



W.P(MD)No.6284 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.06.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.6284 of 2024

and

W.M.P.(MD)Nos.5880, 5881 & 5882 of 2024

P.Selvakumar

... Petitioner

Vs.

- 1.The State Rep. by its Commissioner,
Commissionerate of Land Reforms,
Elizhagam, Chepauk, Chennai-600 005.
- 2.The District Collector,
O/o.The District Collector,
Dindigul, Dindigul District.
- 3.The District Revenue Officer,
O/o. The District Revenue Officer,
Dindigul, Dindigul District.
- 4.The Revenue Divisional Officer,
Revenue Divisional Office,
Palani, Dindigul District.
- 5.The Tahsildar, O/o.the Tahsildar,
Oddanchathiram, Dindigul District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned order in Na.Ka.No.5219/2018/E3 dated 24.01.2022 and consequential impugned order 12.01.2024 in Na.Ka.No. 5219/2018/E3 on the file of the Respondent No.5 and quash the same as illegal and direct the respondents to provide patta to the landless poor of Scheduled Caste Community in Survey No.529/1 and Survey No.529/6 in Kallimanthayam Post, Oddanchataram Taluk, Dindigul by implementing the order of the 4th respondent dated 28.09.2020 within a time stipulated by this Court.

For Petitioner : Mr.T.Thirumurugan

For Respondents : Mr.G.Vairam Santhosh
Additional Government Pleader

ORDER

Heard both sides.

2.The petitioner belongs to Arunthathiyar Community. He states that around 500 families belonging to Scheduled Caste are living in deplorable conditions in Teppampatti Village. They applied to the Government for allotting them free house sites. The request made by them was considered. Survey Nos.529/1 & 529/6 were identified for allotment. This decision was taken as early as on 25.02.2012. Copy of the proceedings issued by the RDO,



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Palani has been enclosed in the typed set of papers. The land that was earlier classified as unassessed waste was re-classified as assessed waste. This was done only for the purpose of granting free house sites pattas.

3.Since the matter was getting delayed, social activists began to agitate. On 25.10.2018, it was reiterated that steps will be taken for issuance of free house sites pattas at the earliest. On 28.09.2020, proceedings were issued by the Revenue Divisional Officer, Palani for converting the land as natham. The said proceedings clearly indicate that the purpose of converting the land as natham was to enable issuance of free house sites pattas to SC community people. The local body also passed a resolution in favour of SC people on 31.12.2020. The Tahsildar, Oddanchathiram wrote to the Assistant Commissioner of Geology and Mining, Dindigul seeking permission to remove the rocks found in the land in order to facilitate issuance of such pattas. On 05.02.2021, the Assistant Commissioner of Geology and Mining, Dindigul also issued 'No Objection Certificate'. Now came the anti-climax. Instead of taking the matter to its logical conclusion, it was decided to put up a new Taluk office in Survey No.529/6. Since the matter was getting delayed, the petitioner herein filed WP(MD)No.18165 of 2021 for implementing the earlier order dated 28.09.2020 passed by the jurisdictional RDO and for demarcation and allotment to the rightful beneficiaries belonging to Adidraavidar community in



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accordance with law.

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4.The said writ petition was disposed of on 07.10.2021 with a direction to the Tahsildar, Oddanchathiram Taluk to consider the fresh representation permitted to be filed. The petitioner accordingly submitted a detailed representation on 08.11.2021. The Tahsildar, Oddanchathiram informed the petitioner vide Memorandum dated 24.01.2022 that the land in S.No.529/6 is required for putting up Taluk Office for the newly proposed Kallimandayam Taluk. Challenging the same, this writ petition came to be filed.

5.The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents.

6.The stand of the respondents is that the Government had decided to bifurcate Oddanchathiram Taluk and form a new Taluk known as Kallimandayam Taluk. The first respondent had been called upon to identify suitable sites for building the Taluk office. The authorities felt that Survey No. 529/6 is suitable and that is why, the impugned communication came to be issued. The stand of the respondents is that persons belonging to SC community are going to be allotted house sites at an alternative place. It is not as if the respondents propose to deny the claim of the SC persons. The respondents want this Court to dismiss the writ petition.



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7.I carefully considered the rival contentions and went through the materials on record. The fact remains that as on date, Oddanchathiram has not been bifurcated. Kallimandayam is yet to be born. The question that calls for consideration is whether in anticipation of the formation of the new Taluk, the process that commenced 12 years ago should be aborted. The constitutional vision is that people should live with dignity. In *M/s.Shantistar Builders v. Narayan Khimalal Totame and ors (1990) 1 SCC 520*, it was held that the right to life is guaranteed in any civilized society and that it would take within its sweep the right to decent environment and a reasonable accommodation to live in. For a human being, it has to be a suitable accommodation which would allow him to grow in every aspect – physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home, particularly, for people in India, can even be mud built thatched house or a mud built fire proof accommodation. The above lines find place in a judgment that was rendered ten years prior to the celebrated judgment of the Constitutional Court of South Africa in *Government of the Republic of South Africa v. Irene Grootboom, 2000 SCC OnLine ZACC 20*. The South African Court said thus :



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“A society must seek to ensure that the basic necessities of life are provided to all if it is to be a society based on human dignity, freedom and equality. To be reasonable, measures cannot leave out of account the degree and extent of the denial of the right they endeavour to realise. Those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realisation of the right. It may not be sufficient to meet the test of reasonableness to show that the measures are capable of achieving a statistical advance in the realisation of the right. Furthermore, the Constitution requires that everyone must be treated with care and concern. If the measures, though statistically successful, fail to respond to the needs of those most desperate, they may not pass the test.”

In *JP Ravidas v. Navyuvak Harijan Utthapan Society Limited* (1996) 9 SCC 300, it was held that the State was obligated to provide adequate means of livelihood to all citizens distributing the material resources for the community for the common welfare. The ultimate object of the directive principles is to liberate the Indian masses and free them from abject conditions. In that case, the Union of India in implementation of Article 39(b) and in discharge of its obligations under Articles 38 and 46 to provide facilities and opportunities to Dalits had allotted land for construction of houses to make their right to settlement and life meaningful, to enable them to live with dignity of person



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and provided economic empowerment of settled residence to enjoy the right to meaningful life. These words ring true in the present case also. In this case also, the proposal was processed only with the aforesaid object in view.

8.Survey No.529/6 measuring over 1 hectares was identified for issuance of free house sites pattas. During the relevant time, it was classified as un-assessed waste dry. It was re-classified as assessed waste dry. All the requisite proceedings had already been taken. No Objection Certificate from the department of geology and mining for removing the rocks had also been obtained. The local body had passed resolution in favour of the beneficiaries. All that remained was to formally demarcate the site and issue free house sites pattas. At this stage, citing the reason that the land is required for putting up taluk office, the earlier process had been abruptly terminated. Even according to the respondents, the petitioners will be given sites at an alternative place.

9.Can the altered approach of the authorities be faulted ? If so, on what grounds ?. The first reason is that they failed to consider if it is absolutely necessary that the taluk office must be put up only at the site already chosen for SC persons. Whenever a Taluk office is put up, developmental activities will automatically spring around it. On the other hand, people cannot be expected



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to live in any place. Survey No.529/6 had been identified as appropriate. Any administrative action should be informed by reason. The respondents cannot arbitrarily decide. It is obvious that no comparative evaluation exercise was undertaken. The officials on their own decided to prioritize the putting up of the Taluk office over the allotment process for the beneficiaries. I hold that this decision has been arbitrarily taken. It was held by the Hon'ble Supreme Court in the decision reported in (1991) 2 SCC 604 (SC&WS Welfare Association v. State of Karnataka) that it is one of the fundamental rules of our constitutional setup that every citizen is protected against exercise of arbitrary authority by the State or its officers. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power and the rule of natural justice operates in areas not covered by any law validly made. No formal allotments might have been made. But the families belonging to Adi Dravidar community do have a definite interest in the subject matter. The petitioner herein had already filed a writ petition. Therefore, the impugned decision could not have been taken without putting the stakeholders on notice.

10.The proposed allottees do have the right of legitimate expectation.



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The Hon'ble Supreme Court of India in the decision reported in (1992) 4 SCC 477 (Navjyoti Cooperative Group Housing Society v. UOI) held that the doctrine of legitimate expectation imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such legitimate expectation. Within the concept of fair dealing in case of legitimate expectation, the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy come in. In that case, the court noted that there was no compelling reason taken into consideration to make a departure from the existing policy of allotment with reference to seniority in registration by introducing a new guideline. I have no hesitation to come to the conclusion that the legitimate expectation of the proposed allottees has been seriously breached.

11. There is yet another aspect to be borne in mind. There is something called doctrine of benevolent exercise of powers. Long ago, the legendary lawyer Shri. Nani Palkhivala lamented that we have public servants but there is no public service. Officials have to discharge their functions by putting themselves in the place of the persons whom they are supposed to serve. That is the difference between a colonial regime and a republican government. Not for nothing Abraham Lincoln said “of the people, by the people and for the



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people”. Human beings are capable of empathy. Had the authorities considered the issue in its holistic perspective, they would have come to the conclusion that benefitting 500 families is far more important than building a Taluk office in the identified site. This is what is called as benevolent exercise of power. The impugned decision falls woefully short on this count also.

12.In this view of the matter, the impugned order is set aside. The fifth respondent is directed to identify the list of beneficiaries in accordance with law and issue them free house site pattas and also hand over the allotted sites. This exercise shall be done by the fifth respondent within a period of three months from the date of receipt of a copy of this order. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
rmi/skm

To

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