



W.P(MD)No.3793 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3793 of 2015

and

W.M.P.(MD)No.2070 of 2016

K.Arasi Olina

... Petitioner

Vs.

R1 is deleted vide Court order
dated 17.10.2022 in W.M.P.(MD)No.2974 of 2017

2.The District Collector,
O/o.District Collector,
Ramnad.

3.The Revenue Divisional Officer,
Paramakudi,
Ramnad District.

4.The Tahsildar,
Paramakudi Taluk,
Ramnad District.

5.The Secretary to Government,
School Education Department,
Secretariat,
Chennai.

(R5 is impleaded vide order
dated 27.01.2023 in W.M.P.(MD)No.14388 of 2023)



W.P(MD)No.3793 of 2015

6.T.Kalimuthu

(R6 is impleaded vide order dated 07.08.2023
in W.M.P.(MD)No.3962 of 2023)

7.Nabeesa Beevi

8.Sikkander Thul Karunai

9.Kadharammal

10.Ameena Beevi

(Respondents 7 to 10 are impleaded
vide order dated 22.09.2023
in W.M.P.(MD)No.4131 of 2023)

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents 1,2 and 3 herein to fix the compensation for the petitioners land under the forcible possession of the respondents in S.No.164/6A1 by affording opportunity to the petitioner and as per the procedure established by law an pay the same to the petitioner within a time frame fixed by this Court.

For Petitioner : Mr.Porkodi Karnan

For Respondents : Mr.M.Siddharthan
Additional Government Pleader for R2 to R5

: Mr.V.Malaiyendiran for R7 to R10

: Mr.D.Senthil for R6

ORDER

Heard both sides.



W.P(MD)No.3793 of 2015

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2. The question that calls for consideration is whether the Government should be directed to pay compensation for having taken over 47 cents of land in Survey No.164/6A1 in Kallikudi Village, Pathibanur in Paramakudi Taluk.

3. The case of the petitioner is that the property belongs to her. The petitioner's claim is strongly contested by the sixth respondent. The 6th respondent would contend that the property belongs to the Government and that therefore the question for paying compensation does not arise. The respondents 7 to 11 who were subsequently impleaded claim that they too have a share in the compensation. On 01.03.2023, when the writ petition was taken up, a learned Judge of this Court while considering W.M.P.(MD)No.3962 of 2023 filed by the 6th respondent herein passed the following order:-

“The petitioner, one T.Kalimuthu, has filed this Writ Miscellaneous Petition seeking to implead himself in the main Writ Petition.

2. Mr.D.Senthil, learned counsel appearing for the petitioner would submit that the petitioner is the Vice President of the School Management Committee, Government Higher Secondary School, Parthibanur, Paramakudi Taluk. He would submit that the land which the first respondent herein (petitioner in the main Writ Petition) claims in S.No.164/6A1, belongs to the Government and had relied upon an SLR to substantiate his claim. He would further submit that the Thasildar ie., the fourth respondent herein had filed a report to the Sub Collector, Paramakudi holding that the first respondent herein is not the owner of the property and therefore, the Revenue Records standing in the name of the first respondent herein should be cancelled and patta should be transferred in the name of the School. He would also submit that as per the



W.P(MD)No.3793 of 2015

information received by the petitioner herein from the office of the Thasildhar, the land in S.No.164/6A1 as per UDR stands in the name of Ramanathapuram Jilla Collector, Local Administration Branch, Madurai. An A-Register extract annexed to the said RTI reply was also relied upon by the learned counsel for the petitioner. He would also rely upon the Judgment and Decree made in OS.No.2 of 2013 on the file of the Sub Court, Paramakudi dated 20.04.2018 to make a statement, that the first respondent herein, who is the seventh respondent in the suit, had claimed that she had purchased the property from one Muhammad Kasim S/o. Muhammad Abubakar Ambalam, whereas, in the present Writ Petition she claims that she had inherited the property from her ancestors. Therefore, the learned counsel would submit that the claim of the first respondent herein before various proceedings are different and that the land would only belong to the Government and the School is functioning in the said place for more than 60 years. Therefore, he would seek to implead himself as a party in the main Writ Petition.

3. The main Writ Petition was filed in the year 2015 seeking for a Mandamus to direct the respondents 1 to 3 to fix the compensation for the land in S.No.164/6A1. The Writ Petition was filed on the premise that the land belonging to the writ petitioner has been occupied by the Government Higher Secondary School, Parthibanur, Paramakudi Taluk and has been used as a play ground. Since the School Authorities were not impleaded as parties, this Court by order dated 27.01.2023, impleaded the Secretary to Government, School Education Department, Secretariat, Chennai as fifth respondent in the main Writ Petition. The report relied upon by the petitioner counsel is of the year 2003. Thereafter, an order has been passed by the District Revenue Officer based upon the representation made by K.Arasi Olina for grant of patta in her favour and the Thasildhar had issued a patta as early as in the year 2014, which remains unchallenged by anyone. The suit scheduled property of the Judgment and Decree made in OS.No.2 of 2013 relates to S.No.164/5 and it has nothing to do with S.No.164/6A1. Therefore, the submission of the learned counsel for the petitioner that the claim of the first respondent herein is different before



W.P(MD)No.3793 of 2015

various proceedings is without merit.

4. Further, the Miscellaneous Petition has been filed in the individual capacity of the petitioner even though he claims to be the Vice President of the School Management Committee, Government Higher Secondary School, Parthibanur, Paramakudi Taluk. The petitioner had not produced any document whatsoever to substantiate that he is the Vice President of the School Management Committee, Government Higher Secondary School, Parthibanur, Paramakudi Taluk except for a bald averment in the affidavit. That apart, he has also not produced any document authorising him to file the present impleading petition. Various reports have been filed by the Revenue Authorities including the third respondent herein, wherein they have admitted the title of the first respondent herein in respect of the land in S.No.164/6A1. They have also, after inspection of the property, given report that the School is in occupation of the land belonging to the first respondent herein. The petitioner herein has also not challenged the proceedings by which the first respondent herein was issued with patta. When such facts are already on record before this Court, I only can hold that the petitioner herein seems to be an interloper and has no *locus standi* to be heard in this Writ Petition. Hence, this Writ Miscellaneous Petition is dismissed. However, no order as to costs.”

Aggrieved by the dismissal of his impleading petition, the 6th respondent filed W.A(MD)No.301 of 2023. The said writ appeal was allowed on 03.08.2023 and that is how, the 6th respondent herein came to be impleaded. In the meanwhile, pursuant to the direction given on 01.03.2023, the authorities have quantified the compensation payable at Rs.22,00,000/-.

4. Two questions arise for consideration:-

(I) Whether a private property was taken over by the Government for utilizing the same for the Government school.



W.P(MD)No.3793 of 2015

(II) Whether the authority can be directed to pay compensation to the petitioner herein.

5. My attention is drawn to the entry in SLR. It is seen therefrom that S.No.164/6, Kallikudi Village stood in the name of Sikkandhar Bava Ambalam. The case of the 6th respondent is that Sikkandhar Bava Ambalam had gifted the entire S.No.164/6 in favour of the Government. He tries to probabalize the theory of gift by pointing out that Government buildings have already come up over a substantial portion of Survey No.164/6. In fact, in the affidavit filed in support of the writ petition itself, it has been conceded that in S.No.164/6B, the Government has constructed a primary health centre and that this land was given as gift by the petitioner's family to the Government. But the fact remains that as on date, the revenue authorities have sustained the claim of the petitioner. The District Revenue Officer, Ramanathapuram vide order dated 07.04.2011 sustained the order of the jurisdictional Revenue Divisional Officer who held that Survey No.164/6A will reflect the name of Sikkandar Bava Ambalam. Till date, the order of the District Revenue Officer dated 07.04.2011 is holding good. The Government had not *suo motu* reviewed the said order. The 6th respondent herein had also not challenged the same by filing any civil suit. Therefore, Issue No.1 has to be answered in favour of the petitioner. I therefore hold that the Government must pay compensation for having taken



W.P(MD)No.3793 of 2015

over the petition mentioned land measuring 47 cents comprised in Survey No. 164/6A1. Since it is stated by the learned Additional Government Pleader that compensation has already been determined, it shall have to be paid to the legal heirs of Sikkandhar Bava Ambalam.

6. The petitioner's case is that Sikkandhar Bava Ambalam had three sons and two daughters and that the property was allotted to the share of the elder son Ali Ibrahim Ambalam and that from him, the property devolved on the petitioner's husband Mohammed Kasim Ambalam who in turn gifted the property in favour of the petitioner. I went through the sale deed. The petitioner relies on the deed dated 04.09.2002 that has been registered as Document No.389/2002 on the file of the SRO, Veerasolan. The respondents 7 to 11 also claim that they are also the descendants of Sikkandhar Bava Ambalam. While they are on the same page as that of the petitioner as regards payment of compensation, they would contend that it cannot be paid entirely to the petitioner herein and that they too have a share therein. Even the order of the District Revenue Officer only states that patta has to be issued in the name of the Sikkandar Bava Ambalam. The issue involves application of the personal law of the parties ie., Muslim law. This issue cannot be decided by the revenue authority. It has to be necessarily resolved only by the jurisdictional



W.P(MD)No.3793 of 2015

civil Court. The parties (petitioner and other claimants) are at liberty to institute a proper suit for declaration as to the entitlement over the compensation. As and when such civil suit is filed, intimation shall be given to the District Collector, Ramanathapuram. The District Collector, Ramanathapuram shall deposit the entire compensation amount as quantified by them to the credit of the suit. Disbursement of the compensation will depend upon the outcome of the civil suit. If according to the sixth respondent, the property belongs to the Government, it is for the 6th respondent to establish the said claim in the manner known to law.

7. The learned counsel for the sixth respondent states that he will file an appropriate suit within a period of four weeks from the date of receipt of a copy of this order. If such suit is filed within a time limit as mentioned above, the same will be disposed of on merits and in accordance with law within a period of three months thereafter.

8. Since the revenue record presently reflects the name of the writ petitioner, the contesting private respondents will have to file civil suit for establishing their claim that they are also entitled to a share in the compensation. The 6th respondent is likewise given liberty to file an



W.P(MD)No.3793 of 2015

appropriate suit contesting the claim of the petitioner that patta land was taken over. Whichever suit is filed earlier in point of time, the compensation amount shall be credited to that suit. The writ petition is anchored on the premise that the property was a patta land. This finding is not final. It will abide by the outcome of the suit to be filed by the 6th respondent. If the respondents 6 to 11 fail to file a suit for which liberty has been granted, compensation amount will have to be disbursed to the petitioner.

9. With this direction to the second respondent and liberty to the parties concerned, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

22.09.2023

Index : Yes / No
Internet : Yes/ No
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To

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O/o.District Collector,
Ramnad.

G.R.SWAMINATHAN, J.

rmi

2.The Revenue Divisional Officer,
Paramakudi,
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W.P(MD)No.3793 of 2015

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W.P(MD)No.3793 of 2015

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