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S.A(MD)No.130 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.130 of 2004

Shri Subramaniaswamy Thirukovil,
Tiruchendur,
Through its Joint Commissioner/Executive Officer,
Tiruchendur.

... Appellant/Appellant/Plaintiff

Vs.

Town Panchayat,
Tiruchendur through its
Executive Officer,
Tiruchendur.

... Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 31.01.2002 passed in A.S.No.153 of 1999, on the file of the Principal District Court, Tuticorin, confirming the judgment and decree dated 31.03.1999 passed in O.S.No.199 of 1996 on the file of the Additional District Munsif Court, Tiruchendur.

For Appellant : Mr.V.Srikanth

For Respondent : Mr.N.Subbarayulu



JUDGMENT

The Judgments and decrees passed in O.S.No.199 of 1996 on the file of the Additional District Munsif Court, Tiruchendur and in A.S.No.153 of 1999, on the file of the Principal District Court, Tuticorin, are being challenged in the present Second Appeal.

2.The appellant herein as plaintiff instituted a suit in O.S.No.199 of 1996 on the file of the trial Court against the respondent for mandatory injunction directing the respondent/defendant to remove the construction already made in the schedule property within the time fixed by this Court, failing which, to have the same done through Court at the expenses of the defendant and for permanent injunction restraining the defendant, its men, agents, servants from putting up any construction in the schedule property and for costs.

3.For the sake of convenience, the parties are referred to as, as described before the trial Court.



4. According to the plaintiff, the schedule property was within Shri Subramaniaswami Thirukoil premises. The said land was acquired by the Government for the purpose of construction of a ground level service reservoir under the composite water supply scheme for Kayalpattinam and other villages and the land acquisition proceedings were initiated. An award was passed by the Land Acquisition Officer, Thasildar, Tiruchendur in No.1/1967, ?1.22040/64 dated 24.08.1967. The land was entrusted to the Public Health Department and they have entrusted the construction of the reservoir to the TWAD Board. The TWAD Board constructed the reservoir and the maintenance of the same was entrusted to the defendant. Several irregularities and illegalities have been committed in the land acquisition and hence, the plaintiff has decided to challenge the validity of the acquisition. The defendant has put up an unauthorised construction in the schedule property and he has absolutely no right to put up any construction in the schedule property. Since the construction was not for any public purpose, the defendant was not entitled to pursue with such construction. Further, the schedule property was within the precincts of Shri Subramaniaswamy Temple, no one was entitled to put up any construction, which was likely to affect the solemnity and sanctity of the place. It was also an environmental



health hazard since the construction involved a septic tank also near the reservoir. Hence, the plaintiff sent a registered notice dated 13.01.1995 to the defendant, requesting the defendant to stop all constructions in the schedule property and to remove all the constructions so far made and to restore the land to its original position. Though the defendant received the notice on 18.01.1995, he has not chosen to send any reply nor he comply with the requests made in the said notice. Hence, the plaintiff has filed the said suit for the abovestated relief.

5.The defendant had filed a written statement stating that the suit was not maintainable in law and on facts. The plaintiff was not entitled to a mandatory injunction as prayed for in the suit. The suit property was acquired by the Government. The Award was passed in Award No.1/1997 (B1.22040/64) on 24.08.1967. From the plaintiff, the acquisition was made and the compensation amount was deposited in the Court. The land was acquired for the purpose of construction of a ground level reservoir under the composite water supply scheme for Kayalpattinam etc., Village and Keela Thiruchendur Village. The land was entrusted to the Public Health Department, which entrusted it to the TWAD Board for the construction of reservoir and pump house even



in the year 1967 for the supply of water for the public including Devasthanam. Thereafter, the TWAD Board handed over the suit property to the defendant for maintenance with the said constructions. The plaintiff cannot file a suit and it was barred by limitation. Again in the year 1992 on behalf of the Panchayat, the TWAD Board constructed an overhead tank in the suit premises and in the year 1994, the defendant had constructed a watchman quarters in the suit property. Since there were encroachments, the Public Health Department directed the defendant to raise compound wall all around to protect the water of the ground level reservoir. The suit property vests with the defendant Panchayat from 1967 onwards. The construction of septic tank would not affect the ground level reservoir and it would not affect the sanctum and sanatorium of the plaintiff. The plaintiff has many pay and use toilets with large septic tank near the temple and the plaintiff was not entitled to the relief of mandatory injunction and prayed for dismissal of the suit.

6.Before the trial Court, on the side of the plaintiff, one Muthanandam was examined as P.W.1 and Exs.A1 & A2 were marked. On the side of the defendant, one Murugesan was examined as D.W.1 and Exs.B.1 to B.5 were marked.



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7. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has dismissed the suit.

8. Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff herein as appellant, had filed an Appeal Suit in A.S.No.153 of 1999 on the file of the first Appellate Court.

9. The first Appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.

10. Challenging the said Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the plaintiff as appellant.



11.At the time of admitting the present second appeal, this Court had framed the following substantial questions of law for consideration:

"1) Is not the ratification of the H.R & C.E Department required when the lands belonging to the temple are acquired?

2) Whether the acquiring authority is legally right in putting the acquired lands for a different purpose other than the one for which it was acquired?

3) Is not the civil Court competent to grant the relief in the nature of mandatory injunction against the Town Panchayat/respondent in this case?"

12.The learned counsel appearing for the appellant/plaintiff would submit that the Courts below failed to note that the owner of the land in an acquisition proceedings can always object, if the acquired land was being used for a different purpose other than the one for which it was acquired. The Courts below ought to have seen that the



very purpose of the land acquisition stands defeated, if the acquired lands are used for a purpose which was alien to the acquisition. The Courts below ought to have seen that the plaintiff's lands were acquired for the construction of a ground level service reservoir and were entrusted to Tamil Nadu Water and Drainage Board. However, the defendant has put up watchman quarters and septic tank thereby polluting the environment of the Temple nearby. The construction of septic tank would affect the ground level water reservoir and possess a threat to the sanitation in and around the Temple premises, which fact the Courts below failed to note. The Courts below failed to appreciate that the construction of the septic tank in the Temple premises was objectionable, since the same cause a health hazard and pollute the environment. The Courts below failed to note that the construction of a septic tank close to the ground level water tank was a violation of Panchayat building Rules and as such, the civil Court has jurisdiction to grant the relief of mandatory injunction and the Courts below failed to note that the land acquisition proceedings of Temple lands cannot be done without the consent of the HR & CE Department as per G.O.Ms.No.1630 Revenue, dated 26.09.1984 and prayed for allowing the Second Appeal.



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13.The learned counsel appearing for the respondent/defendant reiterated the averments made in the plaint and the appeal and submitted that the Courts below had rightly dismissed the suit.

14.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and also perused the records carefully.

15.According to the plaintiff, it is an admitted fact that an extent of 44 cents comprised in Survey No.201/3 and an extent of 13 cents in Survey No.202/2 totalling 57 cents in Keela Tiruchendur Village belonged to the plaintiff Temple within the premises of the Temple and in the year 1967, it was acquired by the Government, who in turn entrusted it to the public Health Department and then to TWAD Board and constructed a reservoir and then handed over it to the Town Panchayat. Further, according to the plaintiff, the defendant also admits construction of the septic near reservoir and the construction of the



septic near reservoir was against the rules of the Panchayat Act and hence, the act of the defendant can be injuncted even without proof of special damage. The contention of the respondent that the Government acquired the property in the year 1967 itself and it was time barred, the same cannot also be accepted since the construction of the guest house are only in the year 1995.

16. According to the defendant, once the property has been acquired by the Government, it is the property of the Government and acquisition is admitted by the plaintiff and if it is the Government property, the plaintiff cannot object.

17. On a perusal of the materials available on record, it is seen that the ratification of the H.R & C.E is not necessary, as the lands were acquired by the Government and there was no objection raised by the HR & CE and the same was ended in Award No.1/1967, B. 1.22040/64 dated 24.08.1967. Hence, the first question of law regarding this issue is held against the plaintiff, as there is no objection raised by the HR & CE or it is not the forum to raise the same.



18.Regarding the second question of law, the acquiring authority has sought the lands for construction of a ground level service reservoir under the composite water supply scheme for Kayalpattinam and other Villages. The authorities have constructed the water reservoir in the said premises as per the acquisition and they put up a over head tank only to serve the people of the local area by supplying water to Devasthanam as well as Keela Tiruchendur Village.

19.Further, it is seen that they have constructed a watchman rest house only to protect the said construction in order to avoid any miscreants entering into the property. It is seen that the Temple itself has constructed various pay and use toilets around the Temple and they have no right to question the construction of the rest house by the defendant.

20.Regarding the third question of law, it is seen that only for the public purpose, the reservoir has been constructed. If at all the plaintiff is aggrieved, he ought to have raise this before the competent Court by way of a different proceedings and not by filing the suit.



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21.From the above, this Court is of the view that the Judgments and Decrees of the Courts below are accompanied with sufficient reasons, in which, this Court does not want to make any interference. Accordingly, the substantial questions of law framed are ordered as against the plaintiff and in favour of the defendant.

22.In the result, the Second Appeal stands dismissed. No costs.

23.08.2024

Index : Yes/No
Internet : Yes/No
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To

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- 1.The Principal District Court,
Tuticorin.
- 2.The Additional District Munsif Court,
Tiruchendur.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.

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Judgment made in
S.A(MD)No.130 of 2004

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