
(2014) 09 MAD CK 0318
In the Madras High Court
Case No : Writ Petition No. 33683 of 2013

P. Solomon Francis

APPELLANT

Vs

The Collector

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Citation : (2014) 7 MLJ 415

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Judgement

B. Rajendran, J.—The petitioners seek for issuance of a Mandamus directing the respondents to disburse the sum of Rs. 56,06,401/- due and payable to them under Award No. 6 of 2013 dated 30.04.2013 passed by the first respondent along with interest and also to refer the award to the jurisdictional Civil Court as contemplated under Section 20(1) of the Tamil Nadu Highways Act for enhancement of the compensation amount.

2. It is the case of the petitioners that the second petitioner has purchased the land measuring an extent of 4.5 acres in Survey No. 4/part, Karunguzhipallam Village, Thiruporur Taluk, Kancheepuram District by a registered sale deed dated 10.11.2008 and from the date of such purchase, the petitioners have been in possession and enjoyment of the property. The said land purchased by the second petitioner is classified as Grama Natham in the revenue records. After such purchase, the petitioners have also developed the property and put up a building. While so, on 22.01.2009, the first respondent issued a notice invoking Section 15 (2) of the Tamil Nadu Highways Act, hereinafter called as the Act, intending to acquire the lands of the petitioners measuring an extent of 30 cents or 1197 square meters for the purpose of formation of six lane I.T. Expressway, Phase II for a distance of 25.3 kilometers from Siruseri Junction, Thiruporur Taluk to Poonjeri Junction in the East Coast Road in Thirukkalikundram Taluk, Kancheepuram District. The substance of the notice was also published in one issue of local daily on 30.01.2009. The said notice dated 22.01.2009 was

addressed to Mr. D. Peter Francis and the first petitioner, being the son of Mr. Peter Francis, when the fact remains that it is the second petitioner who is the owner of the lands. According to the petitioners, Mr. Peter Francis died on 03.11.2012. The second petitioner is the wife of Peter Francis and the petitioners 1 and 3 and her children. On such notice, the petitioners sent a preliminary objection dated 06.02.2009 followed by additional objections on 01.04.2009. In spite of such objections, the respondents proceeded to issue a notice dated 30.07.2010 to take possession of the property. On 04.02.2013, the first respondent issued a notice to the petitioners under Section 19(5) and 19(7) of the Act and called upon them to appear for an enquiry on 18.02.2013. The petitioners appeared before the first respondent and submitted their objections dated 15.02.2013. The first respondent, without considering such objections, passed an award dated 30.04.2013 in Award No. 6 of 2013 and determined the compensation payable to the petitioners at Rs. 56,06,401/- under Section 19(3) and 19(6) of the Act and such intimation was also served on the petitioners. Thereafter, as directed by the respondents, the first petitioner produced all the documents to the respondents and the petitioners were intimated that the compensation amount would be disbursed within a few days. The petitioners also, by their letter dated 14.06.2013, sought for reference for enhancement of compensation amount before the competent Civil Court as contemplated under Section 20(1) of the Act and accepted to receive the compensation amount under protest. As there was no communication received from the respondents regarding payment of compensation amount, the first petitioner submitted a representation dated 09.07.2013 requesting to disburse the compensation amount. Even thereafter, the respondents did not disburse the compensation amount, hence, the petitioners have invoked the jurisdiction of this Court and filed the present writ petition.

3. The learned Senior counsel appearing for the petitioners would contend that the second petitioner purchased the lands in question by means of a registered sale deed dated 10.11.2008 and from that date, the petitioners are in possession and enjoyment of the lands in question. In the sale deed, the description of the property clearly indicates that there is a building in the land. Further, the description of the property indicates that the lands in question is classified in the revenue records as Gramanatham and it is a private property of the petitioners. Therefore, at no stretch of imagination, it could be stated that it is a poramboke land and it is vested with the Government, as has been contended by the respondents in the counter filed before this Court in this writ petition. The classification of the property would only go to show that it is a land meant for the purpose of dwelling by putting up a building therein. The petitioners are also utilising the property for their dwelling purpose. Merely because the petitioners did not obtain patta, it will not disentitle them to seek for compensation for having acquired their land. There are at least three house sites in the property in question as on date. Even though the sale deed was executed in favour of the second petitioner on 10.11.2008, the sale deed was not released immediately on

the ground that the value of the property reflected in the sale deed has to be evaluated and ultimately, the sale deed was returned only in the year 2009.

4. The learned Senior counsel for the petitioners further contend that if the land in question is classified as Poramboke land, as contended in the counter affidavit filed in this writ petition, the respondents need not have invoked the provisions of the Act for acquiring the land and the petitioners need not be issued with notices as contemplated under the Act. In this case, the petitioners have been issued with notice intimating the intention of the respondents to acquire the lands, the objections of the petitioners were called for and they have also filed their objections and ultimately, an award was passed. The respondents, having invoked the provisions of the Act to duly acquire the lands are estopped from contending that the lands in question are classified as Poramboke land and it is vested with the Government. The petitioners are entitled for payment of compensation for having acquired their lands and non-disbursement of the same warrants issuance of a Mandamus by this Court.

5. On the other hand, the learned Additional Government Pleader appearing for the first respondent, relying on the counter affidavit of the first respondent, would contend that the lands acquired from the petitioners is not their private land but it is a Village site and or Government Poramboke for which Natham Patta has not been issued. It was further contended that the petitioners are encroachers of the property and therefore, they are not entitled for payment of compensation amount and consequently, they are not entitled for a reference under Section 20(1) of the Act. It was further argued by the learned Additional Government Pleader that at the time when the notification under Section 15(1) and 15(2) of the Act were issued, there was no building in existence and what was available is only a pump room. There was no residential house in the portion encroached by the petitioners. Further, during the course of enquiry, the petitioners have admitted that they have not obtained patta for the lands in question. Even the certificate obtained from the Village Administrative Officer, Karunguzhipallam Village discloses that the petitioners are only encroachers and they have not been issued with patta. Inasmuch as the land acquired from the petitioners is a poramboke land, the petitioners are not entitled for any payment of compensation and he prayed for dismissal of the writ petition.

6. In reply, the learned Senior counsel appearing for the petitioners, relying on the reply filed by the petitioners, would contend that the contention of the respondents, at this stage, that the lands in question has been encroached by the petitioners and it is classified as poramboke land in the revenue records cannot be countenanced for the simple reason that in the description of the sale deed dated 10.11.2008 it was clearly mentioned that there exists a building in the land in question at the time of such purchase. The lands were utilised by the petitioners only for their dwelling purpose. If the land in question is classified as poramboke as contended by the respondents, the registering authority need not have registered the sale deed or entertained the sale. The alleged certificate said

to have produced by the Village Administrative Officer that the petitioners have encroached the lands in question is incorrect. In any event, only after passing an award and hearing the objections, the respondents, for the first time in the counter affidavit filed in this writ petition, have come up with a plea that the lands in question are classified as government poramboke and it is vested with the Government. Further, when the writ petition came up for admission, this Court directed the petitioners to file an affidavit before the second respondent stating that the entire compensation amount can be distributed among the petitioners and on such direction, the petitioners have also filed such an affidavit. While so, the objections now raised in the counter affidavit by the first respondent cannot be countenanced.

7. The learned senior counsel for the petitioners vehemently argued that the contention of the respondents, at this stage, that the lands in question is classified as Government poramboke and it is vested with the Government cannot be countenanced for the simple reason that the petitioners participated in the award enquiry pursuant to the notice issued by the respondents and an award was also passed determining the compensation payable to them. In all the proceedings preceding the acquisition proceedings, notices were issued to the petitioners by treating them as owners of the lands in question. The learned senior counsel for the petitioners also would contend that even according to the respondents in the counter affidavit, the land in question is classified as Village site and it is intended only for house sites for residential use. Admittedly, it is a house site where building is in existence and the petitioners are in occupation of the same. The learned senior counsel for the petitioners, relying on the Certificate dated 06.06.2013, issued by the Village Administrative Officer, Karunguzhipallam, Thiruporur Taluk, Kancheepuram District, which is enclosed in page No. 40-A of the typed set of papers, would contend that the land is classified as Gramanatham and the contention of the respondents that it is a poramboke land cannot be countenanced. In this context, the learned Senior counsel for the petitioners relied on the below mentioned decisions to contend that under Law, a land which is classified as Gramanatham is a private land and it cannot be said to be vested with the Government.

(i) The State of Madras Vs. Kasthuri Ammal and Others, wherein the Division Bench of this Court held that inasmuch as the land in question is classified as gramanatham, it must be held to be a house site, the possession of which the plaintiff is entitled to cling to and resist all invasions. Such a right of the plaintiff can never be held to have been extinguished or curtailed by reason of Act 30 of 1963. It must also be stated with equal force that any interference or invasion with the said right of plaintiff is always challengeable in appropriate proceedings before the Civil Court. It was further held that when the land of a private individual was taken over by the Panchayat with an offer to purchase it by private negotiation for due consideration, after taking possession, the panchayat raised a plea that it is a poramboke land and on survey, it was found so and therefore, the land owner is not entitled for any compensation. In that case, it

was held that since the area was earmarked as Natham Poromboke, such site must be held to be a house site and the plaintiff is entitled for payment of compensation for having taken over her land. It was further held by the Division Bench that if, instead of her action for compensation, the plaintiff were to sue for an injunction based on her right of possession, her right to maintain the civil action can never be questioned even though possession was taken from her.

(ii) A.K Thillaivanam and A.K. Dayalan Vs. The District Collector, Chengai Anna District at Kancheepuram, The District Revenue Officer, Kancheepuram, Chengai Anna District, The Revenue Divisional Officer, Kancheepuram, Chengai Anna District and The Tahsildar wherein this Court held that in the counter affidavit, it was admitted by the respondents that the land is a Village Natham and therefore it does not vest with the respondents (the State) and they have no right to it. When the land has been classified as Village Natham, it is obvious that no portion of the land vests with the respondents. The admitted classification is Village Natham and merely because the petitioners have converted the same into agricultural lands, no right could accrue to the respondents even after conversion. When the land is classified as gramamatham, the land was never vested with the respondents nor they could take action under the Land Encroachment Act or any other enactment.

(iii) The Executive Officer, Kadathur Town Panchayat Vs. V. Swaminathan, The State of Tamil Nadu, The District Collector and The Revenue Divisional Officer, wherein the Division Bench of this Court, referring to the earlier decisions on the subject, held that when admittedly the land is classified as "Gramamatham" it is obvious that such land never vest with the Government or the Town Panchayat. The Division Bench also defined the term "Gramamatham" as quoted in Law Lexicon as a ground set apart on which the house of Village may be built. It is a residential portion of a Village; or portion of a Village inhabited by the residents or land reserved as house site etc.,

(iv) State of Tamil Nadu Vs. Madasami and Others, wherein this Court held that the right of owner vis-a-vis right of Government over the lands classified as Natham or Natham Poramboke or Gramamatham only meant as Gramamatham. The lands classified as Gramamatham and allotted to village people is meant for their use as house site or for any purpose of storing hay and manure or as smithy or as a brick kiln or as a place for weaving etc., When once a property is classified as gramamatham the Government cannot make any claim or right over such property. Such land classified as gramamatham with or without buildings cannot be claimed by the government as a property belonging to government. When a person puts up a construction over such land classified as gramamatham, the character of such property changes and it vests with such individual and he accrues a right to transfer such property to anybody he likes. The extent of land so occupied by such person has to be considered towards his enjoyment of the said property and the Government has no say in the said right accrued to an individual occupant.

(v) Karana Maravar Service Society, etc. Thevar Complex, Virudhunagar Road, T. Kallupatti, Madurai District Vs. The State of Tamil Nadu, wherein this Court relied on the decision of the Honourable Supreme Court in the case of Chigurupati Venkata Subbayya and Others Vs. Paladuga Anjayya and Others, wherein it was held that communal lands, Porambokes, other ryotwari lands, waste lands, forests, mines and minerals, quarries, rivers and stream tanks and irrigation works etc., other than the land classified as gramanatham vest with the Government.

(vi) Dharmapura Adhinam Mutt Vs. Raghavan and R. Subbiah wherein this Court following the earlier orders of this Court in The Executive Officer, Kadathur Town Panchayat Vs. V. Swaminathan, The State of Tamil Nadu, The District Collector and The Revenue Divisional Officer, mentioned supra, held that the lands classified as Gramanatham is not vested with the Government and they are different from Ryotwari lands, pannai lands and waste lands. While the lands under the other classification vested with the Government, the land classified as gramanatham cannot be said to be vested with the Government. The land classified as gramanatham is the Village habitation where the land holders may build houses and reside. They are also known as house sites (kid). Such lands are classified as gramanatham to differentiate it from the lands classified as inam lands, ryotwari lands, pannai lands and waste lands. While the latter vested with the Government, gramanatham lands are never vested with the State. In para No. 32 of this judgment, the Division Bench held as follows:-

"32. Therefore, Gramanatham is not vested with the Government. Under UDR Scheme (Up Dating Revenue Record scheme) the gramanatham lands were surveyed and survey numbers have been assigned. There was an attempt by the Government to levy tax (Natham Nilavari Thittam). Therefore, under that scheme, the Natham lands were surveyed and re-survey numbers were assigned and pattas were issued. Since Gramanatham is the habitation where the land owners may build houses and reside, they were known as house sites. They were classified as Gramanatham to differentiate the land from Inam lands, Ryotwari lands, Pannai lands and Waste lands. While the lands under the other classifications vested with the Government, the Gramanatham never vested with the State. However, under the UDR scheme, to enforce a tax on the Natham lands, a Thoraya Patta, for tax purpose was issued to those persons who claimed to be the land owners. The land holding is based on the title through the predecessor-in-title. Therefore, the Patta issued under the UDER scheme is not the Patta under the Land Encroachment Act and there is no bar of the jurisdiction of the Civil Court under Section 14 of the Land Encroachment Act.

8. I heard the learned Senior counsel appearing for the petitioners and the learned Additional Government Pleader appearing for the first respondent. Even though the second respondent was served, none appears on behalf of the second respondent.

9. According to the petitioners, the second petitioner purchased the lands by

means of a registered sale deed dated 10.11.2008 registered as document No. 463 of 2009 on the file of Sub-Registrar, Thiruporur. This land, along with other lands, were proposed to be acquired by the respondents for the purpose of formation of six lane I.T. Expressway, Phase II for a distance of 25.3 kilometers from Siruseri Junction, Thiruporur Taluk to Poonjeri Junction in the East Coast Road in Thirukkalikundram Taluk, Kancheepuram District by invoking the Tamil Nadu Highways Act. In such acquisition proceedings, the respondents have issued a notice dated 22.01.2009 under Section 15(2) of the Act by recognising the petitioners as owners of the property. In fact, the notice dated 22.01.2009 was addressed to one Tr. Peter Francis and the first petitioner herein, who is the son of Tr. Peter Francis. On receipt of the notice, the petitioners filed their preliminary objection on 06.02.2009 and also participated in the enquiry conducted by the respondents. Notwithstanding the objections of the petitioners, an award was passed on 30.04.2013 determining the compensation payable to the petitioners, for acquisition of their lands, at Rs. 56,06,401/-. Thereafter, on 14.06.2013, the petitioners submitted a letter seeking to disburse the award amount and expressed their willingness to receive the award amount under protest. In and by the letter dated 14.06.2013, the petitioners also sought for a reference, as contemplated under Section 20(1) of the Act, for enhancement of the compensation amount. As the respondents did not disburse the compensation amount, the petitioners have filed this writ petition.

10. It is evident that the petitioners were recognised as owners of the lands in question inasmuch as the respondents have issued notices to them in the course of land acquisition proceedings. The petitioners also raised preliminary objections, but they were overlooked and an award was passed on 30.04.2013. Therefore, according to the petitioners, the non-disbursement of the compensation amount is not justified and therefore they have filed this writ petition for issuing appropriate Mandamus to the respondents.

11. On notice in the writ petition, the respondents have filed a counter affidavit. For the first time in the counter affidavit, the respondents have come up with a plea that the lands in question are classified as government poramboke land and therefore the petitioners are not entitled for any compensation amount. If it is so, it is not known as to why the respondents could issued notices to the petitioners in the course of acquisition proceedings and also entertained the objections filed by them. Even in the award passed on 30.04.2013, the name of the deceased Tr. Peter Francis and the name of the first petitioner is clearly indicated therein as owners of the land who are entitled for receipt of compensation amount. Therefore, at this stage, it is no longer open to the respondents to contend that the lands in question are classified as government poramboke , the petitioners did not obtain patta in their favour and therefore, they are not entitled for receipt of compensation amount.

12. As regards the claim of the respondents that the lands in question is a government poramboke land, except a statement in the counter, the respondents

have not produced any records to substantiate the same. On the other hand, the petitioners have produced a certificate dated 06.06.2013 from the Village Administrative Officer, Thiruporur Taluk to the effect that the lands in question are classified as gramamatham lands. Even the sale deed dated 10.11.2008 in favour of the second petitioner is a registered one. If really the lands in question are classified as government poramboke land in the revenue records, the registering authority could not have entertained such sale deed dated 10.11.2008 for registration. Further, in the sale deed, the description of the property is clearly indicated as a vacant agricultural land along with house and compound wall. Such sale deed is accompanied by annexure 1-A wherein the nature of construction is indicated. Therefore, when the land in question is classified as gramamatham, then the Government has no right over such land or the land do not vest with the Government. Rather, it is a private property which was in the occupation of the petitioners and when it is acquired by the respondents, they are bound to pay compensation to the petitioners.

13. In this context, it is relevant to refer to the decisions relied on by the learned senior counsel for the petitioners wherein it was repeatedly held by this Court as well as the Honourable Supreme Court that when the classification of the land is gramamatham it is a private land meant for the dwelling of such occupant. When a person puts up a construction over such land classified as gramamatham, the character of such property changes and it vests with such individual and he accrues a right to transfer such property to anybody he likes. The extent of land so occupied by such person has to be considered towards his enjoyment of the said property and the Government has no say in the said right accrued to an individual occupant. Further, as per the decision of the Division Bench mentioned supra, the land classified as gramamatham never vests with the Government at all. Therefore, the contention of the learned Additional Government Pleader is hereby rejected. In the light of the aforesaid decisions, this Court holds that the lands in question are classified as gramamatham in the revenue records over which the government cannot make any contra claim. This land is the private land of the petitioners and therefore they are entitled for payment of compensation as determined by the respondents themselves in the award dated 30.04.2013 passed in favour of the petitioners.

14. In the result, the writ petition is allowed directing the respondents to disburse the compensation amount, as determined in the award dated 30.04.2013, to the petitioners within a period of three months from the date of receipt of a copy of this order. No costs.