

W.A.(MD).No.604 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:23.09.2024

CORAM :

**THE HON'BLE MRS. JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN**

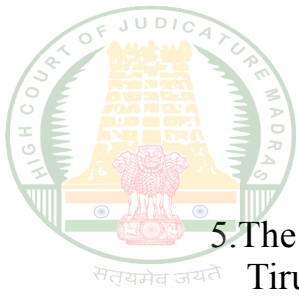
W.A.(MD).No.604 of 2019
and
C.M.P.(MD).Nos.4945 and 4946 of 2019

- 1.M.Palayee
- 2.Mohana
- 3.Pandian
- 4.Bhuvaneswari

... Appellants

Vs.

- 1.Secretary to Government,
The State of Tamil Nadu,
Department of Science and Technology
Fort St. George,
Secretariat,
Chennai-600 009.
- 2.The District Collector,
Tiruchirapalli.
- 3.The District Revenue Officer,
Tiruchirapalli District,
Tiruchirapalli.
- 4.The Revenue Divisional Officer,
Tiruverambur Taluk,
Tiruverambur,
Tiruchirapalli District.



W.A.(MD).No.604 of 2019

WEB COPY

5.The Tahsildar,
Tiruverambur Taluk,
Tiruverambur,
Tiruchirapalli District.

6.The Bharathidasan University,
(Now anna University),
Tiruchirapalli.

7.The Chief Engineer,
PWD, Technical Education Circle,
Chennai-600 025.

... Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 08.05.2019 in W.P.(MD).No.18880 of 2018.

For Appellants	: Mr.ARL.Sundaresan Senior Counsel
For Respondents	: Mr.D.Sachi Kumar (for R1 to R5 & R7) Additional Government Pleader :Mr.E.V.N.Siva (for R6)

JUDGMENT

[Order of the Court was made by **Mr.P.VELMURUGAN, J.**]

This intra court appeal has been filed challenging the writ court order dated 08.05.2019 passed in W.P.(MD).No.18880 of 2018.

2.The appellants filed writ petition in W.P.(MD).No.18880 of 2018, to issue a writ of Certiorarified Mandamus, to call for the records



W.A.(MD).No.604 of 2019

relating to the award of work under letter No.DB/D.O/T. 31/2018-19/TEC, dated 13.07.2018 of the seventh respondent in favour of the eighth respondent herein and quash the same and direct the fourth respondent herein to grant patta in favour of the appellants herein in respect of the lands of an extent of 1.62.0 hectares (4.00 acres) comprised in S.No.698 (Old S.No.99 part), Sooraiyur Village, Thiruverembur Taluk, Tiruchirappalli District. The Writ Court after giving opportunity to the appellants, disposed of the writ petition with certain observations and directions and the relevant paragraph No.12 of the said order dated 08.05.2019, is extracted hereunder:

12. But the matter cannot rest there. A mere perusal of the materials on record would indicate that the Writ petitioners have made out a prima facie case that the land in question belongs to them. Probably, that is why the Government issued G.O.Ms.No.3149 Department of Education, Science and Technology, dated 26.06.1982 for acquiring the same. Therefore, it is necessary that the respondents are put on terms. Right or wrong, there is a declaratory decree standing in favour of the Writ petitioners. This Court permits the sixth respondent herein to file a third party appeal questioning the said



WEB COPY



W.A.(MD).No.604 of 2019

Judgment and Decree. If such an appeal is filed within a period of four weeks from the date of receipt of a copy of this order, the same shall be entertained by the appellate Court without reference to limitation. It is the sixth respondent that wants to have the compound wall constructed by enclosing the land in question. Therefore they shall deposit a sum of Rs.40,00,000/-(Rupees Forty Lakhs only) to the credit of O.S.No.617 of 2012 on the file of the II Additional District Munsif, Thiruchirappalli. The first appellate Court shall dispose of the appeal within a period of four months from the date of filing. Additional evidence shall be permitted to be adduced. The first appellate Court shall decide as to whom the land in question belongs. If it comes to the conclusion that the land in question belongs to the Writ petitioners, in the very same proceedings, the first appellate Court will also finalise the compensation payable to the Writ petitioners. Since the lease was granted by the Government in favour of the sixth respondent University way back on 09.02.1990, it shall be taken as the cut off date for fixing the market value. Since the possession was handed over by the Government to the University on the said



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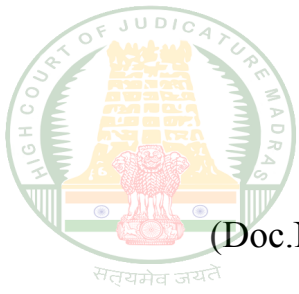


W.A.(MD).No.604 of 2019

date, the Writ petitioners will be entitled to 15% interest on the compensation awarded. The first appellate Court will apply the principles for determining the compensation as set out in Section 23 of the Land Acquisition Act 1894 and pass an order. I have directed the sixth respondent to deposit an amount of Rs.40 Lakhs, because I see that in a number of cases the compensation amount is not paid even after the passing of award. If the sixth respondent does not deposit the amount of Rs.40 Lakhs as directed, it will not be entitled to carry on with the construction of the compound wall. It is made clear that this Court has not given any definite finding on the title of the petition mentioned lands. It is for the appellate Court to adjudicate the issue.

3.Challenging the said order of the writ Court, the appellants have filed this writ appeal.

4.The learned Senior Counsel appearing for the appellants would submit that the land in question was purchased by their father Thiru.Mariappa Uthamandar vide registered sale deed, dated 12.10.1966



W.A.(MD).No.604 of 2019

(Doc.No.5571/66) from one Kumudhavalli Thayar. When the appellants

came to understand that the property in question was classified as Assessed Waste Dry in the revenue records, they filed a suit in O.S.No. 617 of 2012 before the learned II Additional District Munsif Court, Thiruchirappalli, for declaration and permanent injunction. The said suit was decreed on 20.08.2014, in which, the respondents 2 to 5 herein are the parties as defendants 1 to 4. Based on the decree, the appellants applied the patta. The request of the appellants was considered by the fifth respondent and the same was rejected by him. Meanwhile, the sixth respondent attempted to put up a compound wall, in which, the seventh respondent issued a work order under letter No.DB/D.O/T. 31/2018-19/TEC dated 13.07.2018 to the eighth respondent in W.P. (MD).No.18880 of 2018 for constructing the compound wall. Challenging the said order, the appellant filed writ petition before the writ Court in W.P.(MD).No.18880 of 2018 and also a consequential direction was sought for by the appellants as against the fourth respondent to grant patta in favour of the appellants in respect of the disputed land.

5.The learned Senior Counsel further submitted that being the



W.A.(MD).No.604 of 2019

WEB COPY

party to the suit, the respondents 2 to 5 have not challenged the decree and judgment passed by the trial Court in O.S.No.617 of 2012 dated 20.08.2014 and instead of granting patta, they supported other respondents. The writ Court failed to consider the fact that the appellants got the decree and judgment in favour of them from the competent Civil Court. Unless the said decree and judgment is being set aside, the sixth respondent cannot encroach the land and therefore, the order of the learned Single Judge is liable to be set aside. Further, the learned Senior Counsel would submit that the learned Single Judge erroneously gave a direction to the sixth respondent to file an appeal, who was not the party to the suit. Hence, he seeks to allow this appeal.

6.The learned counsel for the sixth respondent would submit that the disputed land was acquired by the Government vide G.O.(Ms.)No. 1349, Department of Education, Science and Technology, dated 26.06.1982 and the Government conferred leasehold rights in favour of the sixth respondent vide G.O.(Ms).No.229 Revenue Department, dated 09.02.1990. The property was also handed over to the sixth respondent. After the said acquisition of the land in the year 1982, the appellants have no right to get title and interest over the said property and title



W.A.(MD).No.604 of 2019

vested with the sixth respondent. The appellants suppressing the said fact, filed a suit in O.S.No.617 of 2012 and in collusion with the respondents 2 to 5, got declaratory decree. Originally, an exparte decree was granted in favour of the appellants, which was subsequently set aside in A.S.No.68 of 2013, dated 16.12.2013 and the matter was remitted back to the trial Court for fresh trial and even after remitting, there is no proper representation on behalf of the respondents 2 to 5 and the respondents 2 to 5 have also not placed any acquisition proceedings of the year 1982 before the trial Court. The appellants, without any objections, got exparte decree against them. In the said suit, the sixth respondent was purposefully not impleaded. He further submitted that the appellants never challenged the acquisition proceedings. The acquisition proceedings came to an end in the year 1982. The sixth respondent was the owner of the property, at the time of filing the suit and obtained decree. Therefore, the judgment and decree passed by the trial Court in O.S.No.617 of 2012 dated 20.08.2014 is liable to be set aside. When the owner of the property/sixth respondent took steps to construct the compound wall with the help of the seventh respondent, at this juncture, the appellants have filed the subject matter of the writ petition impleading the sixth respondent. The appellants have not come with



W.A.(MD).No.604 of 2019

clean hands before the writ Court and suppressing the material fact of acquisition in the year 1982 and in collusion with the respondents 2 to 5, obtained the decree. The learned Single Judge also personally inspected the property and passed the said order. However, the writ Court considered the fact that the sixth respondent was not a party to the earlier suit in O.S.No.617 of 2012 and therefore, the writ Court permitted the sixth respondent to file an appeal challenging the judgment and decree passed by the trial Court in O.S.No.617 of 2012. Based on that, the sixth respondent also filed an appeal in A.S.No.81 of 2019, before the I Additional Judge, Trichy, challenging the judgment passed in O.S.No. 617 of 2012. Though he was not a party to the suit, but he is aggrieved party and he was permitted to file an appeal. Since the order of the Single Judge has been stayed, the appeal could not be disposed of. Further, he requested before this Court with a direction to the first appellate Court to dispose of the appeal in A.S.No.81 of 2019 within a stipulated time.

7.This Court considered the rival submissions made by the learned counsel appearing on either side and also perused the materials available on record.



W.A.(MD).No.604 of 2019

8.It is seen from the records that the appellants filed a suit in O.S.No.617 of 2012 and they got decree on 20.08.2014. Thereafter, they filed a representation for issuance of patta. Since the revenue officials have not considered their representation, they approached this Court in W.P.(MD).No.9877 of 2015 and this Court directed the fifth respondent herein to verify the documents, which are available in the Registrar Office and pass appropriate orders on merits, on the appellants' representation dated 14.10.2014. After passing the order, they have not issued patta. Meanwhile, the sixth respondent with the help of the eighth respondent in the writ petition tried to put up a compound wall. Since the seventh respondent issued work order to the eighth respondent in the writ petition, the appellants approached this Court and on service of the notice, the sixth respondent filed the counter stating that the disputed land was acquired by the Government, on 26.06.1982, under G.O. (Ms).No.1349, Department of Education, Science and Technology. After the acquisition proceedings, the Government of Tamil Nadu handed over the land to the sixth respondent and the sixth respondent was in possession. The appellants suppressing the material facts, filed the suit against only the respondents 2 to 5 and got the decree behind the back of the owner of the property, namely, Bharathidasan University.



W.A.(MD).No.604 of 2019

Considering the said fact, the learned Single Judge took a view and also went to the extent of inspecting the property physically and passed the order dated 08.05.2019. Though the Government of Tamil Nadu handed over the land in question to the sixth respondent/University by way of lease, the sixth respondent is a necessary party, but wherein the sixth respondent is not a party in O.S.No.617 of 2012 on the file of the II Additional District Munsif, Trichy. Even though initially, the suit was dismissed on 07.02.2013, the defendants therein remained *exparte*. The appellant filed the appeal in A.S.No.68 of 2013 before the I Additional Sub Court, Trichy and the said appeal was allowed and the matter was remitted to the trial Court for fresh trial. Even thereafter, the respondent Nos. 2 to 5 did not file the written statement and no evidence was let in and therefore, in the absence of any materials on the side of the defendants, the civil Court passed the decree in the suit on 20.08.2014. In the suit, there was no challenge and the learned Single Judge finds that the official respondents 2 to 5 colluded with the appellants and they did not take any defense also and the same was not intimated and the lease in favor of the University was also not intimated and acquisition proceedings are also not intimated. Therefore, the learned Single Judge made the above said observation. A further perusal of the records would



W.A.(MD).No.604 of 2019

show that in the writ petition filed by the appellant in W.P.(MD).No.9877

of 2015, the fifth respondent was directed to consider the application made by the appellants dated 14.10.2014 in accordance with law, in which, the sixth respondent is also a necessary party and they have not filed any counter and they have not challenged the said writ Court order. However, subsequently, the appellants challenged the work order issued by the seventh respondent in favour of the said Selvam in the writ petition and in this petition, the sixth respondent filed a counter, stating about the acquisition proceedings and also leasehold interest and the learned Single Judge permitted the sixth respondent to challenge the judgment and decree passed in O.S.No.617 of 2012 on the file of the II Additional District Munsif Court, Trichy. Therefore, the sixth respondent was permitted to file an appeal and they also filed an appeal in A.S.No.81 of 2019 on the file of the I Additional Sessions Judge, Trichy. It is for the sixth respondent to canvass the first Appellate Court and in case, the first Appellate Court finds lack of materials, they can either remit the matter to the trial Court or they can let in additional evidence and dispose of the matter in accordance with law. Since there is no material to show that as to whether the notification was issued or any land acquisition proceedings was initiated and the same was served to the appellants and



W.A.(MD).No.604 of 2019

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the award was passed or any reference whether the appellant received the compensation or not, and since there is bereft of the particulars, it requires evidence regarding the establishment of the title. Rightly or wrongly the appellants filed the suit before the civil Court for declaration and obtained the declaratory decree. Though it is found that the respondents 2 to 5 did not file the written statement and allowed the trial Court to decree the suit, however, now the sixth respondent was given liberty to file the appeal and he has also filed the appeal and the same is pending before the civil Court. Therefore, it is for the civil Court to deal with the case in the manner known to law and dispose of the case in accordance with law. Though this Court directed the first appellate Court to dispose of the appeal within a period of four months, it is brought to the knowledge of this Court that at the time of admission of this appeal, the order of the Single Judge has been stayed. Most probably, the first Appellate Court could not have disposed of the suit. It is not proper to the Writ Court without ascertaining factual position, to give such a direction mentioned in para 12 of the impugned order. However, the Single Judge has rightly given the permission to the sixth respondent who has a certain right in the said property. If at all acquisition had been completed and the land handed over to the University, the revenue



W.A.(MD).No.604 of 2019

records ought to have reflected the name of the University. On the contrary, revenue records continue to show the land as 'Assessed Waste Dry' and not in the name of the University.

9.Under these circumstances, the observation made in paragraph No.12 of the impugned order is unwarranted. However, the sixth respondent was not a party to the suit in O.S.No.617 of 2012. Though the appellants impleaded the sixth respondent in the earlier petition in W.P.(MD).No.9877 of 2015, he did not make him as a party either in the suit or in the appeal quite earlier in A.S.No.68 of 2013. Therefore, under these circumstances, this Court passes the following directions:

9.1.Since the sixth respondent filed an appeal in A.S.No.81 of 2019, the first Appellate Court is directed to give opportunity to both the parties and hear the appeal and dispose of the matter in accordance with law within a period of two months from the date of receipt of a copy of this order;

9.2.In case the first Appellate Court finds that the matter to be remitted back to the trial Court, it is for the respondents 1 to 5 and the



W.A.(MD).No.604 of 2019

sixth respondent to file the written statement before the trial Court within a period of 30 days from the date of remitting. Thereafter, the trial Court is directed to conduct the trial after framing issues on day-to- day basis;

9.3.The trial Court is directed to complete the trial after receiving the written statement and framing issues within a period of four months from the date of receipt of the remittal order; and

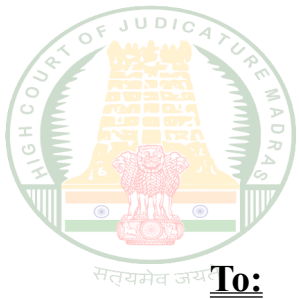
9.4.Till then, the sixth respondent is directed not to alter the physical features of the said property.

10.With the above directions, this writ appeal is disposed of. No costs. Consequently, the connected civil miscellaneous petitions are closed.

[P.V.J.] & [K.K.R.K.J.]

23.09.2024

NCC :Yes / No
Index :Yes / No
Internet :Yes / No
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W.A.(MD).No.604 of 2019

To:
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1. Secretary to Government,
The State of Tamil Nadu,
Department of Science and Technology
Fort St. George,
Secretariat,
Chennai-600 009.
2. The District Collector,
Tiruchirapalli.
3. The District Revenue Officer,
Tiruchirapalli District,
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4. The Revenue Divisional Officer,
Tiruverambur Taluk,
Tiruverambur,
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5. The Tahsildar,
Tiruverambur Taluk,
Tiruverambur,
Tiruchirapalli District.
6. The Chief Engineer,
PWD, Technical Education Circle,
Chennai-600 025.
7. The Special Government Pleader,
Madurai Bench of Madras High Court,
Madurai.



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W.A.(MD).No.604 of 2019

P.VELMURUGAN. J.,
and
K.K. RAMAKRISHNAN. J.,

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and
C.M.P.(MD).Nos.4945 and 4946 of 2019

Dated :23.09.2024