



W.P.(MD)No.19156 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 09.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.19156 of 2021

1.R.B.Prema Kumari

2.G.Prem Anand

3.Krishna G.Thampi

4.T.Lekshmi Amma

5.K.Prasad

6.K.L.Preetha

... Petitioners

Vs

1.The State of Tamil Nadu,
Represented by
the District Collector of Kanyakumari,
at Nagercoil, Kanyakumari District.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The Chief Educational Officer,
Kanyakumari, at Nagercoil,
Kanyakumari District.

4.The District Educational Officer,
Thiruvattar, at Marthandam,
Kanyakumari District.



W.P.(MD)No.19156 of 2021

5. The Headmaster,
Government High School, Thiruvattar,
Kanyakumari District.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to consider and dispose of the petitioner's petition dated Nil- 10.2020 sent to respondents 1 to 4 on 21.10.2020 intimating the decision to the petitioners within a time to be fixed by this Court.

For Petitioners : Mr.K.N.Thampi

For Respondents : Mr.P.Thambidurai,
Government Advocate

ORDER

This Writ Petition has been filed for the issue of writ of mandamus directing the respondents to consider the representation made by the petitioners on 21.10.2020, wherein, the petitioners are seeking for the payment of compensation from the respondents.

2. The case of the petitioners is that the subject property in old Survey No.2568 (correlating to R.S.No.864/1) was allotted in a partition suit in O.S.No.2107 of 1102 (M.E) corresponding to 1926/27. One Krishnanthambi was in possession and enjoyment of an extent of 87 cents



W.P.(MD)No.19156 of 2021

and he died in the year 1964 and on his death, the property was succeeded by Gopinathan Thampi and Kesavan Thampi.

3. A Government school was running adjacent to the property and the compound wall of the property was demolished and the School started having access to the property. Hence, a suit came to be filed by the above said Gopinathan Thampi and Kesavan Thampi in O.S.No.587 of 1983 before the learned Principal District Munsif, Padmanabapuram, seeking for the relief of declaration of title and possession over the property measuring an extent of 87 cents. This suit was also contested by the State and the Educational Department. The trial Court by Judgment and Decree dated 09.04.1992, granted the relief of declaration, but, however, refused to grant the relief of possession on the ground that the School had been using this property for a long period of time and therefore, they are entitled to retain possession by means of adverse possession.

4. The above Judgment and Decree passed by the trial Court became a subject matter of appeal before the Sub Court,



W.P.(MD)No.19156 of 2021

Padmanabhapuram in A.S.No.65 of 1992. The Appellate Court by Judgment and Decree dated 16.08.1996 dismissed the appeal and confirmed the Judgment and Decree passed by the trial Court. Thus, the relief of declaration alone was granted without granting possession of the subject property.

5. The petitioners are successors in interest for the property and according to the petitioners, they are entitled for compensation for the property. The petitioners, therefore, made a representation in this regard to the respondents on 21.10.2020 seeking for compensation. Since the same was not considered, the present Writ Petition has been filed before this Court.

6. The fourth respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

“4. It is submitted that the Education Department constructed Appar Primary school in the year 1073 the seal of the Trivancore cochin is engraved in the Building. The land is in possession of the Government from the 18 century. There is no encroachment. The



WEB COPY



W.P.(MD)No.19156 of 2021

petitioners have stated that the students of the High school Thiruvattar, have damaged the eastern side of the property. The Eastern side of the property happens to be Kulasekaram to Marathandam Road. is submitted that in view of the fact that the land was in possession of the government long before say from the year 1073 and from the year 18th century the re is no; question of any tress passing by the Respondents.

5. It is submitted that having failed in the civil suit, the petitioners are now trying to get the possession of the land by filing this writ Petition, suppressing all the vital facts. The petition dated 21-10-2020 of the petitioners will show that the petitioners are very much interested in getting monetary benefit from the land which is no more belongs to them. It is a false claim over a property on which they have no right. Hence there is no necessity to give any reply to the notice. The petitioners themselves are aware of this fact, as when the civil having jurisdiction has confirmed the fact.”

7. Heard the learned counsel appearing on either side.



W.P.(MD)No.19156 of 2021

WEB COPY

8. The learned counsel appearing for the petitioners submitted that the State cannot knock off the property on the ground of adverse possession and therefore, the petitioners are entitled for at least compensation for the property. To substantiate this submission, the learned counsel relied upon the Judgment of the Hon'ble Apex Court in the case of *Vidaya Devi Vs. The State of Himachal Pradesh and Others* reported in **(2020) 2 SCC 569**. The learned counsel submitted that the Hon'ble Apex Court had deprecated the State for claiming adverse possession and it was held that the State cannot be permitted to perfect its title under the doctrine of adverse possession. The learned counsel further submitted that the petitioners cannot be deprived of compensation on the technical plea of laches / delay and for this issue also, the learned counsel relied upon the above Judgment.

9. The learned Government Advocate appearing on behalf of the respondents submitted that the petitioners are not entitled for any compensation, since the civil proceedings have already reached finality. This was also communicated to the petitioners by the fourth respondent.



W.P.(MD)No.19156 of 2021

The learned counsel for the petitioners submitted that no such communication was received by the petitioners till date and that a copy of the same was furnished only during the course of hearing.

10. In the considered view of this Court, the civil proceedings declared the title to the property in favour of predecessor in title. However, the relief of possession was denied by applying the doctrine of adverse possession. The petitioner has now relied upon the Judgment of the Hon'ble Apex Court to contend that the State cannot take away the lands of its citizen by applying the doctrine of adverse possession. The learned counsel has relied upon the said Judgment on the ground that the relief cannot be denied on the mere plea of laches / delay.

11. The above stand that has been taken by the petitioners will have to be necessarily considered by the respondents. In view of the same, there shall be a direction to the first respondent to deal with the representation made by the petitioners on 21.10.2020 on its own merits and in accordance with law and in the light of the specific plea that has been taken by the petitioners which has been recorded supra. A final decision



W.P.(MD)No.19156 of 2021

shall be taken by the first respondent and the same shall be communicated to the petitioners within a period of eight (8) weeks from the date of receipt of a copy of this order.

12. This Writ Petition is disposed of with the above directions.

No costs.

09.11.2023

NCC:yes/no
Index:yes/no
Internet:yes/no
tsg

To

- 1.The State of Tamil Nadu,
Represented by
the District Collector of Kanyakumari,
at Nagercoil, Kanyakumari District.
- 2.The Director of School Education,
College Road,
Chennai-600 006.
- 3.The Chief Educational Officer,
Kanyakumari, at Nagercoil,
Kanyakumari District.
- 4.The District Educational Officer,
Thiruvattar, at Marthandam,
Kanyakumari District.



W.P.(MD)No.19156 of 2021

WEB COPY

5. The Headmaster,
Government High School, Thiruvattar,
Kanyakumari District.



WEB COPY



W.P.(MD)No.19156 of 2021

N.ANAND VENKATESH, J.

tsg

W.P.(MD)No.19156 of 2021

09.11.2023