



WEB COPY



W.P. No. 26749 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.06.2024

Pronounced on : 07.06.2024

CORAM: JUSTICE N.SESHASAYEE

W.P. No.26749 of 2019
and WMP.Nos.26137, 26138 & 26140 of 2019

Aaron Samuel Hospital Society
Represented by its Secretary
Having Office at No.520, First Floor
Mudichur Road, Lakshmipuram
Chennai - 600 045.

(Amended as per order dated 05.09.2023
in WMP.No.22721/2022 in WP.No.26749/2019) ... Petitioner

Vs

1.The Secretary to Government
Environment & Forests Department
Secretariat, Fort St.George
Chennai - 600 009.

2.The Secretary to Government
Agriculture Department
Secretariat, Fort St.George
Chennai - 600 009.

3.The Forest Range Officer
Tambaram Taluk
Tambaram.

... Respondents



W.P. No. 26749 of 2019

WEB COURT

PRAYER: Writ petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent culminating in G.O.Ms.No.170, Environment and Forests (FR.10) Department dated 11.12.2009 issued by the Government of Tamil Nadu and quash the same, and restore the G.O.Ms.No.2976 Agriculture Department dated 29.09.1969 and G.O.Ms.No.230 dated 7.3.1975, consequently forbear the respondents from interfering with the petitioner peaceful possession and enjoyment of the allotted land by running a hospital in Survey No.298 to an extent of 20 acres situated at Perungalathur.

For Petitioner : Mr.R.Rajarajan

For Respondents : Mr.Ramanlal
Additional Advocate General
Assisted by Mr.T.N.C.Kaushik
Addl. Govt Pleader for R1 to R3

ORDER

1.1 The petitioner society came into existence owing to the efforts of Dr.G.Samuel. He was known to be a specialist in treating Tuberculosis. While so, on 15.07.1969, when he was serving as the superintendent of T.B. Sanatorium, Tanjore, he applied to the Government for allocation of



W.P. No. 26749 of 2019

20 acres of land from and out of the Reserve Forest at Vandalur, for construction of a hospital. On 29.09.1969, vide G.O.Ms.2976, Agricultural Department, the Government had carved out 20 acres in Survey No.204 from the Reserve Forest area at Vandalore and assigned it to the petitioner-society on payment of cost of Rs.300/- per acre subject to certain conditions which *inter alia* included that the property must be used exclusively for the construction of the hospital. On 07.08.1970, the Agricultural Department came out with a memorandum, in which it required the assignee of the land, namely the petitioner, to complete the construction of the hospital within five years. This five year period would expire in August, 1975.

1.2 While so, a few months prior to the expiry of the five year period, indicated herein above, on 07.03.1975, the Government came out with another G.O. in G.O.Ms.No.230, Forest and Fisheries (FR III) Department, wherein it indicated its intent to recall the land earlier allotted, for establishing a Zoo. It allotted another 20 acres in Survey No.298, as an alternative site with all the conditions stipulated in G.O.Ms.No.2976 dated 29.09.1969, and the memorandum of the Agricultural Department, dated 07.08.1970. In fitness of things, the



W.P. No. 26749 of 2019

petitioner society ought to have completed the construction latest by August, 1975. But that did not happen.

1.3 According to the petitioner, since the property assigned under G.O.Ms.230 was very proximate to the Reserve Forest, it applied to the Chief Conservator of Forest for necessary sanction for putting up the hospital buildings. Since that was not forthcoming, the society laid W.P.No.6791 of 2008. This petition was allowed by a learned Single Judge of this Court vide order dated 208.03.2008. It appears that the Forest Department had made a statement before the learned Judge that necessary NOC would be granted to the petitioner.

1.4 While things stood thus, the respondent would file a Review Petition No.110 of 2008, and it came to be allowed vide order of the Court dated 15.03.2016, and thereby it revived W.P.No.6791 of 2008.

1.5 On 17.12.2018, W.P.No.6791 of 2008 was dismissed for default. The petitioner took out necessary application to restore the petition along with a separate petition for condonation of delay. This came to be dismissed on 19.09.2019. Challenging the said order, the petitioner



W.P. No. 26749 of 2019

moved the First Appellate Court with W.A.No.4114 of 2019. On

12.02.2020, this appeal came to be allowed, and thereby W.P.No.6791 of 2008 was revived yet again.

2. While things stood thus, the Government vide G.O.Ms.170, Environment and Forest (FR10) Department, dated 11.12.2009 resumed the 20 acres it had earlier assigned under G.O.Ms.No.230, dated 07.03.1975 on the solitary ground that the petitioner had not put up any construction in the land assigned. This notification dated 11.12.2009 is under challenge in this petition.

3. The contention of the petitioner is straightforward and uncomplicated:

- a) Even though, the Government has assigned the land, an official of the Government namely the Chief Conservator of Forest delayed in granting permission for construction of the hospital building. Indeed, even today, it is not granted. When the situation is created by the Government or its officials, the Government cannot shift the blame on the petitioner; and
- b) There is a breach of principle of natural justice, in that, the petitioner was not enquired as to why the buildings could not



W.P. No. 26749 of 2019

be put up.

WEB COPY

4. Arguing for the respondents 1 to 3, Mr.Ramanlal, the learned Additional Advocate General assisted by Mr.T.N.C.Kaushik, the learned Additional Government Pleader made the following submissions:

- a) While it cannot be disputed that some 20.0 acres of land was assigned to the petitioner's society on 29.09.1969, it was intended for a specific purpose: the petitioner was to construct a hospital for the poor. The price of the land was fixed at Rs.300 per acre for 20 acres. It was only on 07.08.1970, the Government imposed an additional condition that the hospital complex, for which the lands were sought and granted, should be completed within 5 years. At no point of time, this land was used by the petitioner.
- b) Indeed, the petitioner now blames G.O.Ms.No.230, Forest and Fisheries (FR III) Department, dated 17.03.1975 as a reason for not being able to commence construction within the said period, claiming that there was a proposal to establish a Zoo in the place allotted. This is plainly untenable, and it is in a breach of conditions stipulated.



WEB COPY



W.P. No. 26749 of 2019

c) Even in 1975, when the land originally allotted to the petitioner's society was resumed by the Government and as an alternate measure, the Government had assigned another 20 acres in Survey No.298, the time should start running from then. However, nothing happened and some 23 years later, the petitioner instituted W.P.No.6791 of 2008, seeking a direction to the Forest Ranger, Thambaram to cut and remove the trees standing therein. This was later came to be allowed by this Court on 28.03.2008, when the then Special Government Pleader making a statement on behalf of the respondents but supporting the petitioner. On the very next day, the respondent therein passed the proceedings in terms of the order passed in the above referred W.P. This forced the Government to seek review of the order of this Court, and that came to be allowed on 15.03.3016.

d) Even at that point of time, the value of the trees intended to be cut for which the petitioner sought a direction from the Court, was valued at around 25 crores. The Forest Ranger who was hand in glove with the petitioner at the relevant point of time had also been departmentally proceeded against.



WEB COPY



W.P. No. 26749 of 2019

e) This apart, from the list of nine members of the petitioner's society, not one is a physician. The original assignment was made when a physician approached the Government for establishing a hospital, but not today. Of the nine members, two were admitted as members in 2006 and 2009 respectively. One in 2015, five in 2017, and another in 2018. Their present motives are not known.

f) This apart, after the Forest Conservation Act, 1980 (Central Act 69 of 1980) came into force, no land can be transferred or used for any non-forest purposes without getting proper orders from the Government of India. This also further strengthened by the Judgment of the Hon'ble Supreme Court in W.P.(Civil).No.202 of 1995, dated 07.05.1999 in I.A.No.400 etc.,

5. The learned counsel for the petitioner submitted that if the Government were to suspect those who are members of the society, they could definitely call for the papers or enquire about their *bona fides*. The learned counsel also placed reliance on ***R.Abdul Jabbar and Others Vs. The State of Tamil Nadu and Others*** [(1997) 1 MLJ 264] and ***R.Ramanathan and Others Vs The State of Tamil Nadu*** [(1997) 2



W.P. No. 26749 of 2019

MLJ 406]. He also argued that a small hospital is built, and is functioning and the petitioner has fenced the area and has also paid a sum of Rs.5,250/- to the P.W.D to clear the area for laying the access on 10.03.1975.

6.1 The rival submissions are weighed. What is not in dispute is that a block of 20.0 acres was assigned by the Government in 1969 for construction of a hospital to the petitioner-Society with a rider added in 1970 Vide a memorandum of the Agricultural Department to complete the construction within five years, and it is not in dispute that before the expiry of the aforesaid five year period, the Government resumed the land for establishing a Zoological Park at Vandalur, and substituted it with another land in Survey No.298. Ever since, the petitioner has been approaching the Chief Conservator of Forest for it to grant permission, and it has not been granted yet. On citing the non-utilisation of the land the Government had recalled the land Vide G.O.Ms.No.170, Environment and Forests (FR.10) Department dated 11.12.2009. This G.O. however is challenged only in 2019.



W.P. No. 26749 of 2019

6.2 There are two aspects why the petitioner cannot succeed in this petition in his efforts, and they are :

- a) The petitioner has chosen to challenge G.O.Ms.No.170, Environment and Forests (FR.10) Department dated 11.12.2009 only in 2019. There is considerable delay and laches which has not been explained. It may be that the petitioner has been prosecuting W.P.No.6791/2008, but that was entirely on a different cause of action, and indeed it is instituted even before the Government came out with G.O.Ms.No.170, Environment and Forests (FR.10) Department dated 11.12.2009.
- b) Even if the petitioner were to succeed, this Court still cannot compel the Chief Conservator of Forest to grant the petitioner the permission to put up construction. There is an imminent need to protect the forest and the environment. And this Court is wary of giving any such direction either . Therefore, unless it is established that there is a mandatory obligation on the part of the Forest Department to grant the petitioner the permission to put up a construction in the land in question, the petitioner cannot cling on to an assignment made sometime, in 1975. Secondly, inasmuch as the land was assigned for a specific



WEB COPY



W.P. No. 26749 of 2019

purpose, and when carrying out that purpose is frustrated today, necessarily the very assignment necessary would stand frustrated.

It may be that the impugned G.O. might have indicated non-utilisation of the land by the petitioner, since for the foregoing reasons, the same may not have any consequence on the outcome of this petition.

7. In the result, the petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

07.06.2024

Index : Yes / No
Speaking order / Non-speaking order
anu/ds

To:

1.The Secretary to Government
Environment & Forests Department
Secretariat, Fort St.George
Chennai - 600 009.

2.The Secretary to Government
Agriculture Department
Secretariat, Fort St.George
Chennai - 600 009.

3.The Forest Range Officer
Tambaram Taluk, Tambaram.



WEB COPY



W.P. No. 26749 of 2019

N.SESHASAYEE.J.,

ds

Pre-delivery order
in W.P.No.26749 of 2019

07.06.2024