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W.P. No. 33677 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 33677 of 2023

and

W.M.P. Nos. 33524, 33525 and 33529 of 2023

Kancheepuram District Consumer Co-operative
Wholesale Stores Ltd., G 1113
represented by its President,
No.185, Prakasam Saalai,
Chennai 600 108.
Petitioner

...

-VS-

1. The Commissioner of Rural Development
and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai 600 018.

2. The District Collector,
Chengalpet District,
Chengalpet.

3. The Commissioner,
Chengalpet Municipality,
Chengalpet.

4. The Chengalpet Co-operative Stores Ltd.,
G.3913, Rep. by its President,
No.88, Kulundhiamman Koil Street,
Chengalpet.

...

Respondents
(R4 impleaded as per order dated
20.12.2023 in W.M.P. No.35405 of 2023)



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records in pursuant to the 1st impugned order passed by the Second Respondent in proceedings Na.Ka.No. 5302/2022/A3 dated 13.01.2023 & the Second impugned order passed by the Third Respondent in proceedings Na.Ka.No.204/2023/E1 dated 25.01.2023 and to quash these orders in respect of S.No.2 of construction of Ration shop and to consequently direct the respondents (i) not to construct any building on the petitioner's land comprised in Old Town Survey No.994/16, New Town Survey No.994, Ward C, Gundur, Melamaiyur, Chengalpet Town, Chengalpet Taluk and District. (ii) not to disturb the petitioner's peaceful possession and enjoyment of petitioner's land copried in Old Town Survey No. 994/16, New Town Survey No.994, Ward C, Gundur, Melamaiyur, Chengalpet Town, Chengalpet Taluk & District and (iii) to pass any other orders.

For Petitioner	: Mr. R.Prem Narayan
For Respondents	: Mr. P.Ganesan (R1 and R2) Additional Government Pleader Mr. P.Srinivas (R3) Mr. S.Ravikumar (R4)

ORDER

Heard Mr. R.Prem Narayan, Learned Counsel for the Petitioner, Mr. P.Ganesan, Learned Additional Government Pleader appearing for the First and Second Respondents, Mr. P.Srinivas, Learned Counsel for the Third



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Respondent and Mr. S.Ravikumar, Learned Counsel for the Fourth Respondent

and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, viz., Kancheepuram District Consumer Co-operative Wholesale Stores Ltd., G-1113, claims to be the owner of the property comprising of land and building situate at Old Town Survey No. 994/16, New Town Survey No. 994, Ward-C, Block-19, Gundur, Melamaiyur, Chengalpet District supported by documents of title and possession to that property. According to the Petitioner, under the guise of the Proceedings in Na. Ka. No. 5302/2022/A3 dated 13.01.2023 of the Second Respondent and Proceedings in Na. Ka. No. 204/2023/E1 dated 25.01.2023 of the Third Respondent, construction is taking place for new building for three fair price shops utilizing the Member of Parliament Local Area Development Fund without any consent from the Petitioner, which has necessitated the filing of this Writ Petition.

3. In furtherance to the order dated 18.01.2024 passed by this Court to conduct field inspection of the location of the property with reference to the aforesaid order dated 13.01.2023 passed by the Second Respondent and order dated 25.01.2023 passed by the Third Respondent, it has been ascertained that



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the said orders actually relate to permission accorded for construction of the proposed fair price shops in the property of the Fourth Respondent, which is also a Co-operative Society, in Survey No. 1004, Kattangalathur Block, Chengalpattu Range, but the construction is mistakenly taking place at Survey No. 994, Ward-C, Block-19, Gundur, Melamaiyur, Chengalpet District belonging to the Petitioner. The Fourth Respondent in his letter dated 18.01.2024 sent to the Petitioner and its Counsel in the memo dated 23.02.2024 filed in this Court have confirmed that the land in Survey No. 994, Ward-C, Block-19, Gundur, Melamaiyur, Chengalpet District, belongs to the Petitioner, and the Fourth Respondent does not claim any right in that property, and that there is no construction of fair price shops taking place in the property of the Fourth Respondent at Survey No. 1004 located in Kattangalathur Block, Chengalpattu Range. In such circumstances, it is evident that the construction of fair price shops is taking place in the property of the Petitioner without any authority of law and there is nothing to show that that the said land had been acquired for public purpose and compensation has been determined and paid to the Petitioner for the same.

4. At this juncture, reference must be made to the decision of the Hon'ble Supreme Court of India in ***Hari Krishna Mandir Trust -vs- State of***



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Maharashtra [(2020) 9 SCC 356], where the legal position in an analogous

fact situation has been enunciated as follows:-

*“96. The right to property may not be a fundamental right any longer, but it is still a constitutional right under Article 300-A and a human right as observed by this Court in **Vimlaben Ajitbhai Patel -vs- Vatslaben Ashokbhai Patel** [**Vimlaben Ajitbhai Patel -vs- Vatslaben Ashokbhai Patel, (2008) 4 SCC 649, para 42**]. In view of the mandate of Article 300-A of the Constitution of India, no person is to be deprived of his property save by the authority of law. The appellant Trust cannot be deprived of its property save in accordance with law.*

*97. Article 300-A of the Constitution of India embodies the doctrine of eminent domain which comprises two parts, (i) possession of property in the public interest; and (ii) payment of reasonable compensation. As held by this Court in a plethora of decisions, including **State of Bihar -vs- Project Uchcha Vidya, Sikshak Sangh** [**State of Bihar -vs- Project***



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Uchcha Vidya, Sikshak Sangh, [(2006) 2 SCC 545] at p. 574, para 69 : 2006 SCC (L&S) 355 : 5 SCEC 589]; Jilubhai Nanbhai Khachar -vs- State of Gujarat [Jilubhai Nanbhai Khachar -vs- State of Gujarat, 1995 Supp (1) SCC 596]; Bishambhar Dayal Chandra Mohan -vs- State of U.P. [Bishambhar Dayal Chandra Mohan -vs- State of U.P., [(1982) 1 SCC 39] : [1982 SCC (Cri) 53], the State possesses the power to take or control the property of the owner for the benefit of public. When, however, a State so acts it is obliged to compensate the injury by making just compensation as held by this Court in Girnar Traders -vs- State of Maharashtra [Girnar Traders -vs- State of Maharashtra, [(2007) 7 SCC 555], paras 55 and 56].

98. *It has been established beyond any iota of doubt that the private road admeasuring 414 sq m area had never been acquired by Pune Municipal Corporation. The right to property includes any proprietary interest, hereditary interest in the right of management of a religious endowment, as well*



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as anything acquired by inheritance. However, laudable be the purpose, the executive cannot deprive a person of his property without specific legal authority, which can be established in a court of law.

99. *In case of dispossession, except under the authority of law, the owner might obtain restoration of possession by a proceeding for mandamus against the Government as held by this Court in **Wazir Chand -vs- State of H.P. [Wazir Chand -vs- State of H.P., AIR 1954 SC 415 : 1954 Cri LJ 1029]** Admittedly, no compensation has been offered or paid to the appellant Trust. As observed by this Court in **K.T. Plantation (P) Ltd. -vs- State of Karnataka [K.T. Plantation (P) Ltd. -vs- State of Karnataka, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414]**, even though the right to claim compensation or the obligation of the State to pay compensation to a person who is deprived of his property is not expressly provided in Article 300-A of the Constitution, it is inbuilt in the Article. The State seeking to acquire private property for public purpose cannot*



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say that no compensation shall be paid. The Regional and Town Planning Act also does not contemplate deprivation of a landholder of his land, without compensation. Statutory authorities are bound to pay adequate compensation.

100. The High Courts exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a writ of mandamus or in the nature of mandamus, but are duty-bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a statute, or a rule, or a policy decision of the Government or has exercised such discretion mala fide, or on irrelevant consideration.

101. In all such cases, the High Court must issue a writ of mandamus and give directions to compel performance in an appropriate and lawful manner of the discretion conferred upon the Government or a public authority.



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102. *In appropriate cases, in order to prevent injustice to the parties, the Court may itself pass an order or give directions which the Government or the public authorities should have passed, had it properly and lawfully exercised its discretion.*

In Director of Settlements, A.P. -vs- M.R. Apparao [Director of Settlements, A.P. -vs- M.R. Apparao, (2002) 4 SCC 638] .

Pattanaik, J. observed: (SCC p. 659, para 17)

“17. ... One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus, “mandamus” means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the



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*applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (see **Kalyan Singh -vs- State of U.P. [Kalyan Singh -vs- State of U.P., AIR 1962 SC 1183]**). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.”*

103. The Court is duty-bound to issue a writ of mandamus for enforcement of a public duty. There can be no doubt that an important requisite for issue of mandamus is that mandamus lies to enforce a legal duty. This duty must be shown to exist towards the applicant. A statutory duty must exist before it can be enforced through mandamus. Unless a statutory duty or right can be read in the provision, mandamus cannot be issued to enforce the same.”

5. In view of the foregoing discussion, it is incumbent upon the Second and Third Respondents as well as the concerned authorities of the State to take all necessary measures immediately for the removal of the construction in the land belonging to the Petitioner at Survey No. 994, Ward–C, Block-19, Gundur, Melamaiyur, Chengalpet District, and restore it in the same manner as it stood



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prior to that unauthorized invasion of its property in transgression of Article 300-A of the Constitution of India, 1950. The report of such compliance shall be filed before the Registrar (Judicial) of this Court by 31.07.2024 in that regard.

In the upshot, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

23.02.2024

Index: Yes/No

NCC: Yes/No

Note: (i) Issue order copy by 31.05.2024.

(ii) Registry is directed to list the matter for reporting compliance on 07.08.2024.

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To

1. The Commissioner of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai 600 018.
2. The District Collector,
Chengalpet District,
Chengalpet.



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P.D. AUDIKESAVALU, J.

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