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WP Nos.5141 and 6782 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-07-2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP Nos.5141 and 6782 of 2023

And

WMP Nos.6879 and 6880 of 2023

Kasturba Gandhi Kanya Gurukulam,
Vedaranyam Represented by its Trustee,
S.Chockalingam

... Petitioner in both WPs

Vs.

Government of Tamil Nadu Represented by the
Principal Secretary,
Department of Revenue and Disaster Management,
Fort St. George,
Chennai-600 009.

... R-1 in WP 5141 of 2023

Government of Tamil Nadu Represented by the
Secretary,
Department of Municipal Administration,
Fort St. George,
Chennai-600 009.

... R-1 in WP 6782 of 2023

Commissioner,
Commissionerate of Revenue and Disaster Management,



Ezhilagam,
Chepauk,
Chennai-600 009.

... R-2 in WP 5141 of 2023

Director of Municipal Administration,
Urban Administrative Building,
Santhome High Road,
MRC Nagar, Raja Annamalai Puram,
Chennai-600 028.

... R-2 in WP 6782 of 2023

District Collector,
Nagapattinam.

... R-3 in both WPs

District Revenue Officer,
Nagapattinam.

... R-4 in both WPs

Revenue Divisional Officer,
Nagapattinam.

... R-5 in both WPs

Tahsildar,
Vedaranyam.

... R-6 in both WPs

Commissioner,
Municipality,
Vedaranyam.

... R-7 in WP 6782 of 2023

WP No.5141 of 2023 is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the sixth respondent herein to conduct inquiry as per the direction issued to him by his Superior Officer, the fifth respondent herein, in his Memo No.R.C.2665/B3/dated 20.10.2021 in a transparent manner on the basis of objective parameters on the issue of title to the land for which patta had been granted to the Gurukulam by the sixth respondent in his proceedings No.K.Dis.13337/87



B5 dated 13.06.1988.

WP No.6782 of 2023 is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondents pertaining to their acquisition process of the impugned land in S.No.632-10, 633, 634 and 635-1 in the Maharajapuram Keezhpathi Village that culminated with their entry upon that land with the display of poster on the wall of the compound of the impugned land on 27.01.2023/14.02.2023 declaring that the land belonged to the Municipality, Vedaranyam and quash the said process of acquisition, and, consequently, issue direction to the respondents to adhere to the procedure codified for normal acquisition process in Sections 5 to 8 and 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 to identify suitable land for the said project.

For Petitioner in both WPs : Mr.R.Natarajan

For Respondents-1 to 6 in
both WPs

: Mr.J.Ravindran,
Additional Advocate General
Assisted by Mr.C.Jayaprakash,
Government Advocate.

For Respondent-7 in WP
No.6782 of 2023

: Mr.D.Ravichander,
Special Government Pleader.



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COMMON ORDER

WP No.5141 of 2023 has been instituted to direct the sixth respondent herein to conduct inquiry as per the direction issued to him by his Superior Officer, the fifth respondent herein, in his Memo No.R.C.2665/B3/dated 20.10.2021 in a transparent manner on the basis of objective parameters on the issue of title to the land for which patta had been granted to the Gurukulam by the sixth respondent in his proceedings No.K.Dis.13337/87 B5 dated 13.06.1988.

2. WP No.6782 of 2023 has been instituted to quash the display of poster affixed on the subject property and to direct the respondents to adhere to the procedure codified for normal acquisition process in Sections 5 to 8 and 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 to identify suitable land for the said project.

3. The petitioner, which is Kasturba Gandhi Kanya Gurukulam, claims to be the Charitable Organisation.



4. The petitioner states that the Kasturba Gandhi Kanya Gurukulam, Vedaranyam was the Trust, which was constituted by the grandfather-Mr.A.Vedarathinam, who is the Managing Trustee, in the year 1946. The petitioner further states that the Trust was created by donating 8.25 acres of the land belonging to the grandfather-Mr.Vedarathinam, who is the Managing Trustee of the petitioner-Trust.

5. The learned counsel for the petitioner states that the land was assigned in favour of the petitioner-Trust for running a Charitable Institution. The petitioner narrates various incidents regarding the development of the Charitable Institutions and the services rendered by them for the welfare of the people of that locality.

6. The dispute aroused in view of the fact that the Government has decided to resume the land on the ground that the subject property is classified as 'Government Poramboke' and further no assignment was granted in favour of the petitioner-Trust at any point of time by the Government.



7. The learned counsel for the petitioner-Trust mainly contended that the name of the petitioner-Trust has been entered into the Revenue Registers and the patta has been granted in favour of the petitioner-Trust and based on the patta, the petitioner-Trust is paying necessary taxes to the Local Authority and in occupation and enjoyment of the property.

8. That being the factum, the Authorities without any adjudication are now attempting to take away the property belonging to the petitioner-Trust.

9. The order passed by the Tahsildar, Vedaranyam in proceedings dated 02.02.2021 was issued without conducting any proper enquiry. The classification of 'Sarkar Poramboke' made in the said order is perverse and the petitioner's name has been entered in the revenue registers and patta has been transferred in the name of the petitioner-Trust. Thus the respondents are directed to conduct an enquiry by affording further opportunity to the writ petitioner.



10. In view of the decision taken by the Government to construct the 'Bus Stand' in the subject property, they have displayed posters in the compound wall of the petitioner-Trust by stating that the property is belonging to Vedaranyam Municipality. The said display of poster in the compound wall of the petitioner-Trust, is under challenge in WP No.6782 of 2023.

11. The learned counsel for the petitioner mainly contended that the petitioner-Trust is running a School and extending services to the benefit of the people of that locality. Therefore, the petitioner-Trust is providing Free Boarding facilities to the students studying in that school and therefore, both the writ petitions are to be considered.

12. The learned Special Government Pleader appearing on behalf of the seventh respondent-Vedaranyam Municipality in WP No.6782 of 2023 raised an objection by stating that the petitioner has not furnished any document to establish their title or otherwise.

13. The Tahsildar conducted an enquiry and categorically found



that the subject properties are classified as 'Sarkar Poramboke'. More-so, the petitioner-Trust have not produced any Government Order assigning the subject property in their favour nor produced any other documents to establish that the subject property is belonging to them.

14. The Government has decided to develop a 'Bus Stand' for the benefit of the public at large and accordingly actions were initiated. When the decision was communicated to the petitioner-Trust and after negotiation, they have given a letter of 'No Objection' for the purpose of developing the 'Bus Stand' in the subject property. The letter was given to the District Collector, Nagapattinam stating that the petitioner-Trust have no objection for handing over the subject property for the purpose of construction of 'Bus Stand' and further made a request to name the 'Bus Stand' as 'Sardhar A.Vedarathinam'.

15. The learned Special Government Pleader appearing on behalf of the seventh respondent in WP No.6782 of 2023 states that based on the letter of undertaking given by the petitioner-Trust, the subject property was taken possession by the Competent Authorities and the work



relating to construction of 'Bus Stand' was commenced. Thereafter, the petitioner-Trust raised an objection by stating that no enquiry was conducted. After giving the letter of undertaking, the petitioner-Trust is now estopped from claiming for an enquiry, which is untenable. More-so, the petitioner-Trust have not been assigned with any property by the Government in the manner known to law and they were in occupation of the land without any Government Order or assignment or lease or otherwise.

16. In the absence of any document to establish right, the petitioner-Trust was illegally in occupation of the Government property, and thus the Authorities are empowered to evict the petitioner-Trust. However, the petitioner-Trust have voluntarily given a letter of undertaking by stating that they have no objection for the construction of the 'Bus Stand' in that locality for the benefit of the people at large and therefore, the project for construction of 'Bus Stand' was approved by the Government and accordingly the construction work process is commenced.

17. The learned Additional Advocate General appearing on behalf of the respondents 1 to 6 in both the writ petitions raised an objection



by stating that the petitioner-Trust was in unauthorised occupation of the Government land and the land has been classified as 'Sarkar Government Poramboke'.

18. Subsequently, wrong entries were made in the revenue records and based on the wrong entries, the petitioner-Trust secured patta in their favour and therefore, the Authorities are directed to look into the revenue records.

19. The Tahsildar has gone into the records and after conducting an enquiry, passed an order in proceedings dated 02.02.2021 and the said order was communicated to the Managing Trustee of the petitioner-Gurukulam and the same remains unchallenged.

20. The learned counsel for the petitioner reiterated by stating that subsequently after passing of the order by the Tahsildar, Vedaranyam on 02.02.2021, the District Collector ordered further enquiry and therefore, the petitioner-Trust have not challenged the same.



21. May that as it be. This Court is of the considered opinion that the Tahsildar found that the subject properties are classified as 'Government Poramboke'. There was no re-classification by the Government. Erroneous entries were made in the Revenue Register without any basis. Therefore, subsequent entries made in the Revenue Register are found to be incorrect and consequently actions were taken to construct the 'Bus Stand' in the subject property.

22. It is brought to the notice of this Court that one Smt.Tamil Elakkiya filed Public Interest Litigation (PIL) in WP No.22628 of 2022 to forbear the respondents to construct a new 'Bus Stand' at Vedaranyam. The Division Bench of this Court dismissed the said writ petition by its order dated 30.08.2022.

23. The petitioner-Trust has not produced any Government Order or document to establish that the Government land has been assigned or leased out to them.

24. In the absence of any such document, the occupation of the



petitioner-Trust cannot be construed as illegal occupation. However, the petitioner-Trust was in enjoyment of the Government land for several years and not paid any rent or otherwise to the Government.

25. In respect of leased out lands or the lands assigned on condition, the persons in occupation are liable to pay rent for their occupation. The District Collector, however, not initiated any action to recover the rent for the occupation of the petitioner-Trust in the Government land.

26. Mere patta would not confer any title. Patta has been issued based on the entries made in the Revenue Register and such entries were subsequently found by the Authorities as incorrect and erroneous and the Authorities have afforded opportunity to the petitioner-Trust to submit their documents. The petitioner-Trust could not produce any document to establish assignments or lease, if any, granted by the Government, but they produced only the entries made in the Revenue Register, which cannot be trusted upon.



27. The learned Additional Advocate General, appearing on behalf of the respondents 1 to 6 in both the writ petitions and the learned Special Government Pleader appearing on behalf of the seventh respondent-Municipality in WP No.6782 of 2023 have made submissions that the possession has already been taken in respect of the subject property, which is a vacant land. The subject property resumed by the Government is admittedly a vacant land.

28. The learned Special Government Pleader appearing on behalf of the seventh respondent-Municipality in WP No.6782 of 2023 made a submission that the portion of the resumed land is not under usage by the petitioner-Gurukulam and thus the construction of 'Bus Stand' has already been commenced.

29. It is clarified on behalf of the respondents 1 to 6 in both the writ petitions that Tender has already been flouted and the works to the tune of Rs.20 lakhs has already been completed and thereafter further progress is stopped on account of the interim order passed in WP No.6782 of 2023.



30. It is brought to the notice of this Court that the construction materials are already stored in the subject property to proceed with the construction works.

31. Charitable activities generally target specific beneficiaries or a particular section of public. These, beneficiaries could be individuals, communities or entities that require help to improve their circumstances.

32. The key distinction lies in the specific beneficiaries and objectives of charitable activities compared to the broader, collective focus of public interest actions. Charity typically has a narrower scope, addressing specific needs, while Public interest considerations are of broader impact on the society as a whole.

33. It is essential to note that there can be overlaps between charity and public interest, as many charitable activities also serve public interest. The law may recognise and support both concepts, as they both contribute to the well-being and betterment of the society. However, they have approached and regulated differently to ensure that the different



purpose and beneficiaries are appropriated and protected.

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34. Charity is intended to benefit a section of people, whereas the public purposes is intended to benefit the public in general. So when a conflict arises between these both, the interest of the public at large must be at the forefront. Neither purpose is lesser than the other, but in the case of a conflict, the larger public interest precedes charity. Charity is also for the promulgation of public interest, but the benefit approved will reach only a section of the public, whereas the public schemes are far reaching and benefiting the general public at large.

35. When both the charitable purposes and public interest are weighed, the balance is sought to be achieved to the maximum extent possible to ensure that the benefit reaches the largest section of the population and the benefits are enjoyed by the common man.

36. Land acquisition or resumption of Government land by the Government is based on the doctrine of “eminent domain”, which is similar to the public trust doctrine. The doctrine of eminent domain provides that



the 'State' has an overarching control over the land, and in this regard, it is guided by two principles:

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(1) “*Salus populi est suprema lex*”, meaning that the welfare of the people is the most important; and

(2) “*Necessitas publica est major quam private*”, meaning that public necessity is greater than private necessity.

37. The standard must take into account the factor of the number of people being affected due to resumption of Government land and the potential number of people benefiting from such resumptions of Government land.

38. In view of the fact that the subject land has not been leased out or assigned in favour of the petitioner-Trust, the subject land has been resumed for the purpose of construction of 'Bus Stand', which will be more beneficial to the public at large and the materials available on record have been considered by the Authorities with reference to the classification of the land. Thus, there is no reason to consider the relief, as such, sought for in these writ petitions. The question of conducting further enquiry would not



arise at all, since the Tahsildar has conducted an enquiry in the year 2021 itself and passed an order, which was communicated to the petitioner-Gurukulam.

39. The learned counsel for the petitioner states that the petitioner-Trust is in occupation of the land measuring about 25 acres for running a School. Preliminarily, as per the Tamil Nadu Private Schools (Regulation) Rules, 2023, the minimum land requirement for private middle, high and higher secondary schools are as under:-

<i>S.No</i>	<i>Location</i>	<i>Minimum Land Requirement</i>
(1)	Metropolitan Development Authority Area	5 grounds
(2)	Corporation (other than Metropolitan Development Authority Area)	6 grounds
(3)	District Head Quarters	7 grounds
(4)	Municipality	8 grounds
(5)	Town Panchayat	10 grounds
(6)	Village Panchayat	2 acres

40. Pertinently, the petitioner-Trust have also given a letter of undertaking to the District Collector, Nagapattinam stating that they have no objection for construction of 'Bus Stand' in the interest of the public. The overall facts would reveal that the petitioner-Trust has not been allotted nor



assigned any land by the Government and they were in illegal occupation and thus, the resumption of Government land for construction of 'Bus Stand' cannot be termed as irregular.

41. Accordingly, both the writ petitions are dismissed.

However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

25-07-2023

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

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To



1. The Principal Secretary,
Government of Tamil Nadu,
Department of Revenue and Disaster Management,
Fort St. George,
Chennai-600 009.
2. The Secretary,
Government of Tamil Nadu,
Department of Municipal Administration,
Fort St. George,
Chennai-600 009.
3. The Commissioner,
Commissionerate of Revenue and Disaster Management,
Ezhilagam,
Chepauk,
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4. The Director of Municipal Administration,
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9. The Commissioner,
Municipality,
Vedaranyam.

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S.M.SUBRAMANIAM, J.

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