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W.P.Nos.15997, 19541, 33977 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.02.2023**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.Nos.15997, 19541, 33977 of 2022

K.P.Muruganantham ... Petitioner in all writ petitions

Vs

1.The Sub Collector
Office of the Sub Collector
Pollachi.

2.The Superintending Engineer
Public Works Department
Parambikulam Division
Parambikulam, Pollachi.

3.The Executive Engineer
Public Works Department
Parambikulam Division
Parambikulam, Pollachi.

4.The Assistant Engineer
Public Works Department
Canal, Branch No.1,
Vettaikaranpudur, Pollachi.

5.M.N.Ashwin Kaliappa ... Respondents in
WP Nos.15997, 19541 of 2022

1.The Sub Collector
Office of the Sub Collector
Pollachi.



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2.The Superintending Engineer
Public Works Department
Parambikulam Division
Parambikulam, Pollachi.

3.The Executive Engineer
Public Works Department
Parambikulam Division
Parambikulam, Pollachi.

4.The Assistant Engineer
Public Works Department
Canal, Branch No.1,
Vettaikaranpudur, Pollachi.

... Respondents
in WP No.33977 of 2022

Prayer: W.P.No.15997 of 2022 filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus to direct the respondents 1 to 4 not to lay any road or pathway on or across on lands in S.F.No.581/1A2 in Vettaikaranpudur Village, Pollachi Taluk and consequently not to interfere with the petitioner's cultivation in the lands in S.F.No.581/1A2 in Vettaikaranpudur Village, Pollachi Taluk.

WP No.19541 of 2022 filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus to call for the records in the order passed by the 3rd respondent dated 28.03.2022 in SA.MU.K.No.THO.NU.P/MU.VA./KO.20/21 and quash the same and consequently direct the respondents 1 to 4 not to permit access of petitioners land S.F.No.581/1A2 in Vettaikaranpudur Village Pollachi Taluk to 5th respondent or any other person.

WP No.33977 of 2022 filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus to call for the records in letter No.ThoPi/MuVaA/Ko.28/159M/2022 dated 02.12.2022 on the file of the 3rd respondent and quash the same and consequently direct the respondents pass orders for re-conveyance of lands in S.F.Nos. 581/1B, 581/1A1 and 581/2 in Vettaikaranpudur Village, Pollachi Taluk, to the petitioner.



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For the Petitioner : Mr.S.S.Rajesh,
for Mr.N.Baaskaran

For the Respondents : Mr.T.Seenivasan,
Special Government Pleader,
for respondents 1 to 4
Mr.A.K.Sriram
Senior Counsel
for Mr.I.Abrar Md.Abdullah,
for the fifth respondent

COMMON ORDER

All the three writ petitions have been filed by the same writ petitioner, K.P. Muruganatham, resident of Aanaimalai Taluk at Pollachi. His father Thiru Palani Gounder was owner of property of land in S.F.No. 581/1A2 and other lands.

2. There was a partition between the said father and his brother and the lands in S.F. No. 581 to extent of 7.64 acres were allotted to the father of the petitioner herein. All these lands are situated at Vettaikaranpudur Village, Pollachi Taluk. Those lands which had been allotted to the father had been acquired by the Government for Parambikulam Aaliyar Project.



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3. It is the contention of the petitioner herein that the lands were not put to effective use by the Government and therefore he had given an application under the provisions of Section 48(B) of the Land Acquisition Act, 1894 and had sought that the lands should be re-conveyed to him. That application, according to the learned counsel for the petitioner is still pending consideration. I must also state that the details of that particular application had not been stated in the affidavit filed in support of the writ petition at least in W.P.No. 33977 of 2022. However let me proceed with premise that the said application is still pending before the Government.

4. In the meanwhile, there was an agreement between the respondents and the petitioner herein. The respondents had called it a grant of land. The petitioner calls it a lease of land. It was for a period of three years and according to the learned counsel for the petitioner the original grant/lease was in the year 1980 and the learned counsel claims that the petitioner has now been in effective possession for almost 40 to 50 years. The last document which evidences such permission for the petitioner herein to occupy the lands either as a grantee or a lessee was dated 01.05.2021 and it granted right to him till 30.04.2024 which evidently means that, the said particular agreement or grant is still in force.



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5. Among the three writ petitions, W.P.Nos. 15997 of 2022 and 19541 of 2022 have also been filed against the fifth respondent, M.N.Ashwin Kaliappa, who is a relative of the petitioner herein. His rights are with respect to a pathway which learned Senior Counsel for the said fifth respondent claims has been recognised for a considerable number of years and which pathway leads to a well in the edge of the lands for which the petitioner had been granted permission.

6. There were disputes between the petitioner and the fifth respondent over the usage of the said pathway and the rights of the same are the subject matter of W.P.Nos. 15997 of 2022 and 19541 of 2022.

7. In the meanwhile, the petitioner had occasion to file a third writ petition wherein the said fifth respondent M.N. Ashwin Kaliappa was not impleaded as a party. That writ petition was W.P.No. 33977 of 2022. The grievance raised in this writ was that the Government had issued a notice that they intend to sever the grant/lease granted in favour of the petitioner herein. There are various reasons given for the same. In the show cause notice issued they claimed that the petitioner was obstructing usage whereas in the order which they had



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passed on 10.11.2022, they claimed that they have received funds from the World Bank for execution of works over the Aliyar Basin and for storage of materials and to access the said work place, the lands of the petitioner which had granted to him/leased out to him are required.

8. It is also seen that the respondents also state that the workmen should also reside there. They also propose to dig and take the sand. This order has given to rise to the filing of W.P.No. 33977 of 2022.

9. The learned Senior Counsel for the fifth respondent in the other two writ petitions stated that the fifth respondent is not either directly or indirectly, concerned with either the application filed under Section 48 (B) of the Land Acquisition Act or with the decision of the respondents to terminate the lease/grant in favour of the petitioner. It is contended that the fifth respondent has an independent right to use the passage to the well and such right cannot be interfered with either by the petitioner or by the respondents herein and that such right has an independent genesis and is asserted by the fifth respondent therein.



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10. There are thus several disputed questions of law of facts involved. This Court sought clarification of the lay of the land. A rough sketch had been presented. I had occasion of examining the same.

11. The learned Special Government Pleader pointed out the agreement under which the petitioner now claims to be in possession which is for the period 01.05.2021 till 30.04.2024. The petitioner had signed it and the Executive Engineer, PWD, WRD, Parabikulam Division also signed it. They are naturally bound by the said agreement. In the said agreement, after various clauses relating to the usage and conditions imposed that no building or fence or structure should be put up and trees should not be cut and that sale proceeds of withered and wind fallen trees shall benefit only the Government and the petitioner herein would have no right over any of the standing trees and the usufruct of the tress can be leased out only by the Government officials not by the petitioner herein and that on termination, the petitioner should restore the land to the Government, finally the parties had also agreed as follows:

" The grant hereby given may be revoked by the assigning authority after giving three months notice in writing and by the Government or Chief Engineer without notice in an emergency (the said Government or



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Chief Engineer being the sole judge of the emergency) and shall be terminable be the grantee by giving to the assigning authority three months notice in writing but without prejudice to breach of any of the foregoing conditions. The grantee shall not in case of such revocation or termination be entitled to any compensation in respect of any improvements effected by the grantee to the land or for the loss caused by the interruption of his occupation.

24. If any dispute or difference shall at any time hereafter arise between the Government or their officers on the one part and the grantee of the other part as to the rights, duties or liabilities of either party in respect of any matter or things relating to or arising out of the grant or the construction or the meaning of all or any of the provisions herein contained, the said dispute or difference shall be referred for settlement to the arbitration of the Chief Engineer and his decision shall be final provided also that in cases where the Executive Engineer has entered with the contract on behalf of the Governor of Tamil Nadu, the dispute or difference shall be referred by the Executive Engineer for the time being and in other cases, by any officer authorizes in this behalf by the Government of Tamil Nadu."

12. This is an agreement entered into by the petitioner with the Executive Engineer. It would be extremely inappropriate if the Court were to step in and thrust a separate clause on them and force them to agree to the same. The court cannot also dispute the agreement which had been entered into with consensus and idiom between two



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parties. They knew the terms of the agreement. They knew the consequences of breach thereof. They knew the obligations therein. They also knew the conditions under which such grant of land/ lease of land was granted. They also knew the manner in which that agreement could be severed or frustrated by one party. They also knew the manner in which such disputes must be resolved by them. It has not been agreed that they should resolve such disputes by filing a petition under Article 226 of the Constitution of India.

13. Quite prudently they had agreed that they would refer disputes for settlement by arbitration by the Chief Engineer. Once they had so agreed then the disputes which would also include issuance of notice for termination, reason for such termination and whether such reasons are proper and whether such reasons have been stated in the show cause notice and the subsequent Government Order are all issues to be raised only before the said Arbitral Tribunal namely the Chief Engineer.

14. The issue of arbitrability can only be decided by the Tribunal. The issue is no longer res integra and had been held so in **Vidya Drolia vs Durga Trading Corporation 2021 (2) SCC 1**. The



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Supreme Court had answered a reference whether in the face of an arbitration agreement the issue of arbitrability of a dispute could be examined by the Court. It was held that such decision had to be taken only by the Arbitral Tribunal.

15. The possession of the petitioner cannot be disturbed till the subsistence of the agreement. Similarly the right of the fifth respondent, to access the well through the pathway cannot be disturbed.

16. The respondents can store their material but cannot, call upon the petitioner to vacate the entire premises. It all depends on the reference to be made to the Arbitral Tribunal/Chief Engineer and decision taken by that particular authority. On all issues including usage of the land by the respondents.

17. The writ Court cannot and adjudicate their issues. A direction is also given to the respondents that necessary orders under the Application under Section 48 (B) of the Land Acquisition Act 1984 should be passed within a period of 12 weeks from the date of receipt of a copy of this order.

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18. The petitioner may take a conscious decision to refer or not to refer the dispute for arbitration but as stated this Court can only protect his possession till the subsistence of the agreement. Any further decision has to be taken only by the Arbitral Tribunal.

19. To repeat the right of the fifth respondent to access the well through the particular pathway cannot also be disturbed since that is not a matter directly in issue in the grant/lease of the land between the petitioner herein and respondents.

20. The writ petitions stand disposed of. No costs. Consequently, WMP Nos.15321, 18822, 18824, 18827, 33457, 33459 of 2022 are closed.

27.02.2023

Index: Yes/no
mrn



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C.V.KARTHIKEYAN, J.
(mrn)

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