



W.P.(MD)No.10706 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.10706 of 2014
and M.P.(MD)Nos.2 and 3 of 2014

1. Elanjiyum
2. Arunprasad
3. V.Parameswaran

... Petitioners

versus

1. The State of Tamilnadu
Rep. by the Secretary,
Revenue Department,
Secretariat,
Fort St. George,
Chennai – 600 009.

2. The District Collector,
Tiruchirappalli District,
Tiruchirappalli.

3. The Tahsildar,
Tiruchirappalli East,
Tiruchirappalli.

4. The Revenue Divisional Officer,
Tiruchirappalli.

... Respondents

(R4 is impleaded vide order dated 09.01.2018
in M.P.(MD)No.4 of 2014)



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Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 3rd respondent vide his order Na.Ka.A1/8688/2014 dated 24.06.2014 issued to the petitioners 2 and 3 herein, quash the same and consequently direct the respondent to renew the lease of the land to an extent of 0.0202 sq.m. at Survey No.7, Ward F, Block -26, Tiruchirappalli in favour of the petitioner.

For Petitioners : Mrs.AL.Ganthiammal
Senior Counsel
for M/s.D.Geetha
For Respondents : Mr.S.Shaji Bino,
Special Government Pleader

ORDER

The first petitioner's husband P.Kathaperumal approached the Government in the year 1984 that there is no place for physical activities and a school for physical education at Tiruchirappalli and requested for allotment of a land for running a fitness centre or a School for physical education at Tiruchirappalli. The Government has also considered the request of the petitioner and allotted a land, having an extent of 202 square meters, situated in Town Survey No.7, Ward F,



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Block -26, Tiruchirappalli, by order dated 17.01.1986 with certain conditions. The allotment was made only for a period of 10 years commencing from 07.11.1985 subject to certain conditions. The relevant conditions are as under:

(i) The grant is liable to be cancelled, if it is found that it was grossly inequitable or was made under a mistake of fact or owing to misrepresentation or fraud or that there was irregularity in the procedure.

(ii) In the event of such cancellation of the grant, the grantee shall not be entitled to compensation for any loss caused to him by the cancellation.

(iii) The grantee shall use the land for the purpose of running the Gymnasium only and shall not be use for any other remunerative purposes.

2. Admittedly, the grantee P.Kathaperumal died on 20.04.1987 and thereafter, his wife one Elanjiyum, who is the first petitioner herein, was running the Gym. Therefore, she made a request to the second respondent/the District Collector, Tiruchirappalli, on 21.09.1993 to change the grant in her favour. The Tahsildar,



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Tiruchirappalli, has also made a recommendation for change of grant in favour of the petitioner, to the District Collector, Tiruchirappalli, on 31.12.1993. However, the District Collector, Tiruchirappalli, has issued a show cause notice on 23.04.1999 that the grantee Kathaperumal died on 20.04.1987 and the first petitioner has also put up two shops against the condition of grant and therefore, they are inclined to cancel the grant and also provided an opportunity to offer an explanation for the show cause notice. The petitioner has also submitted her explanation on 27.10.1999. The Tahsildar, Tiruchirappalli and the Revenue Divisional Officer have conducted a spot inspection and filed a report before the District Collector, Tiruchirappalli. The District Collector, Tiruchirappalli, finally cancelled the order of grant on 08.04.2002, which was challenged by the first petitioner before this Court in W.P.No.13347 of 2002 and the same was dismissed by this Court on 19.04.2002. Challenging the same, the first petitioner has preferred a Writ Appeal in W.A.No.1261 of 2002 and a Division Bench of this Court, by Judgment dated



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22.01.2007, has passed the following order.

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“9. According to the learned counsel for the appellant, as per the said order of the Division Bench, she is using the property in question. Taking note of the information furnished in her writ petition, we are of the view that ends of justice would be met by permitting the petitioner/appellant to make a fresh application/representation to the first respondent mentioning all the details within a period of three weeks from the date of receipt of a copy of this order. If any such application/representation is made within the time mentioned above, the first respondent is directed to consider and pass appropriate orders in accordance with law within a period of 12 weeks from the date of receipt of a copy of such application. It is made clear that if the Government decides to accept her request, they are free to fix reasonable rent and impose appropriate conditions. In view of the direction of the Division Bench dated 29.04.2002, the petitioner/appellant is permitted to use the property in question till final decision being taken by the Government as directed above.”

Pursuant to the order of this Court, the petitioner has submitted a



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representation to the Government on 02.03.2007 and the same was rejected vide G.O.Ms.No.167, Revenue Department, dated 19.05.2011 on the ground that the condition of grant has been violated by the first petitioner. Based on this GO and other proceedings of the Revenue Divisional Officer, the Tahsildar, Tiruchirappalli, has issued eviction notice on 24.06.2014, which is under challenge in this writ petition.

3. This writ petition is filed by one Elanjiyum, W/o.P.Kathaperumal and one Arun Prasath, Proprietor of M/s.Suriya Electricals, Tiruchirappalli and one V.Parameswaran, Managing Partner, Annai Abirami Traders, Tiruchirappalli.

4. The learned Senior Counsel appearing for the petitioners submits that the land was granted to the first petitioner's husband P.Kathaperumal for the purpose of running a Gymnasium with an intention to develop physical activities at Tiruchirappalli. The first petitioner, wife of P.Kathaperumal, is running the Gym without any



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deviation, however, put up two shops to meet out the expenditure for running the Gym. She further submits that this Court in W.A.No.1261 of 2002, by order dated 22.01.2007, has permitted the petitioner to submit a representation to the Government and also directed the Government to consider the representation. While so, the Tahsildar, Tiruchirappalli, has issued the impugned notice, directing the petitioners to evict the premises and the Government has not taken any decision on the representation of the petitioner. The 3rd respondent/Tahsildar, Tiruchirappalli, who was also a party to W.A.No. 1261 of 2001, has failed to comply with the directions issued by this Court and the permission granted by this Court to use the property till the final decision is taken by the Government and when the Government has not taken any final decision, the 3rd respondent ought not to have issued this impugned eviction notice.

5. The learned Special Government Pleader disputed the contention of the petitioners that the Government has already taken a



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decision vide G.O.Ms.No.167, Revenue Department, dated 19.05.2011, wherein, the grant made in favour of the first petitioner's husband was cancelled for violation of terms and conditions and this is a consequential eviction notice issued by the Tahsildar, Tiruchirappalli and that too based on the said G.O.Ms.No.167, dated 19.05.2011. Therefore, the petitioners cannot maintain this writ petition as against the consequential eviction notice without challenging the Government Order in G.O.Ms.No.167, Revenue Department, dated 19.05.2011. The learned Special Government Pleader has also relied upon a decision of the Hon'ble Supreme Court in ***Edukanti Kistamma (dead) through LRs and others vs. S.Venkatareddy (dead) through LRs and others***, reported in ***2010 1 SCC 756***, wherein, it has been held as follows:

“22. It is a settled legal proposition that challenge to consequential order without challenging the basic order/statutory provision on the basis of which the order has been passed cannot be entertained. Therefore, it is a legal obligation on the part of the party to challenge the basic order and only if the same is found to be wrong,



consequential order may be examined (vide P.Chitharanja Menon v. A.Balakrishnan, H.V.Pardasani v. Union of India and Govt. of Maharashtra v. Deokar's Distillery).

23. Undisputedly, the grant of a right or a permit/licence under any statutory provision requires determination of rights and entitlement of the parties. Once such a right is determined, the issuance of the order on the basis of such determination remains a ministerial act.

24. In Kundur Rudrappa v. Mysore Revenue Appellate Tribunal, this Court examined the provisions of the Motor Vehicles Act, 1939, wherein Section 64 provided for an appeal against the grant or refusal of the grant of a permit on a route. In the said case, the appeal was filed only against the order of issuance. This Court held that such an appeal was not maintainable for the reason that issuance of permit was only a ministerial act, necessarily following the grant of the said permit and as no appeal was maintainable against the order of issuance. The order of the Tribunal was a nullity for want of competence. The Court further held that in such an eventuality, the permit granted to the other party could



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not have been cancelled and directed for issuance of the permit. Same view has been reiterated by this Court in Sharif Ahmad v. RTA.

25. In A.P.SRTC v. STAT, this Court observed that actual issue of permit cannot be equated to the grant thereof, as both are separate things and issuance will be consequential to the grant of the permit. In fact, it is the grant and not issuance of the permit, which requires to be challenged.”

6. The learned Senior Counsel appearing for the petitioners submits that the Government Order in G.O.Ms.No.167, Revenue Department, dated 19.05.2011, has not been served upon the petitioners. Therefore, she requested time to get instructions as to whether the Government Order in G.O.Ms.No.167, dated 19.05.2011 has been served upon the petitioners or not.

7. This Court considered the rival submissions made and perused the materials available on record.



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8. The first petitioner's husband P.Kathaperumal has approached the Government in the year 1984 that he is intending to promote physical activities at Tiruchirappalli. This was considered by the Government and the Government has also granted a prime property to an extent of 202 sq. meters in Town Survey No.7, Ward F, Block No. 26 at Tiruchirappalli, in the year 1985, for a period of 10 years, commencing the period from 07.11.1985, with certain conditions. The first petitioner's husband P.Kathaperumal has also run a Gym for some time and died on 20.04.1987. Thereafter, the first petitioner is running the Gym with the help of her son. While so, she made a request for extension of grant and also to change the grant in her name. The respondents, who conducted inspection on her representation, found that the first petitioner has utilized the land for commercial purpose by putting up two shops. Based on that representation, the District Collector, Tiruchirappalli, has issued a show cause notice to the first petitioner in the year 1999 and thereafter, by order dated 08.04.2022,



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cancelled the order of grant and directed the first petitioner to evict the premises, which was challenged by the first petitioner in W.P.No. 13347 of 2002 and the same was dismissed by this Court on 19.04.2002. Challenging the same, the first petitioner has also preferred a Writ Appeal in W.A.No.1261 of 2002 and a Division Bench of this Court by Judgment dated 22.01.2007, gave leniency to the first petitioner to submit a representation for extension of lease and the same shall be considered by the Government. Till such time, the first petitioner was permitted to run the Gym.

9. The first petitioner has also submitted her representation pursuant to the order of the Division Bench and the same was also rejected by the Government vide G.O.Ms.No.167, Revenue Department dated 19.05.2011. However, the petitioner, without challenging G.O.Ms.No.167, dated 19.05.2011, has challenged the consequential eviction notice issued by the Tahsildar, Tiruchirappalli and also taken a ground that the Tahsildar, Tiruchirappalli, is not



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having any authority to issue such eviction notice, when the Division Bench of this Court has permitted the first petitioner to run the Gym till the disposal of her representation, which is pending with the Government for consideration. But, the fact remains that the first petitioner has deliberately suppressed the Government Order in G.O.Ms.No. 167, Revenue Department, dated 19.05.2011.

10. Now, the learned Senior Counsel appearing for the petitioners took a stand that G.O.Ms.No.167 dated 19.05.2011 was not served upon the petitioners. The respondents have already filed a copy of the Government Order in G.O.Ms.No.167, dated 19.05.2011 in the typed set of papers along with the counter affidavit as on 14.10.2014 and that was also received by the counsel on record on 07.10.2014. The petitioners have not challenged the said G.O.Ms.No.167, dated 19.05.2011 till date.

11. This writ petition is pending from the year 2014. In view of



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the interim order granted by this Court in this writ petition, the petitioners are also holding the property illegally. Therefore, this Court is not inclined to grant any further time to ascertain as to whether the Government Order in G.O.Ms.No.167 dated 19.05.2011 was served upon the petitioners or not. The fact remains that the petitioners have also suppressed the Government Order passed in G.O.Ms.No.167 dated 19.05.2011 and squatting on a prime property at Tiruchirappalli for more than 10 years. The grant was originally granted in favour of P.Kathaperumal in the year 1985 for a period of 10 years. The period of original grant was also over in the year 1995. The grantee P.Kathaperumal died on 20.04.1987 and the first petitioner, wife of P.Kathaperumal, without any change of grant, is also squatting on the property from the month of May 1987 without any authority and has not taken any step to change the grant in her name.

12. The fact remains that the first petitioner has put up two shops and also rented the same for an Electrical shop and also for a Finance



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company. The tenants are also parties to this writ petition. This writ petition has been filed by the petitioners by suppressing the Government Order in G.O.Ms.No.167, dated 19.05.2011, wherein, the order of grant was cancelled on the ground that the condition of grant has been violated. Further, the period of grant was also over. Therefore, the petitioners are not having any locus to maintain this writ petition.

13. Accordingly, the writ petition is dismissed. The respondents are at liberty to recover the arrears of rent from the petitioners for illegal occupation of the property, as per the market value, in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

20.04.2023

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



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B.PUGALENDHI, J.

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To

1. The Secretary,
Revenue Department,
Secretariat,
Fort St. George,
Chennai – 600 009.
2. The District Collector,
Tiruchirappalli District,
Tiruchirappalli.
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