



W.P.(MD)No.21497 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.21497 of 2023

and

W.M.P.(MD)Nos.17885 & 17886 of 2023

Kalasalingam and Anandammammal Charities

A registered trust (having No.60/1983),

Rep. By Trustee having office at

Anand Nagar, Krishnankovil,

Watrap Taluk,

Virudhunagar District,

Through its President

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Revenue and Disaster Management Department,
Secretariat,
Chennai-9.

2.The District Collector,
Virudhunagar District,
Virudhunagar.

3.The District Revenue Officer,
Virudhunagar,
Virudhunagar District.



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4. The Tahsildar,
Watrap,
Virudhunagar District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 2nd respondent made in Na.Ka. No.G2/22785/2017-2 dated 07.06.2021 and the consequential proceedings of the 1st respondent made in G.O.Ms. No.434 (Revenue and Disaster Management Department - Land Disposal Unit, Land Disposal 6(2) Section) dated 14.08.2023 and quash the same and consequently, direct the respondent to consider the petitioner's request for exchange of land.

For Petitioner : Mr.Sricharan Rengarajan
Senior Counsel
for G.Ramesh

For Respondents :Mr.J.Ravindran
Additional Advocate General
for Mr.K.Balasubramani
Special Government Pleader

ORDER

Heard the learned Senior Counsel appearing for the petitioner and the learned Additional Advocate General assisted by the learned Special Government Pleader appearing for the respondents.



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2. The petitioner is an educational institution. Public Interest Litigation was filed in W.P.(MD)No.11055 of 2017 alleging that the petitioner had committed encroachment in respect of the water course and constructed a building. The petitioner was shown as 8th respondent in the said writ petition. The petitioner was also duly represented. After hearing both sides, the Division Bench vide order dated 11.07.2017 passed the following order:-

“4. We direct the first respondent to consider and dispose of the representation submitted by the petitioner dated 02 January, 2017, on merits and as per law with notice to the eight respondent. It should be the endeavour of the District Collector to cause survey of the property mentioned in the affidavit filed by the petitioner and to decide as to whether there was any such act of encroachment at the instance of the eight respondent. In case, it is found on enquiry that there is encroachment, necessarily, action should be taken in accordance with law against the encroachers. Such exercise shall be completed within a period of four months from the date of receipt of a copy of this order.”

Pursuant to the said direction, after conducting spot inspection, an eviction order was passed by the Tahsildar, Watrap on 25.04.2019. Challenging the same, the petitioner filed an appeal under Section 10 of the Tamil Nadu Land Encroachment Act, 1905. The appeal was dismissed on 07.06.2021. The



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petitioner thereafter filed revision petition before the Government. The revision petition was dismissed vide G.O.Ms.No.434, Revenue and Disaster Management Department dated 14.08.2023. Challenging the same, this writ petition has been filed.

3. The primary contention of the learned senior counsel appearing for the petitioner is that the then District Collector, Virudhunagar had recommended exchange of lands since the water course in question had lost its character and in view of the topographical situation. He also would refer to G.O.Ms.No.201, Revenue and Disaster Management Department, dated 10.05.2022 in support of his contention. He reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned G.O and grant relief as prayed for.

4. The learned Additional Advocate General appearing for the respondents submitted that this Court had passed an order for removal of encroachment and that therefore, the impugned G.O dismissing the petitioner's revision petition ought not to be interfered with. He pressed for dismissal of the writ petition.



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5. We carefully considered the rival contentions and went through the materials on record. Before us, it has not been disputed that the petitioner had committed encroachment on the water body. The emphasis is more on considering the petitioner's request for providing lands in exchange. At the very outset, we clarify that G.O.Ms.No.201, Revenue and Disaster Management Department, dated 10.05.2022 cannot be invoked. The learned senior counsel would of-course refer to the recommendations made by the committee as set out in Paragraph No.4(ii). Recommendations are there. But what matters is the operative portion of the G.O. Paragraph No.6 of the G.O reads as follows:-

“6. The Government have decided to accept the recommendations of the Committee to streamline the procedures involved in the exchange of land (not involving water course) and accordingly, order the replacement of the existing Revenue Standing Order 26(A) concerned with the exchange of land (not involving water course) with the rules as detailed in para 5 above.”

The operative portion very clearly states that exchange can be permitted only if water courses are not involved. The case on hand pertains to odai which is a water course. Therefore, reliance on the aforesaid GO is misplaced. We carefully went through the orders passed by the District Collector as well as the Government. The orders are very reasoned. It is not as if peremptory action is



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proposed to be taken. Spot inspection was conducted. All the relevant aspects were taken note of. It was ultimately concluded that the petitioner has in fact put up the building on a water course. The direction given by the Division Bench in W.P.(MD)No.11055 of 2017 is to the effect that if encroachment is identified, then it has to go. The question of offering lands in exchange does not arise at all. Such a course of action was not contemplated by the order of the Division Bench dated 11.07.2017 in W.P.(MD)No.11055 of 2017. The petitioner has availed appeal as well as revisional remedies. All the three authorities have in unison rendered a finding that the petitioner has encroached on the water body. In exercise of writ jurisdiction, interference with such a finding is not warranted. Consequence has to follow. We grant six more months to the petitioner to physically remove the building in question. The petitioner shall file an affidavit of undertaking to remove the building within the aforesaid period. The Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[G.R.S., J.] [B.P., J.]

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