

23.In the meanwhile, a suit had also been filed in O.S.No.32 of 2017 before the District Munsif Court at Usilampatti by five plaintiffs and the father of the two of the plaintiffs, Veerana Thever, appeared during the enquiry and claimed that his ancestor did guard duty on behalf of the Temple and sought compensation to be paid. Further, it was held during the enquiry that he had no such right and was only an encroacher. The amount was therefore deposited under "843-Civil Deposit". Finally, the amount was also handed over to the Trustee of the Temple by way of a crossed cheque. Revenue records were also mutated classifying the land as Backward Class Natham land.

24.Thereafter, 74 beneficiaries were identified and pattas were granted to them. Questioning their eligibility and locus, Writ Petitions came to be filed in this regard and which was in fact a dispute over the choice of the beneficiaries and not dispute regarding the acquisition of the lands. The identification process took place and finally, after the Writ Petitions were disposed of, the respondent was in a position to grant patta to eligible families hailing from poor Barber community.

25.The law in this point had been crystalised in **2020 (8) SCC 129**, in the case of **Indoor Development Authority vs Manoharlal and others**, wherein, a Constitution Bench of the Honourable Supreme Court held that deemed lapse of proceedings initiated under 1894 Act is occasioned where award under Section 11 of the Act has been made five years or more prior to date of commencement of the 2013 Act, and the two conditions specific in Section 24(2) are cumulatively satisfied ie., (A) possession of the acquired land has not been taken and (B) compensation has not been paid - even if one of these two conditions is not satisfied, the 1894 Act acquisition proceedings shall not be lapse.



26. In the instant case, the fact of acquisition of lands had not been denied or disputed by the petitioner. Issuance of a draft notification and publication of the same in Tamil Nadu Government Gazette, on 19.12.1984, issuance of draft declaration under Section 6 and publication of the same in Tamil Nadu Government Gazette on 20.02.1986 and issuance of draft direction under Section 7 and publication of the same in Extraordinary issue of Tamil Nadu Government Gazette on 14.03.1986 are all facts which cannot be denied or disputed. Further, the notices under Sections 9(1), 10 and 9(3) were also issued and an award enquiry was also conducted on 31.03.1986. The compensation was also determined at Rs.54,046.15/-. Finally, the total compensation of Rs.55,274.90/- was also handed over to a Trustee of Sree Kumarasamy Temple by way of a crossed cheque.

27. This signifies the satisfaction of both the conditions stipulated in the judgment referred to supra by the Constitution Bench, namely, by taking of possession and payment of compensation. Subsequently, revenue records had also been mutated classifying the land as Backward Class Natham land. Further, 74 families belonging to poor Barber community had also been identified and pattas had also been issued. It is a fact that this gave rise to various Writ Petitions being filed questioning the locus of the beneficiaries. But this would not certainly affect the acquisition of the lands and as a matter of fact, establishes the fact of acquisition.

28. Beneficiaries had been identified and this is possible only when lands had actually been acquired and possession taken. The issue was not with respect to the acquisition, but with respect to the eligibility of the beneficiaries. The petitioner or Temple was not a necessary party in those litigations. They were not necessary to be heard because the land had already been acquired. It is informed that subsequently, all the litigations had been disposed of and the respondents are in a position to identify and grant pattas to 74 landless Barber community people. It is at this stage, when demarcation of the land had been commenced, the present Writ Petition had been filed.

29. The very fact that the demarcation of the land had commenced would indicate that the respondents had entered into the land and had taken physical possession. Thus, the entire aspect of acquisition had completed. The lands have been taken possession. Revenue records have been mutated. The possessed land had been demarcated and handed over to the beneficiaries. Compensation had been paid by way of a crossed cheque. Compensation had also been received. Hence, nothing survives for further adjudication with respect to the acquisition proceedings.

30. In view of all the above facts, the lands cannot be re-conveyed. The reasons stated by the petitioner that the lands are



projected when notifications had been issued for acquisition of the lands in the years 1984/1986. Now the said reasons cannot be considered or adjudicated.

31.The Writ Petition is therefore, dismissed. No order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Secretary to Government,
Social Welfare Department,
Secretariat,
Chennai - 600 009.
- 2.The Commissioner,
Hindu Religious and Charitable Endowments
Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.
- 3.The Commissioner,
Most Backward Classes and Denotified
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Welfare Department,
Collectorate,
Madurai-625 020.
- 5.The District Collector,
Collectorate, Madurai - 625 020.
- 6.The Tahsildar,
Usilampatti Taluk,
Madurai - 625 532.



7.The Zonal Deputy Tahsildar,
Taluk Office, Usilampatty Taluk,
Madurai District - 625 532.

+1 CC to M/s.S.RAMSUNDARVIJAYRAJ, Advocate (SR-3597[F]
dated 02/02/2022)

+1 CC to M/s.SPL.GP (SR-3352[F] dated 01/02/2022)

Order made in
W.P. (MD) No.13278 of 2021
31.01.2022

SK(CO)
GC(09.02.2022) 9P 10C