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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Friday, the Twenty Second day of March Two Thousand and Twenty Four
PRESENT

The Hon`ble Mr.Justice SATHI KUMAR SUKUMARA KURUP

WMP(MD). No.3484 of 2024
IN
WP(MD)1638 of 2024

S.Vanitha

... Petitioner/18th Respondent

Vs

1 P.Surli Andavar

... Respondent/Writ Petitioner

2 The Superintendent of Police
Theni District Theni.

3 The Deputy Superintendent Of Police
Theni Police Station Circle
Theni District.

4 The Inspector of Police
Palanichettipatti Police Station
Palanichettipatti Theni District.

5 The Tahsildar
Bodinayakkanur Taluk,
Theni District.

6 M.Annakili

7 M.Ashok Kumar

8 M.Prem Kumar

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9 S.Ravi



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11 Anand

12 Rathinasamy

13 R.Alagumalai

14 R.Erudhayaraj

15 P.Pavithra

16 P.Senthil

17 K.Eswaran

18 S.Kumaresan

19 Ganesan

... Respondent/2- 19 Respondents

Prayer :-

Writ Miscellaneous Petition is filed under Article 226 of the Constitution of India, praying this Court to recall the order dated 30.01.2024 made in W.P.(MD). No.1638 of 2024 on the file of this Honourable Madurai Bench of Madras High Court and consequently to dismiss the Writ Petition in W.P.(MD).No.1638 of 2024 and thus render justice

Prayer in WP(MD). 1638/ 2024 :

Writ Petition, filed under Article 226 of the Constitution of India, praying this court to issue a Writ of Mandamus directing the respondent nos.1 to 3 to provide adequate necessary police protection to the life and limb of the petitioner and for



fencing the property of the petitioner in S.No.459/2A and 459/2B to an extent of Acre 67 cents situated in Kodangipatti Village, Bodinayakkanaur, Theni District and by considering the petitioner's representation dated 06.01.2024 within the period that may be stipulated by this Hon'ble Court and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of this case and thus render justice.

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.c.Masilamni, Advocate for the Petitioner and of Mr.M.Ajmalkhan, Senior Counsel for M/S.Ajmal Associates for the 1st Respondent, this Court made the following order:

This Writ Miscellaneous Petition is filed by one of the private Respondents in W.P.(MD) No.1638 of 2024 seeking to recall the order made in W.P.(MD) No.1638 of 2024 dated 30.01.2024 by this Court.

2.W.P.(MD) No.1638 of 2024 was filed by furnishing misleading information stating that the private Respondents 5 to 19 in W.P.(MD) No.1638 of 2024 had preferred an appeal against the order passed in W.P.Nos.5424 of 1994. Aggrieved by the order passed in W.P.Nos.5424 of 1994, Writ Appeal was preferred and the same was not dismissed. It was pending.

3.In W.P.(MD) No.1638 of 2024, it was stated that the Writ Appeal filed by the

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Government in W.A.No.729 of 2009 was dismissed. Therefore, the Government had



issued a Government Order and handed over the property to Asiya Mariyam. The revenue records were also mutated in the name of Asiya Mariyam.

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4.The learned Counsel for the Petitioner in W.P.(MD) No.1638 of 2024 relied on the order passed by this Court in a similar Writ Petition, in which the land was acquired in Senji for 87 families, who were Adi Dravidars by the Adi Dravidar Welfare Department. The writ petition was filed before the Principal Bench, Madras in W.P.(MD) No.4997 of 1999 challenging the notification for acquisition on the ground that the members of the above 87 families are not Adi Dravidars and they are converted Christians,, in which the Writ Court found out that the beneficiaries were already in possession and therefore, granted an order of status quo regarding possession for 12 weeks. Within such time, fresh notification can be issued. However, no steps were taken to acquire the lands. Therefore, the original beneficiaries have approached the Writ Court again to take steps under the Land Acquisition Act, 1894 and issue pattas to them in W.P.(MD) No.26196 of 2014. After filing of the counter by the Respondent Officials, pattas granted to them originally will hold good and the writ petition filed by the allottees were allowed.

5.Once again the Writ Petitioners filed another writ petition in W.P.(MD) No.19565 of 2020 to mutate the revenue records. By an order dated 09.07.2021, the writ petition was dismissed and the land acquisition proceedings were quashed.

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However, the Authorities were directed to expedite the land acquisition



proceedings. Thereafter, the land owners approached this Court by filing W.P.(MD) No.30763 of 2016 to restore their patta in their names.

6.The said writ petition was allowed by order dated 09.07.2021. Thereafter, the original allottees, for whom pattas were issued and subsequently, the land acquisition proceedings were quashed, approached this Court by way of filing Review Application in Rev.A.No.109 of 2021 seeking issuance of patta to them. That was also dismissed. Subsequently, based on the directions of this Court, a representation was given by the persons, who were allotted the lands and were granted pattas, on the basis on which the land acquisition proceedings were also quashed.

7.The representation given by the Petitioner was pending with the Government. When the writ petition was pending, the learned Judge had passed the orders directing the Respondents/State Authorities to file a report as to whether they want to initiate fresh acquisition proceedings. In compliance of the same, a report was filed by the District Collector, Villupuram District stating that the Government had decided to negotiate with land owners and purchase the land. If the private negotiation fails will resort to the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

8.Based on the submission made by the learned Government Advocate, the learned single Judge had disposed of the writ petition in W.P.(MD) No.6773 of 2022



by order dated 10.08.2022 by directing the Respondent to complete the land acquisition proceeding as expeditiously as possible, granting the order of status quo till completion of the acquisition proceedings.

9. Aggrieved by the same, the land owners had preferred W.A.(MD) No.2632 of 2022. The learned Senior Counsel appearing on behalf of the Appellants in W.A. (MD) No.2632 of 2022 submitted that such a direction to acquire the lands ought not to have been issued by the learned single Judge. The land owners were put to grave prejudice by compelling the State to acquire the lands and secondly, by producing detailed affidavit and supporting documents, he submitted that almost all the so called beneficiaries are not entitled for free house site patta as either they are well off in life being Government servants or otherwise well employed and several of them have either moved out of the present land and migrated to cities and not even residing in the village. The learned Senior Counsel appearing on behalf of the appellants further submitted that the direction of the learned single Judge requires interference.

10. The learned Government Advocate filed a report in response to the particulars furnished by the learned Senior Counsel for the appellants and submitted that some of the particulars mentioned by the Appellants were true and some were also not true. Also, the learned Government Advocate submitted that fresh acquisition proceeding had not been initiated so far.



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11.The learned Senior Counsel appearing on behalf of the beneficiaries would submit that it is a decision of the State to exercise its power of eminent domain and the appellants/land owners have no right to question, once the acquisition is for public purpose. In his own inimitable style, he personally swung into action, made a field visit and collected the particulars and filed a statement refuting the allegations of migration/disentitlement, etc and submitted that even the report filed by the Government Pleader is also made without even enquiring to the basic facts. After discussing on the merits of the case, the writ appeal was dismissed by the Division Bench of this Court.

12.The learned Counsel for the Petitioner in W.M.P.(MD) No.3484 of 2024 relies on this order seeking to recall the order passed in W.P.(MD) No.1638 of 2024. He would rely on the order passed in W.P.(MD) No.13784 of 2021, which was filed seeking police protection to fence the property, wherein the learned single Judge of this Court had relied on the decision of the Hon'ble Supreme Court in P.R.Murlidharan Theertha Padar and others Vs. Swami Dharmananada Theertha Padar and others reported in (2006) 4 SCC 501.

13.In the light of the reported ruling, the learned Judge had dismissed the writ petition in W.P.(MD) No.13784 of 2021. Therefore, in the light of the above order, the learned Counsel for the Petitioner in W.M.P.(MD) No.3484 of 2024 seeks to recall the order passed in W.P.(MD) No.1638 of 2024 dated 30.01.2024.



14.He would further submit that the said Asiya Mariyam in her affidavit had stated that she is the only legal heir of his father, Apa Thambi Rowthar @ Khader Hussain Meera Labai Rowthar. After the death of Asiya Mariyam, some third parties claiming themselves as the legal heirs of Asiya Mariyam had filed a writ petition seeking police protection for fencing the property. Therefore, he prays that the order passed in W.P.(MD) No.1638 of 2024 dated 30.01.2024 had to be re-called.

15.The learned Counsel for the Petitioner in W.P.(MD) No.1638 of 2024 did not bring it to the knowledge of this Court that the writ appeal filed by the private Respondents 5 to 19 in W.P.(MD) No.1638 of 2024, was pending before the Division Bench of this Court. That was not brought to the notice of this Court, while filing W.P.(MD) No.1638 of 2024.

16.The writ appeal filed by the private Respondents 5 to 19 was pending as on the date of order passed in W.P.(MD) No.1638 of 2024. That is, as on 30.01.2024, W.A.(MD) No.729 of 2019 was not disposed of. Therefore, the order has to be re-called. W.P.(MD) No.1638 of 2024 was filed by third parties, who claimed to be the legal heirs of Asiya Mariyam. The writ petition itself is not maintainable and therefore, it is to be recalled.

17.The learned Senior Counsel for the Petitioner in W.P.(MD) No.1638 of 2024 vehemently opposed to the submission of the learned Counsel for the Petitioner in

W.M.P.(MD) No.3484 of 2024. It is his contention that the writ appeal relied on by the learned Counsel for the Petitioner in W.M.P.(MD) No.3484 of 2024 has no



bearing on the facts of this case. Asiya Mariyam during her life time had challenged the land acquisition proceeding. The writ petition filed by Asiya Mariyam was allowed and the land acquisition proceedings were quashed. The writ appeal filed by the Government was dismissed. Subsequent to the dismissal of this writ appeal, the Government issued notification handing over the possession to the Writ Petitioner.

18.The learned Senior Counsel for the Respondents in W.M.P.(MD) No.3484 of 2024 would submit that the order passed in W.P.(MD) No.1638 of 2024 is perfectly correct. The Petitioner herein in W.M.P.(MD) No.3484 of 2024 is one of the private Respondents in W.P.(MD) No.1638 of 2024. Against the order passed in W.P.(MD) No.1638 of 2024, W.A.(MD) No.729 of 2009 was filed by the Government and the same was dismissed by order dated 18.06.2009. Subsequently, the Government had issued G.O.Ms.No.355/2009 dated 28.08.2012.

19.The Petitioner in W.M.P.(MD) No.3484 of 2024 has no locus standi to challenge the order passed against the land acquisition proceedings. Only the Government can challenge it. Also, after the Government had issued the Government Order handing over the property to the Petitioner in W.P.(MD) No 5424 of 1994, Asiya Mariyam, the contention of the learned Counsel for the

Petitioner in W.M.P.(MD) No.3484 of 2024 that after the death of Asiya Mariyam, third parties had filed this writ petition, as though they are the legal heirs of Asiya



Mariyam, cannot be challenged by the Petitioner herein.

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20. This Court in W.P.(MD) No.1638 of 2024, in the light of the order passed in W.P.(MD) No 5424 of 1994, had only directed the Tahsildar/competent Authority and the Executive Magistrate to conduct the enquiry as per the Tamil Nadu Survey and Boundaries Act, 1923 and with a direction to the Petitioner in W.P.(MD) No 1638 of 2024 to file appropriate petition before the Tahsildar, Bodinayakkanur. On such petition being filed, the Tahsildar as the Authority under the Tamil Nadu Survey and Boundaries Act, 1923, shall issue notice to the private Respondents 5 to 19 cited in the writ petition and after hearing the parties, shall dispose of the petition filed by the Writ Petitioner within a period of 15 days.

21. Also, the Tahsildar as Executive Magistrate has the Magisterial powers directing police protection. Therefore, the order of this Court passed in W.P.(MD) No 1638 of 2024 does not warrant any re-call. The Petitioner in W.M.P.(MD) No 3484 of 2024 has no locus to challenge the order. He had been duly put on notice by the Executive Magistrate at Bodinayakkanur. The Tahsildar as Competent Authority under the Tamil Nadu Survey and Boundaries Act, 1923 had conducted an enquiry and passed appropriate orders. If at all the Petitioner is aggrieved, he can file a suit and he cannot approach this Court seeking re-call of the writ petition order. The subject matter of the Writ Petition and the Writ Appeal relied by the learned Counsel for the Petitioner in W.M.P.(MD) No 3484 of 2024 even though is similar in nature will not have a bearing on this order.



22.The private Respondents filed the Writ Appeal, which was dismissed subsequent to this order. Therefore, this Writ Miscellaneous Petition has no merit. If at all the Petitioner is aggrieved, either he or the other affected parties, the private Respondents can approach the Civil Court. The order passed by this Court is in continuance of the Writ Petition already filed by Asiya Mariyam during her life time in W.P.(MD) No. 5424 of 1994. As on date, the Gazette Notification issued by the State Government of Tamil Nadu in the light of the order passed in W.P.(MD) No. 5424 of 1994 handing over the property to the owner of the land, who had challenged the land acquisition proceeding had not been reversed by any Authorities. Only to protect the very same land, the police protection was sought for and this Court had directed the Executive Magistrate and also the Authority under the Tamil Nadu Survey and Boundaries Act, 1923 to hold enquiry and issue appropriate orders.

23.In the light of the Government Order passed by the Government of Tamil Nadu in G.O.(P)No. 355, dated 28.08.2012, the land that was handed over to the owner of the land after quashing of the land acquisition proceeding is to be fenced, for which the proceeding of the Tahsildar will hold good. In noway, it has caused prejudice to the Petitioner in W.M.P.(MD) No 3484 of 2024.

24.Also, as per the order dated 20.02.2024, W.A.No.727 of 2009 filed by the private Respondents was dismissed. It has been clearly observed that the private beneficiaries cannot maintain the writ petition against the order of the writ petition



quashing the land acquisition proceedings. A competent person is the State Authority. It has only issued a direction to consider the representation of the private Respondents.

25.The point for consideration is whether the order passed in W.P.(MD) No.1638 of 2024 dated 30.01.2024 is to be re-called?

26.On consideration of the rival submissions and the citations relied on by the learned Counsel for the Petitioner in W.M.P.(MD) No 3484 of 2024, it is found that the Petitioner in W.M.P.(MD) No 3484 of 2024 has no locus standi to challenge the Government Order issued by the Government of Tamil Nadu after the Writ Petition in W.P(MD) No. 5424 of 1994 was allowed in favour of the land owner and G.O.(P) No.355, dated 28.08.2012 was passed by the Government of Tamil Nadu.

27.The private Respondents do not have right to challenge the order passed in W.P.(MD) No. 5424 of 1994 as observed in W.A.No.727 of 2009. The observation of the learned single Judge of this Court in a similar matter in W.P.(MD) No.13784 of 2021 is different from the facts of this case. In W.P.(MD) No.1638 of 2024, the Petitioner had sought fencing the property after handing over the same by the Government of Tamil Nadu, as per G.O.(P) No.355, dated 28.08.2012. It is not a question of who is in possession. The possession is not disputed. The land owner during her life time had challenged the land acquisition proceedings. The land acquisition proceeding was set aside by the order made in W.P.(MD) No. 5424 of 1994, vide order dated 28.07.2000. Only for the same property, the successor of



Asiya Mariyam had filed W.P.(MD) No.1638 of 2004. Whether the Petitioner is a successor of Asiya Mariyam or not is to be agitated by the aggrieved party before the competent Civil Court.

28.This Court had passed orders in the light of the earlier Writ Petition in W.P. (MD) No. 5424 of 1994 and in the light of G.O.(P) No.355, dated 28.08.2012. Therefore, the rulings cited by the learned Counsel for the Petitioner in W.M.P.(MD) No.3484 of 2024 will not apply to the facts of this case. The order passed in W.P. (MD) No.13784 of 2021 is also not applicable to the facts of this case.

29.The order of the Division Bench in W.A.No2632 of 2022 filed by the land owner, who challenged the land acquisition proceeding for acquiring the lands for landless poor also will not hold good in this case. In that case, the challenge to the land acquisition proceedings was pending. At that time, the learned single Judge of this Court ordered status quo till the writ petition was disposed of and in the meanwhile, directed the Government to consider fresh land acquisition proceeding. Pending the writ petition by the land owners, whose land was acquired, the Government did not proceed with the fresh land acquisition proceeding.

30.Under those circumstances, the beneficiaries of the Scheme filed a writ petition and obtained an order for grant of patta. Subsequently, the land acquisition proceeding was quashed in favour of the land owners, whose land was acquired.

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31.Under those circumstances, W.A.No2632 of 2022 preferred by the land



owners had been dismissed. In this case, the land acquisition was challenged by Asiya Mariyam and W.P.(MD) No. 5424 of 1994 was allowed in favour of Asiya Mariyam, the land owner. Subsequently, the Government had passed Government Order handing over the possession to the land owner. The private Respondents 5 to 19 had preferred W.A.No.727 of 2009, which was dismissed by observing that they cannot maintain the Writ Appeal. The competent entity to challenge the order passed in the writ petition was the State Government. The private Respondents/beneficiaries cannot come in appeal against the order passed in the Writ Petition. The only relief granted to the private Respondents in W.P.(MD) No.1638 of 2024 is to give a fresh representation to the State Government.

32.Under those circumstances, there is no necessity for this Court to re-call the order, as rightly pointed out by the learned Senior Counsel for the Respondents in W.M.P.(MD) No.3484 of 2024, the Petitioner in W.P.(MD) No.1638 of 2024. This Court had only directed the Tahsildar, Bodinayakkanur as Executive Magistrate as well as the Competent Authority under the Tamil Nadu Survey and Boundaries Act, 1923 to measure the property and pass appropriate orders after holding enquiry with the private Respondents 5 to 19. If at all the Petitioner in W.M.P.(MD) No.3484 of 2024 is aggrieved regarding the status of the Petitioner, it has to be decided only after adducing the evidence before the competent civil Court, which this Court cannot consider under Article 226 of the Constitution of India.



33. Therefore, the point for consideration is answered in favour of the Respondents in W.M.P.(MD) No.3484 of 2024 and against the Petitioner in W.M.P. (MD) No.3484 of 2024, as the order passed in W.P.(MD) No.1638 of 2024 dated 30.01.2024 need not be recalled.

In the result, this Writ Miscellaneous Petition stands dismissed.

Sd/-

Assistant Registrar(CS II)

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/07/2024

Sub Assistant Registrar
(CS- I/ II / III / IV)

TO

1. The Superintendent of Police
Theni District Theni.
2. The Deputy Superintendent Of
Police Theni Police Station Circle
Theni District.
3. The Inspector of Police
Palanichettipatti Police Station
Palanichettipatti Theni District.
4. The Tahsildar
Bodinayakkanur
Theni District.

+ 1 cc to M/sAjmal Associates, CA Sr.No.15944/2024



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ORDER DATED : 22/03/2024

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ORDER

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WMP(MD). No.3484 of 2024

WP(MD) No.1638 of 2024

Giving direction and etc.

as stated within.

MGJ(23.07.2024) 16P 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023