



W.P(MD)No.3674 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3674 of 2012

1.P.Chinnachamy

2.P.Shanmugavel

... Petitioners

Vs.

1.The District Collector,
Dindigul District.

2.The Municipal Commissioner,
Oddanchatram Municipality,
Oddanchatram,
Dindigul District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to impugned order dated 09.02.2012 passed by the 2nd respondent in Na.Ka.No.83/2012/THAA, quash the same and consequently direct the 2nd respondent to pay suitable compensation to petitioner with respect to 45 cents of land in S.Nos.503/1, 503/2 and 307/1B at Oddanchatram village.



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For Petitioners : Mr.S.Anand Chandrasekar,
For M/s.Sarvabhauman Associates.

For Respondents : Mr.S.Shanmugavel,
Add. Government Pleader for R1.
Mr.J.Parekh Kumar for R2.

ORDER

The writ petitioner herein is a resident of Nadupanni Thottam, Palani Gounden Pudur, Oddanchatram Taluk. The petitioner's case is that the land belonging to him was taken over by the local body for forming a road without adopting due process of law. His specific grievance is that compensation was not paid. Since the representations submitted by the petitioner before the authorities did not elicit any response, the petitioner filed W.P.(MD)No.1944 of 2011. Vide order dated 09.11.2011, this Court directed the District Collector, Dindigul District to consider the petitioner's representation and pass order on merits and in accordance with law. Pursuant to the said direction, the impugned order came to be passed rejecting the petitioner's request. Challenging the same, the present writ petition came to be filed.



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2.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. The core argument of the petitioner is that the patta in respect of the land continues to stand in the name of the petitioner. However on ground, the position is different. A public road is running thereon. The road had been formed 20 years prior to the filing of this writ petition. It is true that the petitioner had not come to the Court immediately. But the petitioner's prayer for compensation cannot be negated on grounds such as estoppel, acquiescence or adverse possession. Relying on the decisions of the Hon'ble Supreme Court reported in **(2013) 1 SCC 353 (Tukaram Kana Joshi v. Maharashtra Industrial Development Corporation)** and **(2020) 2 SCC 569 (Vidya Devi v. State of Himachal Pradesh)**, the learned counsel for the petitioner contended that though the right to property might have ceased to be a fundamental right under Article 19(1)(f) of the Constitution of India, it still enjoys the status of a constitutional right under Article 300-A of the Constitution of India. The State cannot be allowed to expropriate any body's property without due process of law. He contended that the petition cannot be thrown out on



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the ground of laches. He called upon this Court to set aside the impugned order and grant relief as prayed for.

3.The local body has filed a detailed counter affidavit and the learned standing counsel took me through its contents. The learned standing counsel for the local body as well the learned Additional Government Pleader for the District Collector, Dindigul submitted that the impugned order is well reasoned and that it does not call for interference. They pressed for dismissal of the writ petition.

4.I carefully considered the rival contentions and went through the materials on record. As rightly contended by the learned counsel for the petitioner, in matters relating to taking over of a private property, the State cannot be allowed to plead defences such as acquiescence, laches, estoppel or adverse possession. Article 14 of the Constitution of India mandates the State to display fairness in all its dealings. This proposition canvassed by the learned counsel for the petitioner is beyond cavil. The two decisions relied on by the learned counsel for the petitioner may not be applicable to the facts and circumstance of this case. In the decision



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reported in (2013) 1 SCC 353 (*Tukaram Kana Joshi v. Maharashtra Industrial Development Corporation*), specific dates have been set out.

The property of the petitioner therein was acquired in the year 1964. On 06.06.1964, notification under Section 4 of the Land Acquisition Act, 1894 was issued. A fresh notification was issued on 04.05.1981. On 30.04.1988, possession was handed over to the City Industrial Development Corporation of Maharashtra (CIDCO). Likewise in the decision reported in (2020) 2 SCC 569 (*Vidya Devi v. State of Himachal Pradesh*), the State took over the land of the appellant therein in 1967 – 1968. Proceeding under the Land Acquisition Act, 1894 had been taken.

5. In the case on hand, if the petitioner had been able to draw my attention to any specific proceeding under which the land had been taken over, certainly I would have awarded compensation disregarding the delay in the institution of the writ proceedings. In the affidavit filed in support of the writ petition, the petitioner had taken a stand that the land was taken over some 20 years ago. The writ petition was filed in the year 2014. Roughly, one can take it that according to the petitioner, he was



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dispossessed in the year 1994. This averment set out in the affidavit filed in support of the writ petition has been shown to be incorrect by the materials produced by the learned standing counsel for the second respondent. The typed set containing the encumbrance certificates in respect of the petition mentioned land has been produced. It can be seen therefrom that in the sale deeds executed by the petitioner in the year 1988, Palani Gounden Pudur road has been shown as one of the four boundaries. The petitioner's family had owned a larger extent of land and Palani Gounden Pudur road cuts through the same. The road has been shown as one of the boundaries in the some of the properties alienated by the petitioner.

6.In the counter affidavit, the Municipal Commissioner has taken a specific stand that the road in question has been in existence since time memorial. He would rely on the testimony of local residents to say that the road has been there for more than 60 – 70 years. When the public are using a particular pathway, the local body is obliged to treat as public road and also lay road. Merely because in the revenue record mutation has not been effected or because the patta still continues to stand in the



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name of the petitioner, that would not by itself furnish cause of action for claiming compensation. The case laws relied on by the learned counsel for the petitioner would come to the petitioner's aid only if the petitioner can point to a definite legal proceeding under which the property was taken over. Whether the facts are rather indeterminate, lapse of time would definitely come in the way of the petitioner from claiming compensation. It is on this ground, I have to respectfully distinguish the case laws relied on by the learned counsel for the petitioner.

7. That apart, judicial notice must be taken note of the fact that formation of road on one's land does enhance the value. The petitioner had earlier owned a larger extent and even though a substantial chunk has been consumed by the road, I am satisfied that the petitioner had been amply compensated by the sharp appreciation of value. While the delay in lodging claim may not be put against the petitioner, the description of the petition mentioned road as one of the four boundaries would definitely come in the way. That would only show that the petitioner had taken advantage of the fact that the road has been formed. When the petitioner knew that the road was in existence in the year 1987



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itself, nothing stopped him from coming to the Court immediately. He has not done so. Therefore, in the case on hand, both the grounds taken by the respondents namely, laches as well as acquiescence would operate against the writ petitioner. The order impugned in the writ petition is sustained and the writ petition is dismissed. No costs.

28.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

The District Collector,
Dindigul District.



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G.R.SWAMINATHAN, J.

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