



W.A.No.858 of 2017 and W.P.No.6089 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:17.07.2023

Delivered on: 26.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.858 of 2017 and

W.P.No.6089 of 2018

&

W.M.P.No.7507 of 2018&C.M.P.No.11759 of 2017

W.A.No.858 of 2017

1. The Commissioner
Corporation of Chennai
Ripon Building, Park Town
Chennai-600 003

2.The Zonal Engineer
Zone-10, Corporation of Chennai
N.S.K.Salai, Kodambakkam
Chennai-600 024

.. Appellants

Vs.

1.A.Dasarathan

2.The Member Secretary
Chennai Metropolitan Water Supply and
Sewerage Board
Pumping Station Salai



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Chindadripettai
Chennai-600 002

3.The Collector
Chennai District
Chennai

.. Respondents

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside the order passed by this Court in W.P.No.34389 of 2016 dated 10.11.2016.

For Appellants : Mr.S.Gopinathan

For Respondents : Mr.R.Thirupathiraj for R1

Mr.N.Paulsundar Singh, SC for R2

Mrs.Geetha Thamaraiselvan, Spl.GP for R3

W.P.No.6089 of 2018

A.Dasarthan

.. Petitioner

Vs.

1.The Collector
Chennai District
Chennai-600 003

2.Revenue Divisional Officer
Egmore, Chennai-600 031

3.The Tahsildar
Mambalam Taluk
Chennai-600 078

.. Respondents



W.A.No.858 of 2017 and W.P.No.6089 of 2018

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the impugned order dated 02.022018 in the proceedings of the 2nd respondent vide No.Se.Mu.Aa.No.A2/48/2018 and quash the same.

For Petitioner : Mr.R.Kannan

For Respondents : Mrs.Geetha Thamaraiselvan for R1 to 3

COMMON JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The Writ Appeal is at the instance of the Corporation of Chennai and its Zonal Engineer, challenging the order passed in W.P.No.310 of 2015 dated 08.01.2015, allowing the Writ Petition filed by the respondent in this Writ Appeal.

2. The brief facts that may be necessary for adjudicating the Writ Appeal are that the petitioner, being the owner of the property bearing plot No.6A, Raghava Reddiar Colony, 4th Street, Sekar Nagar, West Saidapet, Chennai-600083, having purchased the same for a valuable sale consideration in and by a sale deed duly registered on 08.07.1998. It is the contention of the petitioner that the lands are lying vacant and the Corporation of Chennai viz., the appellants before us, put up a road in a



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portion of the petitioner property. The petitioner therefore gave representations seeking removal of the encroachments and as there was no response, the petitioner sent a legal notice. The petitioner thereafter filed a Writ Petition in W.P.No.310 of 2015 seeking a direction to consider the petitioner's representation and a learned Single Judge of this Court allowed the Writ Petition on 08.01.2015, directing that the respondent to consider the petitioner's representation dated 29.05.2014 on merits and in accordance with law. Complaining that the order was not complied with, Cont.P.No.2178 of 2015 came to be filed. Pending the Contempt Petition, the Tahsildar sent a detailed report confirming the petitioner's title and also genuineness of his patta. The petitioner was therefore constrained to give one another representation on 03.09.2016, seeking removal of the encroachment and also compensation to the petitioner. The Writ Petition is filed seeking issuance of a Writ of Mandamus to direct the respondents to pass orders on the said representation dated 03.09.2016.

3. The appellants, as respondents in the Writ Petition filed a counter affidavit stating that road was laid even before 1998 and was being used as a road for more than 25 years by the general public and that the



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Corporation has provided basic amenities like streets, light besides also maintaining the road, at its costs. Even before the purchase of the property by the petitioner, the land was being used only as a road and several families in the adjoining streets have been using the said road for several years. It was however conceded by the respondents that if the petitioner's claim was genuine he would be compensated by issuance of a TDR (Transfer of Development Right) certificate which can be used by the petitioner, either personally or even transferred to other prospective builders.

4. The learned Single Judge after hearing the parties directed the respondents to measure the property and extent of encroachment and held that the petitioner would be entitled to compensation as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 2013 Act). This order is under challenge before us in the Writ Appeal on the grounds that a Civil Suit had been filed which had culminated in Second Appeal proceedings in S.A.No.1015 of 2005, wherein the Writ Petitioner was the appellant and that in the said proceedings the appellants herein were not parties and



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when the Contempt petition filed by the petitioner was also closed and the appellants had fairly come forward to offer TDR certificate, without considering all these factors, the learned Single Judge had passed orders directing payment of compensation.

5. Before us an additional counter affidavit has been filed by the 3rd respondent viz., the District Collector, Chennai where, it has been stated that on verifying the patta and various Court orders and related documents, even though the patta issued originally to the petitioner was genuine, since the land for which the patta was issued was a road viz., a portion of Sakunthala street, the Tahsildar recommended for cancellation of patta. The RDO also acting on the recommendations of the Tahsildar concerned proceeded to cancel the patta.

6. W.P.No.6089 of 2018:

This Writ Petition has been filed by the 1st respondent in W.A.No.858 of 2017. The said Writ Petition seeks to challenge the order dated 02.02.2018 passed by the 2nd respondent viz., the RDO cancelling the patta in favour of the petitioner. The grounds of challenge are that the 2nd



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respondent is only an appellate authority under the Patta Pass Book Act and cannot take suo motu proceedings for cancellation of patta especially when already the patta issued to the petitioner is found to be genuine.

7. We have heard Mr.R.Gopinathan learned counsel for the appellant in Writ Appeal and Mr.R.Kannan appearing for the Writ Petitioner and Mr.P.Thirupathiraj for the 1st respondent, Mr.N.Paul Sundar Singh, Standing Counsel for the 2nd respondent in the Writ Appeal and Mrs.Geetha Thamaraiselvan, Special Government Pleader for 3rd respondent in Writ Appeal and for the respondents 1 to 3 in the Writ Petition.

8. Curiously, the appellants did not challenge either the title of the Writ Petitioner or the fact that patta came to be issued to him in respect of the subject land. It is only their case that though patta was given and it was also verified to be genuine, since the lands were being used as a road and thousands of families have been using the road for the past several years, patta had to be cancelled and therefore the order of the learned Single Judge directing payment of compensation under the 2013 Act was



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erroneous. The learned Single Judge, according to the counsel for the appellants had not even considered the offer given by the appellants to issue a TDR certificate to the Writ Petitioner which can be used by him while developing any property within the CMDA limits or also transfer the same for consideration to any other developer or owner of the property who was in need of additional constructed area.

9. Per contra, learned counsel for the 1st respondent/Writ Petitioner would contend that the authorities themselves admit that the petitioner is the owner of the property and patta was also issued, which also came to be verified to be genuine subsequently and the act of the appellants in encroaching into the Writ Petitioner's lands and converting the same as a road was clearly illegal and liable to be called in question and there was no irregularity or illegality warranting interference by this Court in Writ Appeal.

10. It is also seen that the 1st respondent/petitioner has filed a suit for permanent injunction against two individuals and also Sekar Nagar Welfare Association. The subject matter of the suit is also pertaining to the



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very same issue viz,, the area that is being used as a road by the public.

The said suit has been dismissed holding that the Writ Petitioner has failed to establish lawful possession. The appeal filed by him also came to be dismissed on 05.08.2004 and the petitioner has preferred S.A.No.1062 of 2005, which is pending, according to the counsel for the Writ Petitioner.

11. Be that as it may, there are clear concurrent findings of two Civil Courts that the petitioner is not in physical possession of the subject lands which is infact admitted to even by the Writ Petitioner, since it is his specific case that the appellants have encroached into his property and formed the road. Even though the appellants have not disputed the title of the Writ Petitioner, it is their specific case that the Writ Petitioner is not in legal possession and the property is being used as a road by the general public and only under such circumstances the patta came to be cancelled. We also notice that the RDO did not take any suo motu action but the cancellation was only pursuant to the recommendations of the Tahsildar which was based on a physical inspection of the property. The patta is not a document of title but only proof of physical possession of the extent contained in the said patta. Here admittedly, the Writ Petitioner concedes



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to the fact that he is out of possession and therefore no illegality or irregularity can be attributed to the proceedings initiated by the Revenue authorities to cancel the patta, since there is no dispute with regard to the fact that the subject property is now used only as a road and the concurrent findings of the Civil Court have also established the fact that the Writ Petitioner is not in physical possession while dismissing his suit for permanent injunction. However, at the same time the appellants have categorically admitted the Writ title over the property and also the fact that originally patta was issued to the Writ Petitioner. Infact, it is also the specific admission of the appellants that exercise was also carried out to verify the genuineness of the patta and it was ultimately found that the patta was also genuine. Under such circumstances, when the petitioner has lost his valuable property he is certainly entitled to compensation.

12. The grievance of the appellants in this regard is that they had voluntarily offered to issue a TDR certificate in lieu of compensation and that the TDR certificate can be financially exploited by the Writ Petitioner and therefore, the order of the learned Single Judge directing payment of compensation under the new Act was clearly unwarranted and erroneous.



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We find force in the said submissions of the learned counsel for the appellants, especially in view of the fact that the 1st respondent/petitioner has lost possession of the property several years back and therefore it would not be proper for the Writ Court to direct payment of compensation as per the new Act viz., Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

13. We have already noticed that the authorities have offered to issue a TDR certificate to the Writ Petitioner in lieu of compensation. The learned Single Judge has rightly held that the act of the appellants cannot be termed as an encroachment since the property was entered upon only for public purposes and the land is being used as a road for past 25 years. We therefore feel that it would be just and proper to direct the Writ Petitioner to submit a representation to the appellants within a period of two weeks from the date of receipt of a copy of this judgment, choosing to accept the offer of issuance of TDR certificate in lieu of compensation proportionate to the land area lost by the Writ Petitioner, however, if the Writ Petitioner is not willing to accept the TDR certificate being offered by the appellants, then it shall be open to the Writ Petitioner to approach the Civil Court



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seeking appropriate compensation. In the event of the Writ Petitioner agreeing to accept the TDR certificate, then the appellants shall issue the necessary TDR certificate to the Writ Petitioner within a period of four weeks from the date of receipt of a copy of this judgment. Otherwise, the Writ Petitioner will be at liberty to approach the competent Civil Court and seek compensation. In view of the time lost in prosecuting the Writ Proceeding limitation shall not be put against the Writ Petitioner if the suit is filed within 3 months from the date of the receipt of a copy of this judgment.

14. For the foregoing reasons, Writ Petition is dismissed and Writ Appeal is allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K.J) & (P.B.B.J)
26.07.2023

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Neutral Citation: Yes/No



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To

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Chennai-600 003

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Egmore, Chennai-600 031

3.The Tahsildar
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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J

(kpr)

Pre-delivery judgment in
W.A.No.858 of 2017 and
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26.07.2023