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W.P.No.34202 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:07.08.2023

Delivered on: 20.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.34202 of 2012

&

M.P.Nos.1,2 of 2014

Thiruvalleeswarar Nagar Cooperative
Housing Society Limited
rep. by its President A.Arockiasamy
No.114, Sundarar Street
Thiruvalleeswarar Nagar
Anna Nagar West
Thirumangalam
Chennai-600 040

...Petitioner

Vs.

1. The State of Tamil Nadu
rep by the Secretary to Government
Housing and Urban Development Department
Fort St.George, Chennai-600 009.

2.Tamil Nadu Housing Board
rep by its Chairman
No.331, Anna Salai
Nandanam, Chennai-600 035.



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3.Shree Thiruvalleeswarar Devasthanam
Thiruvallithayam
rep by its Executive Officer
Padi, Chennai-600 050.

4. The Commissioner
Hindu Religious and Charitable
Endowment Department
Chennai-600 034.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the respondents 3 and 4 from disturbing the peaceful possession and enjoyment of the respective plots in the land comprised in S.No.218/2, Padi Village, Saidapet Taluk, Chengalpet District, (now Thiruvallur District) by the members of the petitioner society, in any manner, on the basis of the illegal notification of the 1st respondent vide Letter No.43306/A2/88-1, Housing and Urban Development, 3rd October 1988 published in Part-II-Section 2 (Supplement)No.40-C of the Tamil Nadu Government Gazette dated 12.10.1988.

For Petitioner : Mr.E.J.Ayyappan

For Respondents : Mr.P.Raja Rajeswari, G.A for R1

Mr.D.R.Arun Kumar, SC TNHB for R2

Mr.Yashwanth, AGP HR&CE for R4

No Appearance for R3



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benefits of Sec.9 of Chennai City Tenants Protection Act, 1921 to purchase the respective plot lands under their occupation. The Devasthanam cannot claim any ownership right since the lands were acquired by the Government and the withdrawal notification issued by the Government is invalid and unenforceable. In such circumstance, the petitioner society sought for Writ of Mandamus to forbear the temple authorities and the HR&CE Department from interfering with the possession of the respective plots and occupation of its members.

3. The HR& CE Department has filed a counter stating that the Writ Petition was not maintainable as the subject lands belong to the temple Arulmigu Thivalleeswarar, Padi which is one of the oldest temples in the City of Chennai and that though the Government initially acquired the subject lands, subsequently the same was excluded from the acquisition and it was duly published in the Tamil Nadu Government Gazette as early as on 12.10.1988. Consequently, the subject lands belong only to the temple absolutely and the temple is bound by the provisions of Tamil Nadu HR&CE Act. Sec.34 specifically prohibits alienation or sale of such temple lands by the hereditary trustees and even a lease exceeding a period



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of 5 years would have to be sanctioned by the Commissioner, HR&CE department.

4. Pending the Writ Petition, the petitioner has taken out M.P.No.1 of 2014 seeking to amend the prayer in the Writ Petition to substitute relief of Writ of Mandamus with relief of Writ of Certiorarified Mandamus, seeking to quash the withdrawal of acquisition proceedings on the file of the 1st respondent dated 12.10.1988 and consequently forbear the temple and HR&CE from disturbing with the peaceful possession and enjoyment of the respective plots in the possession of the members of the appellant society. In the affidavit in support of the said amendment application, it is stated that though the Writ Petition was initially filed with a prayer only seeking a Writ of Certiorari, the matter was posted before Court for maintainability and thereafter the original prayer was amended to one limited to a Writ of Mandamus alone in the place of certiorari as originally prayed for. According to the petitioner, the said relief of Certiorari is very much available and would be the proper remedy and therefore amendment is sought for.



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5. A counter affidavit has been filed by the 3rd respondent, Executive Officer of Thiruvalleeswarar Devasthanam, strongly objecting to amendment sought for. According to the said counter affidavit, the petitioner cannot take away the rights already accrued to the temple way back in the year 1988. The Writ Petition itself is belated and the application to quash the denotification by seeking to amend the prayer is also made after a lapse of 26 years and more over by virtue of amending Act 2 of 1996 of Tamil Nadu City Tenants Protection Act, lands owned by temple are exempted U/s. 9 of the said Act and the petitioner cannot claim any right, much less compel the temple to sell the land to them. Thereafter, an additional counter affidavit has also been filed by the said Executive Officer stating that admittedly when the Writ Petition was filed that too after several years after denotification, even though a Writ of Certiorari was prayed for initially, an objection was raised by the Registry with regard to the maintainability of the prayer and the matter was also listed before the Court and after hearing the counsel for the petitioner, the Court held that such a prayer could not be maintained and thereafter the petitioners have accepted the same and restricted the relief only for issuance of a Mandamus, giving up the portion pertaining to quashing the



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denotification. In such view of the matter, according to the Executive Officer of the 3rd respondent, the present amendment application is clearly not maintainable.

6. Heard Mr.E.J.Ayyappan,learned counsel for the petitioner, Mrs.P.Raja Rajeswari, learned Government Advocate for R1, Mr.D.R.Arunkumar, SC (TNHB) for R2 and MR.Yaswanth, AGP(HR&CE) for R4. We have heard the counsel not only on the merits of the Writ Petition but also with regard to the miscellaneous petition seeking amendment of the prayer.

7. Admittedly, the land acquisition proceedings were initiated by the Government and subject lands were acquired under Award No.16 of 1973 and the lands belonging to the temple were notified for acquisition for the purpose of TNHB putting up tenements. The Sec.6 Declaration was also made on 12.07.1978. However, subsequently the Government decided to withdraw from acquisition and denotified the lands in S.No.218/2 belonging to the temple by publishing the same in Government Gazette on 12.10.1988. The State is vested with discretion and power to withdraw



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acquisition proceedings U/s. 48 of the Land Acquisition Act. Even in the earlier Writ Petition 18167 of 2011, it was brought to the notice of the petitioner's that acquisition stood withdrawn even as early as on 12.10.1988. However, for reasons best known to the petitioner society no challenge was made to the said denotification at the earliest point of time. Only in the present writ petition, that too after a lapse of two years after filing the Writ Petition, the amendment application has been filed. As rightly contended by the counsel for the respondents, when the original prayer was for issuance of a Writ of Certiorarified Mandamus to quash the denotification proceedings of Sec.48 of the Land Acquisition Act, the Registry posted the same for maintainability before the Court and subsequently the petitioner has given up his right to seek a Writ of Certiorari restricted its prayer for Mandamus alone. It is not now open to the petitioners to make a back door entry and seek the very same relief which was turned down by this Court earlier, under the guise of filing an amendment application. The petitioner is clearly estopped from challenging the said denotification proceedings. Even otherwise, on the ground of delay also, the petitioners are not entitled to challenge the denotification proceedings at this length of time. The lands were denotified



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way back in the year 1988 and for more than two and half decades, the petitioner did not seek to challenge the same. Even when the Writ Petition was filed in the year 2012 an attempt to challenge the same was voluntarily given up by the petitioner when the matter was posted for maintainability before the Court, even at the time of numbering the Writ Petition. Much later, after a lapse of two years, the very same prayer has been sought to be reintroduced which is clearly impermissible. The petitioners are estopped from even maintaining the amendment application in view of the earlier orders.

8. We have also independently perused the proceedings at the maintainability stage. The learned Judge has recorded the fact that the learned counsel sought the permission to mould the relief and accordingly the prayer from “Writ of Certiorari” has been modified as one of “Writ of Mandamus”. It is interesting to note that one of the objections taken for maintainability of the Writ Petition was the inordinate delay in challenging the Gazette notification issued in the year 1988. Only thereafter, the petitioner society has taken a conscious decision to give up the relief to challenge the denotification U/s. 48 of the Land Acquisition Act.



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Therefore, the amendment application M.P.No.1 of 2014 is clearly not maintainable and liable to be dismissed.

9. Coming to the merits of the Writ Petition, the fact that the acquisition proceedings have been withdrawn is admitted by the State as well as the Housing Board. They have come on record stating that the lands belong to the temple. The petitioner society comprises of members who are lessees/sub-lessees of temple. The prayer therefore seeking for a blanket mandamus to forbear the temple as well as the HR&CE Board from interfering with the possession of the members of the petitioners society cannot be maintained especially in view of the fact that after the Amendment Act 2 of 1996 to the Tamil Nadu City Tenants Protection Act, the right to purchase the land belonging to the temple U/s.9 is also no longer available to the members of the petitioner society. Therefore, we do not find any merit in any of the contentions put forth by the writ petitioners.



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In fine, the Writ Petition stands dismissed. No costs. Consequently,
connected miscellaneous petition is closed.

(D.K.K.J) & (P.B.B.J)
20.09.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
mjs

To

1. The Secretary to Government
State of Tamil Nadu
Housing and Urban Development Department
Fort St.George, Chennai-600 009

2.The Chairman
Tamil Nadu Housing Board
No.331, Anna Salai
Nandanam, Chennai-600 035

3.The Executive Officer
Shree Thiruvalleeswarar Devasthanam
Thiruvallithayam
Padi, Chennai-600 050

4. The Commissioner
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Endowment Department
Chennai-600 034



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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J
(mjs)

Pre-delivery judgment in
W.P.No.34202 of 2012

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