



W.A(MD)No.216 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2023

CORAM :

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.A(MD)No.216 of 2023
and
C.M.P(MD)No.2633 of 2023**

Tamilmaran

... Appellant

VS.

1. The District Collector,
O/o. The District Collector,
Thanjavur District.

2. The Commissioner,
O/o. The Commissioner,
Kumbakonam Municipal Corporation,
Kumbakonam,
Thanjavur District.

3. Thiru N.Venkatachalam
Then Tahsildar Kumbakonam,
Now Tahsildar, Highways Land Acquisition,
Kumbakonam,
Thanjavur District.

4. Thiru M.Senthil Murugan,
Commissioner,
Kumbakonam Municipal Corporation,
Kumbakonam.

... Respondents



W.A(MD)No.216 of 2023

PRAYER : Appeal filed under Clause 15 of Letters Patent, against the order passed in W.P(MD)No.800 of 2023 dated 19.01.2023.

For Appellants : Mr.Elephant G.Rajendran
For R1 : Mr.P.Thilakkumar, Government Pleader
For R2 : Mr.P.Veera Kathiravan
Additional Advocate General, assisted by
Mr.M.Rajarajan, Standing Counsel

JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Challenge in the writ appeal is to the dismissal of the writ petition filed by the appellant with the following prayer:-

"To issue a Writ of Mandamus, directing the 2nd respondent namely, the Commissioner not to interfere with the petitioner's peaceful possession and enjoyment of the petitioner's nanja land bearing T.S.No.1019 an extent of 1.12 acres in Ward No.6, Block 17 Ullur Village, Kumbakonam Town."



W.A(MD)No.216 of 2023

WEB COPY

2. The Writ Court had dismissed the writ petition solely relying upon an earlier judgment of this Court made in W.P(MD)No. 11839 of 2014, dated 22.07.2014.

3. We have heard the learned counsel appearing for the appellant, learned Government Pleader appearing for the 1st respondent and the learned Additional Advocate General appearing for the 2nd respondent in detail.

4. While the appellant claims that his forefather was a cultivating tenant of the land in question and the same was assigned to him under the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965, it is the claim of the municipal corporation that the land was put in its possession even in the year 1976 under G.O.Ms.No.2620, dated 27.12.1976. This claim of the municipal corporation is very seriously disputed by the appellant. The appellant would rely heavily upon certain entries in a register which is dated 06.10.1976, wherein, it is shown that the assignment made in favour of the predecessor in interest of the appellant of one acre



W.A(MD)No.216 of 2023

and 12 cents of land in Re-Survey No.1019 as withheld, to show that an assignment was made in favour of his predecessor.

5. Mr.Rajendran, learned counsel appearing for the appellant would draw our attention to the receipts for payment of money towards instalments payable towards the cost of the land. Pointing out that the Authorised Officer, Land Reforms, had received the cost of the land in bits and pieces upto 2nd August 1982, Mr.Rajendran would contend that the assignment stands conclusively proved. He would also rely upon the entries made under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969, recognising G.Narayanasamy Padayachi, the forefather of the appellant, as a cultivating tenant.

6. Mr.Veera Kathiravan, learned Additional Advocate General appearing for the respondent State would contend that even in the year 1976, the assignment was made in favour of the Municipality and he would also rely upon certain communication dated 10.04.1984 to show that the forefather of the appellant namely, G.Narayanasamy Padayachi was assigned land in Survey No.811-A.1 and R.S.No.2121 of Palavathankattalai Village of Kumbakonam Taluk.



W.A(MD)No.216 of 2023

Reliance is also placed on the proceedings of the Authorised Officer, Land Reforms, Kumbakonam, dated 26.12.1980.

7. Mr.Rajendran would, however, rely upon a judgment of the Division Bench of this Court in **T.M.Sulochana Ammal vs. The Commissioner and Secretary to Government Revenue Department, Chennai**, reported in **[2012] 1 LW 490**, to contend that the land which was declared surplus under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, cannot be assigned for housing purposes. We also find that certain civil suits filed by other persons claiming under the very same Narayanasamy Padayachi had been dismissed. In such circumstances, we find that there is a very serious factual dispute regarding the possession of the appellant.

8. While the appellant claims that the municipality was never put in possession of the land and he was doing agriculture, the municipality would claim that it had always been in the possession and the appellant had nothing to do with the land in question. Sitting under Article 226 of the Constitution of India, a Writ Court or the Writ Appellate Court suffer a handicap, since they cannot look



W.A(MD)No.216 of 2023

into the evidence and decide on the admissibility or otherwise of the documents. As we had already pointed out, various documents have been produced by the parties in support of their claim and it is claimed that all of them are official documents. We do not think we can venture upon the question as to which of the documents is genuine. We find that the issue relating to possession has become little complicated in the light of documents depicting rival positions. We do not think we will be justified in going into that question and pronouncing one way or the other.

9. We are, therefore, constrained to affirm the order of the Writ Court and dismiss the writ appeal. We make it clear that we have not pronounced upon the rights of the parties. The dismissal of the appeal or the writ petition will not have a bearing on the claim made by either of the parties. We leave it open to the appellant to move the appropriate civil court and establish his right, title and possession over the suit properties. We direct maintenance of *status quo* by the parties for a period of 45 days to enable the appellant to approach the competent civil court.

10. The Writ Appeal is dismissed with the above observations. No costs. Connected miscellaneous petition is closed.



W.A(MD)No.216 of 2023

WEB COPY

(R.SUBRAMANIAN, J.) & (L.VICTORIA GOWRI, J.)
26.06.2023

Index : Yes / No
Neutral Citation : Yes / No
bala

To

1. The District Collector,
O/o. The District Collector,
Thanjavur District.

2. The Commissioner,
O/o. The Commissioner,
Kumbakonam Municipal Corporation,
Kumbakonam,
Thanjavur District.

3. Thiru N.Venkatachalam
Then Tahsildar Kumbakonam,
Now Tahsildar, Highways Land Acquisition,
Kumbakonam,
Thanjavur District.

4. Thiru M.Senthil Murugan,
Commissioner,
Kumbakonam Municipal Corporation,
Kumbakonam.



WEB COPY



W.A(MD)No.216 of 2023

R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

bala

JUDGMENT MADE IN
W.A(MD)No.216 of 2023
DATED : 26.06.2023