



W.P.(MD)No.4117 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.04.2025

DELIVERED ON : 15.04.2025

CORAM

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.P.(MD)No.4117 of 2017

and

W.M.P.(MD)No.3276 of 2017

G.Mary Gennie

: Petitioner

Vs.

- 1.The District collector,
District Collectorate,
Nagercoil,
Kanyakumari District.
- 2.The District Revenue Officer,
The district revenue officer,
Nagercoil,
Kanyakumari District.
- 3.The Revenue Divisional Officer,
O/o. The revenue Divisional Officer,
Pathmanapuram,
Thakkalai,
Kanyakumari District.



W.P.(MD)No.4117 of 2017

4.The Thasildhar,
Vilavancode Taluk,
Kuzhithurai,
Kanyakumari District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 4th respondent Thasildhar, Vilavancode in Na.Ka.A2/2557/2016 dated 26.10.2016, quash the same, and further direct the respondents to assign the lands in Survey Nos.607/3 and 606/1 in Kollamcode Village, Vilavancode Taluk, Kanyakumari District in favour of the petitioner as per the Judgment and Decree passed by the Court of the Subordinate Judge at Kuzhithurai in Kanyakumari District dated 05.01.2007 in A.S.No.93 of 2002.

For Petitioner : Mr.Isaac Mohanlal,
Senior Counsel
for Mr.T.Cibi Chakraborty
For Respondents : Mr.Veera Kathiravan,
Additional Advocate General
Assisted by Mr.B.Saravanan
Assistant Government Pleader



W.P.(MD)No.4117 of 2017

WEB COPY

ORDER

The petitioner seeks issuance of a Writ of Certiorarified Mandamus, calling for the records of the fourth respondent and quash the proceedings in Na.Ka.A2/2557/2016 dated 26.10.2016 and to consequently direct the respondents to assign lands in S.Nos. 607/3 and 606/1 in Kallamcode Village, Vilavancode Taluk, Kanyakumari District.

2.I have heard Mr.Isaac Mohanlal, learned Senior Counsel appearing for M/s.Isaac Chambers, Counsel for the petitioner and Mr.Veera Kathiravan, learned Additional Advocate General assisted by Mr.B.Saravanan, learned Additional Government Pleader appearing for the respondents.

3.The case of the petitioner is that the petitioner owns an extent of 74 cents comprised in S.Nos.606/1, 606/2, 606/3 and 607/3 at Kollamcode Village, Vilavancode Taluk, Kanyakumari District, having purchased the same under registered sale deeds of the years 1964 and 1968. Even according to the petitioner, the said lands are classified as “assessed waste dry lands” and the petitioner has constructed a house and has also planted coconut trees, jack fruit trees and has also dug a well and has been in peaceful possession



W.P.(MD)No.4117 of 2017

and enjoyment of the said property, paying taxes to the revenue authorities. Adjacent land owners who had no pathway claimed right of pathway and submitted representations to the first respondent, District Collector, seeking to acquire lands in S.Nos.606/1 and 607/3. The writ petitioner filed a suit in O.S.No.359 of 1993, for relief of declaration and consequential injunction. Pending the suit, there was Peace Committee Meeting conducted on 21.05.1997 and the petitioner agreed for providing a pathway to enable the adjoining land owners to reach their lands through S.Nos.606/1, 606/2 and 606/3. The said arrangement was also confirmed by the report of the Advocate Commissioner, filed in the said suit. The suit was decreed on 17.09.2002, restraining the defendants from evicting the petitioner from the said property, without adhering to due process of law.

4.As the relief of declaration was declined, the petitioner preferred an appeal in A.S.No.93 of 2002, before the Sub-Court, Kuzhithurai. The First Appellate Court granted the relief of declaration and confirmed the decree for injunction already passed by the trial Court. However, the First Appellate Court imposed a condition that the petitioner would have to pay twice the market value of the land on or before 05.03.2007 and on such compliance, the respondents were called upon to assign the property to the petitioner.



W.P.(MD)No.4117 of 2017

WEB COPY

5.According to the learned Senior Counsel, in compliance with the judgment and decree of the First Appellate Court, the petitioner has remitted a sum of Rs.87,674/- on 05.03.2007, which was the last date for payment of the said money. However, no steps were taken by the respondents to assign the lands in favour of the petitioner. The petitioner was therefore, constrained to send a representation to the District Collector / first respondent on 09.02.2013, seeking assignment in compliance with the decree of the competent Civil Court.

6.As there was no action taken on the said representation, the petitioner also moved this Court in W.P.(MD)No.10468 of 2016. The said Writ Petition was allowed by this Court on 28.07.2016, calling upon the respondents to address the representation of the petitioner within a period of two [2] weeks. The petitioner also made further representation subsequent to the said order and also appeared in person on 29.09.2016 and submitted all relevant documents. A reminder was sent on 14.10.2016. However, subsequently, the fourth respondent has passed the impugned order, refusing assignment of the land citing that the petitioner and her husband were Government servants and they had acquired lands against the Tamil Nadu Government Servants Conduct Rules, 1973 and that there was a



W.P.(MD)No.4117 of 2017

pathway in S.No.606/1 and therefore, patta cannot be granted. The further reason was also given to reject the assignment request stating that the market value as directed by the First Appellate Court was not paid and the petitioner has voluntarily chosen to adopt the guideline value and pay the same. It is further contended that the lands in respect of which patta is sought, is situate in coastal area and the said lands are absolutely necessary for the Government to implement various schemes.

7.Learned Senior Counsel Mr.Isaac Mohanlal, would submit that with regard to the contention that the petitioner and her husband were Government servants, the property was acquired by the petitioner as early as in 1960s even prior to the Tamil Nadu Government Servants Conduct Rules, 1973, coming into force and therefore, the said conduct Rules cannot be put against the petitioner to deny patta in respect of the property purchased well before the coming into force of the said Rules.

8.With regard to the pathway, learned Senior Counsel would submit that the pathway dispute was settled in O.S.No.359 of 1993 and therefore, that also cannot come in the way of the petitioner being entitled to patta. With regard to the payment of double the market value as directed by the First Appellate Court, learned Senior Counsel would submit that as soon as the judgment copy was



W.P.(MD)No.4117 of 2017

received by the petitioner on 27.02.2007, the petitioner applied to the Sub-Registrar's office, Kollancode and got valuation and accordingly, the amount of Rs.87,674/- was remitted vide Challan No.752454 on 05.03.2007. Therefore, learned Senior Counsel would submit that the petitioner is entitled to the assignment and the impugned order is liable to be quashed.

9.Per contra, learned Additional Advocate General would submit that the petitioner is attempting to execute the decree of the Civil Court in a Writ Petition. What the petitioner could not achieve before the Civil Court, he is now attempting to get it indirectly done through writ jurisdiction. He would place reliance on the decision of the Kerala High Court in the case of ***the Corporation of Kochi Vs. Thomas John Kithu and others*** reported in **2020 SCC online Ker 2260**, where the Division Bench of Kerala High Court held that the decree of a Civil Court cannot be executed by issuance of Writ of Mandamus. He would also place reliance on the decision of the Hon'ble Supreme Court in the case of ***Ghan Shyam Das Gupta Vs. Anant Kumar Sinha*** reported in **(1991) 4 SCC 379**, wherein it has been held that the High Court, exercising jurisdiction under Article 226, cannot assume the role of an appellate Court and when Order 21 CPC provides for elaborate exhaustive provisions dealing with execution of decree, the High Court cannot embark upon such an exercise in its sub-jurisdiction.



W.P.(MD)No.4117 of 2017

WEB COPY

10.With regard to the payment of the guideline value, the learned Additional Advocate General would submit that the petitioner has admittedly, reckoned only the guideline value and not the market value and the petitioner ought to have approached the appellate court for clarification or atleast called upon the respondents to come forward to fix the market value. Therefore, according to the learned Additional Advocate General, without undertaking such an exercise, the petitioner having unilaterally paid double the amount of guideline value, cannot state that the order of the Appellate Court has been complied with. Learned Additional Advocate General would further refer to the map showing the layout of the property and contend that the petitioner owned a vast extent of property and the petitioner also disposed of the same for valuable consideration and now the petitioner with ulterior motive, is trying to lay hands on Government property, which is required for implementing various schemes. He would therefore, pray for Writ Petition being dismissed.

11.In response, learned Senior Counsel would submit that the Principal Secretary and Commissioner of Land Administration, Chennai in and by letter dated 22.10.2008, has referred to the judgment of the First Appellate Court and also deposit of a sum of



W.P.(MD)No.4117 of 2017

Rs.87,674/- by the writ petitioner and also referred to the Government Pleader, Nagercoil had given an opinion that it was not a fit case for appeal, the Collector of Kanyakumari was requested to report the market value of the land during the year 1992. In furtherance thereof, the Collector has also obtained an opinion of the Government Pleader, Madurai Bench of Madras High Court. The valuation report for the year 1992 also, even according to the Principal Secretary and Commissioner of Land Administration, Chennai, only discloses market value at Rs.31,696.28/- for S.No.606/1 and Rs.12,648.87/- for S.No.607/3. Admittedly, the petitioner has paid Rs.87,674/-, which is approximately about 2 times the said value which is recognized even by the respondents as the relevant market value in the year 1992. A decision has also been taken not to prefer any further appeal and the Principal Secretary has in fact, recommended the Government to assign the land to the writ petitioner herself.

12.Therefore, the respondents have already taken a decision that the lands can be assigned in favour of the writ petitioner, even as early as in 2008, as seen from the communication which has been discussed hereinabove. Therefore, it is now not open to the respondents to go back and contend otherwise. With regard to the reliance placed on the Tamil Nadu Government Servants Conduct Rules, I find no force in the submissions of the learned Additional



W.P.(MD)No.4117 of 2017

Advocate General, for the simple reason that the properties were acquired by the writ petitioner even prior to the coming into force of the said rules in 1973 and therefore, no retrospective effect can be given to punitive provisions of the Service Rules.

13.Secondly, with regard to the passage rights also, the trial Court has recorded the compromise between the adjoining neighbours and the writ petitioner and therefore, the existence of passage or otherwise is immaterial for the assignment made in favour of the writ petitioner. Thirdly, with regard to non-payment of the market value, even though the petitioner has obtained guideline value from the Sub-Registrar and deposited twice the said amount in the Court, despite the same not being the market value, the respondents by their own conduct have agreed that the amount deposited by the petitioner would be fair market price, which is clearly confirmed by the communication referred hereinabove.

14.The further arguments of the learned Additional Advocate General that the petitioner has sold all her adjoining property and wants to take away the Government property as well, I am unable to countenance the said submission, because the ownership of the adjoining properties and sale in favour of the parties is immaterial to the subject lands, which dispute emanates from a civil suit initiated by the writ petitioner. Therefore, merely because adjoining lands



W.P.(MD)No.4117 of 2017

have been sold by the petitioner, that cannot be a ground to deny the petitioner the fruits of the decree obtained by her.

WEB COPY

15.With regard to the maintainability of the Writ Petition, placing reliance on the decision of the Kerala High Court and Supreme Court, no doubt the Writ Court cannot act as an appellate Court or an executing Court, giving effect to decree of a Civil Court, which is normally is permissible by way of execution proceedings under Order 21 of CPC. However, in the facts of the present case, I find that the suit filed by the petitioner was one for declaration and permanent injunction. The trial Court granted a decree only for permanent injunction, declining the relief of declaration. However, the First Appellate Court, modifying the said decree of the trial Court, granted the relief of declaration as well, subject to the petitioner depositing twice the amount of market value before the Court on or before 05.03.2007. It was only the declaratory relief which was granted by the appellate Court by imposing such a condition. Subsequently, the petitioner has also deposited the said amount and has thereafter, approached the authorities for assigning the lands in favour of the writ petitioner.

16.I find from the report of the District Collector dated 02.01.2008 that the District Collector has also satisfied himself that the petitioner having deposited Rs.87,674/- and has requested for



W.P.(MD)No.4117 of 2017

assignment of lands and lands being unobjectionable poromboke lands, the property can be assigned to the writ petitioner, who is a widow and having only one daughter, who is also married and settled elsewhere and considering the fact that the petitioner is living on pension of Rs.5000/-.

17.In the light of the stand taken by the respondents themselves, it is not necessary for the petitioner to go before the Civil Court to execute the decree. In fact, even in the proceedings of the Principal Secretary, I find that the respondents have taken a categorical stand that the Civil Court cannot direct the Government to assign lands and in fact in the communication dated 22.10.2008, the Principal Secretary and Commissioner of Land Administration, Chennai, has also referred to the decision of this Court in W.P.No. 19393 of 1994 dated 04.02.2022, holding that the Government has a prerogative right in assignment of poromboke lands and no authority can compel the Government to assign the said lands. Therefore, having taken such a conscious stand and despite the same, having decided to accept the request of the petitioner favourably, it is not known as to why, after filing of the Writ Petition a diametrically opposite stand has been taken by the respondents. Insofar as the lands being required for other projects, that cannot be a reason for not complying with the decree and also the conscious decision taken by the authorities themselves to assign the lands in favour of the writ



W.P.(MD)No.4117 of 2017

petitioner. Therefore, in the peculiar facts and circumstances of the case, I do not find that the petitioner should be shut out for approaching this Court, instead of not attempting to execute the decree.

18.For the foregoing reasons, I am inclined to allow this Writ Petition.

19.Accordingly, the Writ Petition is allowed and the impugned order of the fourth respondent dated 26.10.2016 is quashed and the respondents are directed to issue assignment orders assigning lands in S.Nos.607/3 and 606/1, within a period of eight [8] weeks from the date of receipt of a copy of the order. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

15.04.2025

Index :Yes / No
Internet : Yes / No
NCC : Yes/No
MR



WEB COPY



W.P.(MD)No.4117 of 2017

To

- 1.The District collector,
District Collectorate,
Nagercoil,
Kanyakumari District.
- 2.The District Revenue Officer,
The district revenue officer,
Nagercoil,
Kanyakumari District.
- 3.The Revenue Divisional Officer,
O/o. The revenue Divisional Officer,
Pathmanapuram,
Thakkalai,
Kanyakumari District.
- 4.The Thasildhar,
Vilavancode Taluk,
Kuzhithurai,
Kanyakumari District.



WEB COPY



W.P.(MD)No.4117 of 2017

P.B.BALAJI., J.

MR

W.P.(MD)No.4117 of 2017

15.04.2025