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W.P.(MD)NO.21589 OF 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.21589 of 2015 AND

M.P.(MD)No.1 of 2015 & W.M.P.(MD)No.3053 of 2017

Sivakasi Master Printer's Association,
Rep. by its President,
Railway Feeder Road,
Sivakasi,
Virudhunagar District.

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. By its Secretary,
Department of Revenue,
Fort St. George,
Chennai – 9.

2. The District Collector,
Virudhunagar District,
Virudhunagar.

3. The District Revenue Officer,
Virudhunagar cum competent Authority,
Virudhunagar District.

4. The Tahsildar,
Sivakasi Taluk,
Sivakasi,
Virudhunagar District.

... Respondents



Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records relating to the impugned proceedings issued by the second respondent in his proceedings in Roc.No.G4/24481/2006 dated 26.11.2015 and quash the same as illegal.

For Petitioner : Mr.Isaac Mohanlal,
Senior counsel,
for Mr.N.Dilip Kumar.

For Respondents : Mr.R.Ravindran,
Additional Advocate General,
assisted by,
Mr.K.Balasubramani,
Special Government Pleader.

* * *

ORDER

The writ petitioner questioned the proceedings of the District Collector, Virudhunagar issued vide Roc.No.G4/24481/2006 dated 26.11.2015.

2. It is acknowledged in the impugned proceedings that an extent of land measuring 0.30 acre in old survey No.579/2 in Sivakasi Village, Sattur Taluk now comprised in T.S.No.6/1, Sivakasi Town and Taluk was alienated in favour of the writ petitioner on payment of



market value of Rs.4,294/- under BSO 24. It was further mentioned therein that the alienation was made with general and special conditions specified in that order for the purpose of construction of building for Graphic Arts School at Sivakasi. The District Collector directed the writ petitioner herein to remove the superstructures and hand over possession of the land to the Government within one week. Two reasons were set out for issuing such a direction; i) The Hon'ble Supreme Court in SLP(c)Nos.20061-62 of 2008 filed by the Tax Payers Association, Sivakasi had made it clear that no encroachment in Sirukulam Kanmoi shall be permitted and ii) The assignee had breached the condition subject to which the alienation was made.

3. The writ petition was filed on 02.12.2015. The matter was taken up on the same day by the Hon'ble Division Bench of this Court and adjourned on 07.12.2015. It was again taken up on 08.12.2015 and the docket order reads "at request, post on 10.12.2015". The matter was taken up on 10.12.2015 again and the docket order reads "at request, post on 15.12.2015". The matter was taken up on 15.12.2015 and the docket order reads "at request, post on



17.12.2015. The docket order dated 17.12.2015 reads as follows:-

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“Since the Hon'ble Supreme Court has adjourned the matter to 12.02.2016, post the matter in the third week of February 2016.”

Subsequently, the matter was not listed for hearing and since the petitioner had not obtained any interim order, the District Administration demolished the constructed building on 14.10.2016.

4. The learned Senior counsel appearing for the petitioner vehemently submitted that the action of the District Administration constituted rank illegality. Admittedly, the land in question had been alienated way back in 1977. The petitioner cannot be termed as an encroacher. The petitioner had put up buildings. Originally, the Arts College was being run, and subsequently, the building was being used for the purpose of housing the students studying in their polytechnic college. The basic purpose has not been changed. In any event, when this Court was seized of the matter, the authorities ought not to have highhandedly carried out the demolition. He submitted that appropriate compensation must be paid by the Government to the petitioner.



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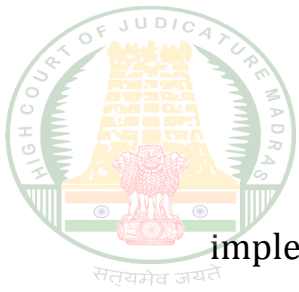
5. The respondents have filed their counter affidavit. Their stand is that they only carried out the orders of the Hon'ble Supreme Court. It was further pointed out that the issues regarding compensation cannot be adjudicated in writ proceedings. They pressed for dismissal of the writ petition.

6. We carefully considered the rival contentions and went through the materials on record.

7. We had already extracted the docket orders passed in this writ petition. It is not as if the authority did not give any breathing time to the petitioner herein. The case was listed on as many as four occasions in December 2015 itself. The petitioner ought to have impressed upon this Court and obtained an interim order. They failed to do so. The authorities cannot therefore be blamed for enforcing the order impugned in the writ petition in October 2016. The impugned order was passed in November 2015. The demolition was carried out only in October 2016. There is a clear gap of more than 11 months.



WEB COPY 8. One may wonder as to why the Hon'ble Division Bench before which the matter was listed for admission did not grant any interim relief in favour of the petitioner. It is seen from the record that on 19.10.2011, the Hon'ble Supreme Court directed the State Government through the District Collector to take appropriate steps to ensure that 138 encroachers mentioned in the affidavit are removed as expeditiously as possible. It was further directed that no encroachment on the said land and the water body known as "Sirukulam Kanmoi" shall be permitted. The order of the Hon'ble Supreme Court was understood by the authorities to mean that the water body should be restored to its original condition. They were under pressure because of the filing of Cont.P.No.197-198 of 2012 before the Hon'ble Supreme Court of India. It is only the Hon'ble Supreme Court which could have clarified if the water body should be restored to its original condition in which event the petitioner's building would have to face demolition or not. The petitioner herein rightly filed an impleading application in the contempt proceedings seeking clarification that the order of the Hon'ble Supreme Court did not envisage eviction of the petitioner from T.S.No.6/1. This



impleading petition was filed on 11.12.2015 before the Hon'ble Supreme Court. In paragraph No.13 of the affidavit, the petitioner stated as follows:-

“When the writ petition filed by the applicant herein came up for hearing before the Hon'ble Madurai Bench of Madras High Court, the Hon'ble Court orally observed that an identical issue is pending before the Hon'ble Court and directed the applicant herein to approach this Hon'ble Court by impleading in the above contempt petition.”

The petitioner having filed an impleading petition before the Hon'ble Supreme Court ought to have obtained relief only before the Hon'ble Supreme Court of India. The order made in the application filed by the petitioner before the Supreme Court has not been produced before us. Since the petitioner had moved the Supreme Court, it would not be proper for us to adjudicate on the same issue.

9. Setting aside the impugned order and granting restitution to the petitioner would not be in public interest. Because that would result in reconstruction of a building on a water body. Alienation made in favour of the writ petitioner in the year 1977 was itself



improper. A water body should never have been allowed to pass into private hands. Even if a tank had become dry, efforts should be made to restore its original condition. That is why, we decline to order restitutionary relief. We also cannot brush aside the contention urged by the respondents that running hostel in the building in question would constitute breach of the conditions subject to which alienation was made.

10. The building in question was admittedly 40 years old. Even if we accept the case of the petitioner, the writ Court sitting under Article 226 of the Constitution of India cannot assess the quantum of damages or compensation since the same requires adjudication by leading evidence for which the appropriate forum is the civil Court.

11. No relief can be granted in these writ proceedings. This writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.SWAMINATHAN, J.) & (B.PUGALENDHI, J.)
20th February 2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

1. The Secretary,
Department of Revenue,
Fort St. George, Chennai – 9.
2. The District Collector,
Virudhunagar District,
Virudhunagar.
3. The District Revenue Officer,
Virudhunagar cum competent Authority,
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