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W.P. No.25849 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.08.2023

DELIVERED ON: 10.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
and
THE HONOURABLE MR. JUSTICE K. RAJASEKAR

W.P. No.25849 of 2017 & W.M.P. No.27290 of 2017

Shanthi

Petitioner

v

- 1 The Deputy Collector (Revenue) North
Revenue Complex
Saram
Puducherry
- 2 The Station House Officer
Lawspet Police Station
Puducherry
- 3 The Tahsildar
Taluk Office
Oulgaret
Puducherry
- 4 The Executive Engineer
Public Works Department
Irrigation Department
Puducherry

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking
a writ of certiorarified mandamus calling for the records pertaining the order



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(R)/N/LA/2017/1966 and quash the same as illegal and invalid and consequently, direct the first respondent to consider the petitioner's representation dated 05.06.2017 within a time frame.

For petitioner Mr. R. Udhayakumar

For respondents Mr. Vasantha Kumar
Addl. Govt. Pleader (Puducherry)

ORDER

K. RAJASEKAR, J.

This writ petition impugns the proceedings dated 11.08.2017 issued by the first respondent, whereby and whereunder, the petitioner's request to stop the proposed demolition of her construction in the subject property, was turned down and the petitioner was also directed to clear the encroachment made by her in the Government land. Besides seeking quashment of the proceedings impugned, the petitioner seeks consideration of her representation dated 05.06.2017 also.

2 The petitioner's case could be succinctly stated thus:

2.1 The petitioner purchased a vacant land measuring 860 sq. ft. in S.No.181/9C in Saram Revenue Village, Oulgaret Municipality, Puducherry, as per sale deed dated 27.03.2007 from one P. Munuswamy. The predecessors-in-title of the said Munuswamy had already obtained a No



Objection Certificate from the first respondent before purchasing the property to know, acquisition proceedings, if any, that had taken place in respect of the land purchased by him. Likewise, the petitioner too obtained a No Objection Certificate from the National Highway Division of the Public Works Department for purchasing the property and thereafter, started constructing a commercial building.

2.2 After obtaining planning permit, the construction reached its lintel level and at that stage, the second respondent intervened and ordered to stop the construction work on the ground that the petitioner has encroached the Government poramboke land.

2.3 Hence, the petitioner approached the fourth respondent, *viz.*, the Executive Engineer, Public Works Department, seeking exchange of land inasmuch as, the Public Works Department had encroached her land to an extent of 340 sq. ft., which was not agreed to.

2.4 Hence, the petitioner addressed a representation dated 10.05.2016 to the first respondent seeking demarcation of her land in S.No.181/9C, in response to which, the first respondent sent a reply dated 27.10.2016 stating that the construction made by the petitioner is on a Government poramboke land and that the petitioner has to approach the Directorate of Survey and Land Records, Puducherry, seeking demarcation. The third respondent also,



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for his part, sent a letter dated 18.07.2016 stating that the total extent in the southern portion of R.S.No.181/9 was acquired for laying East Coast Road and also suggested to verify the actual acquisition for the East Coast Road before proceeding further.

2.5 Meanwhile, the petitioner sent another representation to the Lt. Governor of Puducherry and subsequently, the matter was referred to Lok Adalat and the third respondent brought to the notice of the Lok Adalat that since the petitioner had encroached the Government poramboke land, there is a proposal to demolish the construction made by her in the encroached land.

2.6 Subsequently, the petitioner addressed a representation dated 05.06.2017 to the first respondent to sort out the issue amicably by looking into her grievance and since the same was not considered by the first respondent, she filed a writ petition being W.P.No.16152 of 2017 to consider her representation dated 05.06.2017, which was disposed of with a direction to consider and pass orders on her representation within three weeks.

2.7 She addressed yet another representation to the fourth respondent, who, in turn, forwarded the same to the first respondent, who considered her representation and passed orders on 11.08.2017 as stated in the opening paragraph, assailing the correctness of which, this writ petition has been filed.



3 The first respondent has filed a counter affidavit dated 13.11.2017

and an additional counter affidavit dated 20.03.2023, stating that the land in R.S.No.181/9/2 in Saram Revenue Village is covered under the Cadastre No.1168/2 to an extent of 00-16-10 hectares and that the same was acquired for laying East Coast Road; the said land was covered under Award No.5 of 1980 dated 03.03.1980 and possession also was taken and handed over to the Public Works Department on 22.04.1980; the then owners of the property, viz., Louis Chinnaiya Arokiasamy Mudaliar, Louis Prakasa Kanniah Mudaliar, Sons of Victor Jagannatha Mudaliar, John Ambrose and Jaya Ambrose Ligorie, have sold the entire extent of 00-16-10 hectares of land situated in R.S.No.181/9 in favour of the petitioner's vendors, viz., Munuswamy, by suppressing the fact that the land in question was acquired in 1980 and based on the representation made by the petitioner, a survey was also conducted and found that the petitioner had encroached the Government poramboke land in R.S. No.175 of Saram Revenue Village and even put up a construction thereon; hence, the petitioner's claim is not maintainable.

4 During course of hearing of this writ petition, *vide* order dated 06.07.2023, this Court, after hearing the rival submissions, appointed Mr.P.Dinesh Kumar, Advocate, as Advocate Commissioner, to inspect the property with the assistance of the Revenue officials and to find out whether



the construction put up by the petitioner is in R.S.No.181/9C or in R.S. No.175.

5 Accordingly, the Advocate Commissioner inspected the place and filed a report dated 15.08.2023, the relevant paragraphs of which, reads thus:

“7. After measurement of the petitioner's property, the disputed site was surveyed from the points of known boundaries in Survey No.182, 181 and 175, based on the current FMB sketch maintained by the Revenue officials. On aforementioned survey and measurement of the disputed property, it is found that 625 sq. ft. approx. of disputed site and construction approximately falls within S.No.175 and 205 sq. ft. approx. of disputed site and construction falls within S.No.181/8. In the present FMB sketch of S.No.181 maintained by the Revenue Official, there is no sub-division of property styled as “181/9C”. The copy of location sketch prepared by the Revenue officials is annexed herewith as Annexures No.6 and 7.

8 On comparison of the copy of certified copy of FMB sketch produced by the Revenue officials, which is currently maintained in their office, which is annexed herewith as Annexure No.8 and the FMB sketch produced by the petitioner annexed with the proceedings dated 05.12.2006, the anomaly concerning alleged existence of petitioner's property in S.No.181/9C is due to the discrepancy with respect to the fixation of the boundary of East Coast Road in Survey No.181/9/2 running from east to west on the northern side.

9. However, the survey of the disputed property on field based on the current FMB sketch of S.Nos.181,182 and 175 clearly shows that 625 sq. ft. approx. of the disputed property lies within S.No.175 and the remaining extent of 205 sq. ft. approx. lies within S.No.181/8. I have also drawn a plan clearly indicating the boundaries and demarcating the survey numbers within which the aforementioned dispute sites lies and the same is annexed herewith as Annexure No.9.”



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6 This Court thoroughly scanned through the available records, including the report of the learned Advocate Commissioner.

7 It is the case of the petitioner that she had purchased the land in S. No.181/9C only after due verification. She alleges that the land purchased by her is occupied by the Public Works Department and a water channel has been constructed thereon; hence, in the remaining portion of the land, she put up a construction and now, the Revenue Department claims that the building constructed by her stands in R.S. No.175, which is classified as a Government poramboke land.

8 However, it is worth mentioning that the petitioner has not produced any document to show the existence of S.No.181/9C. On the contrary, the respondents have filed a copy of the award dated 03.03.1980 passed in Award No.5 of 1980 by the Land Acquisition Officer, wherein, Serial No.18 deals with Cadastre No.1168/2 to an extent of 00-16-10 hectares and the names of the enjoyers have been mentioned as Louis Sinnaya, Louis Pragasam Kannaiyya, Sons of Louis Arokiasamy. The Acquisition Officer,



the Tribunal for Land Acquisition to identify the owners and distribute the award amount. Thus, the award dated 03.03.1980 shows that the entire extent of the land in S.No.181/9 has been acquired and compensation also has been deposited in the year 1980 itself.

9 Further, it is worth pointing out that no document for the existence of S.No.181/9C or proceedings relating to sub division of the lands in S.No.181/9 was produced before this Court. That apart, settlement register of the lands which was produced by the learned Additional Government Pleader (Puducherry) also shows that the land in S.No.175 has been classified as மடு. Superadded, the learned Advocate Commissioner also, in his report, has stated that the petitioner's constructed property falls in two survey nos., i.e., 625 sq. ft. of land in S.No.175 and 205 sq. ft. of land in S.No.181/8. The learned Advocate Commissioner has further stated that as per the FMB sketch maintained by the Revenue officials, there is no sub-division of property styled as S.No.181/9C.

10 Thus, the report of the learned Advocate Commissioner and the sketch produced before this Court also substantiate the case of the respondents that the petitioner has purchased the property which was not in existence. The



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respondents that the land in S.No.181/9 was acquired and compensation was also deposited in the Court. In the order impugned, the first respondent has stated that the land purchased by the petitioner falls in R.S.Nos.181/9 which land was acquired, and compensation was also deposited in the Court. It is also discernible that the land in R.S.No.181/9/2 also correlates with Cadastre No.1168/2 to an extent of 00-16-10 hectares and stands in the name of Louis Prakasam Kannaiah Mudaliar as per the Settlement Register. Hence, this Court finds that the first respondent has rightly forwarded the file to the Irrigation Division of the Public Works Department for clearing the encroachment on the Government poramboke land.

11 In the light of the discussion aforesaid, this Court is of the view that the petitioner's vendor, viz., Munuswamy, had purchased the property by incorporating S.No.181/9C in his sale deed and he had also obtained a No Objection Certificate for a non-existing survey number. Unfortunately, the petitioner who has not properly identified her land at the time of purchase from her vendor, had started to put up construction in the available land which falls within S.Nos.181/8 and 175, which do not belong to her.



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In the result, this writ petition fails and is accordingly dismissed as being devoid of merits. Costs made easy. Connected W.M.P. stands closed.

(S.V.N., J.) (K.R.S., J.)
10.11.2023

cad



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