



W.P.(MD) No.13308 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

W.P.(MD)No.13308 of 2020

Kathirvel @ Selvendran

...Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Deputy Secretary to the Government,
Adi Dravida & Schedule Tribes Welfare Department,
Chennai.

2.The District Collector,
Collectorate,
Thiruchirappalli District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ or direction or order more in the nature of Writ of Mandamus directing Respondents herein to consider the petitioner's representation dated 21.07.2020 and pass appropriate orders to restore the land to an extent of 57 cents in S.No.26/8 in Dhamalavarupayam, Woraiyur, Thiruchirappalli acquired under Land Acquisition Act to my name in the light of the order dated 20.09.2004 passed in W.P. No.9357 of 1997 on the file of the Principal Bench of this Court within a time stipulated by this Court.



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For Petitioner :Mr.D.Nallathambi

For Respondents :Mr.K.S.Selvaganesan
Additional Government Pleader

ORDER

This writ petition has been filed for issuance of writ of mandamus directing the respondents to consider the representation made by the petitioner on 21.07.2020 and to restore the subject land in S.No.26/8 measuring an extent of 57 cents in the name of the petitioner in line with the order passed by this Court in WP No.9357 of 1997 dated 20.09.2004.

2. The subject property along with larger extent of property became the subject matter of land acquisition proceedings under the Land Acquisition Act, 1894. The acquisition proceedings were challenged by the petitioner in WP No.9357 of 1997 before this Court and the relevant portions in the order passed by this Court on 20.09.2004 are extracted hereunder:-

“4. On perusal of the records and upon hearing the learned counsel for the petitioner, this Court is of the view that on the part of the respondents/Government, unless they come forward to satisfy the Court to the extent that the land of the petitioner's grandmother which has been acquired for the purpose for which it has been utilized, since the



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acquisition is of the year 1973 and in spite of three decades having gone by, unless tangible reasons are assigned by the Government that they have utilized, the property for the purpose that it was acquired, they will have no case against the claim of the petitioner.

5. Today, when the above matter has been taken up for consideration, nothing comes out fruitful from the side of the respondents nor a counter affidavit has been filed. Since on the part of the respondents, they are not able to satisfy the Court that they have utilized the petition mentioned property for the purpose that it has been acquired ie., for providing house sites to poor Adi Dravidas, it is only proper to restore the lands to the actual owners, if they are alive, or to their legal representatives as the petitioner herein. Therefore, in the circumstances of the case, this Court is left with no option but to allow the above writ petition as prayed for, directing the respondents to surrender possession of the lands to the extent of 57 cents in S.No.26/8 in Dhamalavarupayam, Woraiyur, Trichirapalli to the heirs of the original owner.

In result,

(i) the above writ petition succeeds and the same is allowed;

(ii) the proceedings of the first respondent in his Ne.Mu.K.No.418 7/NE. A.3/96 dated 13.2.1997 are hereby quashed;

(iii) the second respondent is hereby directed to restore the lands to an extent of 57 cents in S.No.26/8 in



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Dhamalavarupayam, Woraiyur, Trichirapalli, to the actual owner who is able to produce the heirship certificate issued by a competent Court of law that he / she is the legal heirs of the deceased T.Chellammal, within thirty days of causing production of proof that he / she is the legal heir, whether it is the petitioner alone or some others or both, as the case may be.

(iv) no costs.”

3. In view of the above order, the acquisition proceedings were quashed and the second respondent was directed to restore the subject land in the name of the actual owner.

4. The grievance of the petitioner is that a registered will has already been executed in favour of the petitioner on 29.12.1959 and the same was also brought to the notice of the respondents and inspite of the same, the property was not restored in the name of the petitioner as directed by this Court. Hence, a representation was made by the petitioner along with all the relevant documents seeking for restoration of the property on 21.07.2020. Since the same was not considered, the present writ petition has been filed before this Court.



WEB COPY 5. The second respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:-

“5. It is further submitted that as against the above impugned letter the Petitioner herein has filed W.P.No.9357 of 1997 and the Hon'ble High Court by order dt.27.06.1997 in M.P.No.14960 of 1997 restrained the Special Tahsildar (A.D.W.) Trichy from any manner dealing with the demised property pending further orders on the Writ Petition. After that the Hon'ble High Court has pronounced the following order on 20.09.2004 in the W.P.No.9357/1997 and thereby the above said Impugned letter dt.13.02.1997 was quashed.

"The 2nd Respondent (the District Collector) is hereby directed to restore the lands to an extent of 0.57cents, in Survey No.26/8 in Dhamalavarupayam village, Woraiyur, Trichirappalli to the actual owner who is able to produce the heirship certificate issued by a competent Court of Law that he / she is the legalheirs of the deceased T.Chellammal, within 30 dyas of causing production of proof that he / she is the legalheir, whether it is the Petitioner alone or some other or both, as the case may be.”

6. Things being so it is submitted that the Petitioner herein filed another M.P.No.16957 of 2006 in W.P.No.9357 of 1997 on the file of the Principal Bench of the Hon'ble High Court praying for modifying the order dt.20.09.2004 to the effect that the demised lands may be restored to him without insisting the production of heirship Certificate. However the Hon'ble High Court has pronounced the order on 25.11.2008 in the above M.P. as below:-



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"It is for the Petitioner to establish the validity of the Will and get the Legal heirship Certificate and on production of such Certificate, the 2nd Respondent is directed to act as per the earlier order passed by this Court."

7. However it is submitted that the Petitioner herein was remaining silent for all along the years from Nov.2008 onwards and suddenly by representation dt.11.07.2020 again requested the Respondents herein to restore the demised lands to him without insisting Succession Certificate from the Competent Court of Law by put forthung untenable contentions. The said representation was followed by the Impugned representation on 21.07.2020 to the respondents herein. After that the petitioner has filed this writ petition."

6. Heard Mr.D.Nallathambi, learned counsel for the petitioner and Mr.K.S.Selvaganesan, learned Additional Government Pleader for the respondents.

7. In the instant case, there are no serious disputes on the facts of the case. The subject property was acquired and subsequently, proceedings were quashed and this Court had directed the second respondent to restore the property in the name of the actual owner of the property. While giving this direction, this Court made it clear that the



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actual owner should produce the legal heirship certificate issued by the competent Court of law. This direction was further confirmed by this Court, when a modification petition was filed by the petitioner in WPMP No.16957 of 2006. While passing this order on 25.11.2008, this Court made it clear that it is for the petitioner to establish the validity of the will and get the legal heirship certificate from the concerned Court.

8. In view of the above orders passed by this Court, the respondents cannot merely act upon the will submitted by the petitioner and the petitioner has to necessarily get the succession certificate from the competent Court. For the reasons best known to the petitioner, the petitioner did not take any steps from the year 2008 and the petitioner went into hibernation and all of a sudden he wakes up in the year 2020 and makes a representation to the respondents to restore the property in the name of the petitioner.

9. The petitioner cannot be allowed to revolve around the earlier order passed by this Court and the petitioner has to necessarily get the succession certificate from the competent Court. If this Court directs the second respondent to act upon the will submitted by the petitioner and



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restore the property in the name of the petitioner, it will virtually amount to modification of the earlier order passed by this Court and set at naught the order passed in the modification petition on 25.11.2008. In view of the same, the respondents cannot act upon the representation made by the petitioner, since acting upon the said representation to restore the property in the name of the petitioner will virtually amount non compliance of the earlier order passed by this Court.

10. In view of the above discussion, it is left open to the petitioner to approach the competent Court and seek for succession certificate based on the registered will that was executed in favour of the petitioner on 29.12.1959. Upon production of the succession certificate from the competent Court, the second respondent shall restore the property in the name of the petitioner as directed by this Court in WP No.9357 of 1997. It goes without saying that the property shall be used by the petitioner after it is restored in his name as per the wishes of the propounder of the will.



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WEB COPY 11. This writ petition is disposed with the above directions. No costs.

12.10.2023

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No

SM

To

1.The Deputy Secretary to the Government,
Adi Dravida & Schedule Tribes Welfare Department,
Chennai.

2.The District Collector,
Collectorate,
Thiruchirappalli District.



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N. ANAND VENKATESH, J.

SM

Order made in
W.P(MD)No.13308 of 2020

Dated
12.10.2023