

(2012) 04 MAD CK 0094

In the Madras High Court

Case No : Writ Petition Nos.4153, 27642 to 27673 of 2011 and M.P. No"s. 1 of 2011

Saroja

APPELLANT

Vs

The District Collector Ariyalur District Ariyalur and Others

RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 3 CTC 300

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P. Valliappan, for the Appellant; M.C. Swamy, Spl. G.P. for R1 to R4
Mr. V. Muralidharan for R5, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru

1. These are very unfortunate litigations where even among the Dalits, i.e, between Arunthathiyars as one group and Parayars on the other side, were fighting over the exact location of their respective plots for over 16 years. It is not clear as to how the Writ Petitions are maintainable at the instance of one group belonging to Arunthathiyars in trying to dispute the location of the plots allotted to them. These matters came to be listed on being specially ordered by the Hon"ble Chief Justice vide order dated 3.4.2012.

2. In this batch of Writ Petitions, admittedly all the petitioner belongs to Arunthathiyar Caste which is a notified Scheduled Caste. It is seen from the records that the State Government invoking the power under the Tamil Nadu Act 31 of 1978 in order to provide house sites for the houseless poor Scheduled Castes of the Valajanagaram Village in Ariyalur District and Taluk acquired lands in Survey No. 140/5A-1 to the extent of 1.25 Hectares.

3. Long after the acquisition, a Writ Petition came to be filed before this Court

being W.P.No.27827 of 2010 and the same was disposed on 6.12.2010. It came to be filed by one Lakshmi for a direction to the respondents to measure and hand over possession of the property situated in Survey No. 140/5A-1 in Valajanagaram Village pursuant to the issuance of patta on 27.5.1994. That Writ Petition was filed by the petitioner who belonged to the Parayar Caste. this Court without going into the merits of the representation directed the respondents to consider her representation dated 15.11.2010.

4. Pursuant to the direction issued by this Court, the District Collector, Ariyalur passed an order vide proceedings dated 11.2.2010. In that order he had stated that subsequent to the acquisition, when a lay out was made, there were objections with reference to the allotment of particular plots for the beneficiaries.

5. After the initial allotments were identified, when the lay out plan was published, one group led by one Mayilayee and 4 others filed a Suit before the District Munsif Court. The Principal District Munsif, Ariyalur decreed the suit. In the suit, it was held that in respect of the Survey No. 140/5A, the lands can be allotted on the basis of the representative capacity of each group. An order of Injunction was granted against the District Collector, Perambalur, District Adi Dravidar Welfare Officer, Perambalur, Revenue Divisional Officer, Ariyalur and Special Tahsildar (ADW), Ariyalur from altering the earlier plan shown in respect of the allotments of plots. As against the judgment and decree passed by the Principal District Munsif, an appeal was filed by the respondent State in A.S.No.21 of 1999. The Sub Court dismissed the Suit and confirmed the decree. Therefore, the authorities as they were bound by the judgment and decree were forced to act upon the earlier plan which was prepared in relation to the allotment of the plots.

6. It was to enforce the said judgment and decree and as confirmed by the lower appellate court, the said Lakshmi and others filed a Writ Petition seeking for a direction to the District Collector to finalize the proposal in the light of her representation. Subsequent to the direction issued by this Court, the District Collector after going through all relevant records held that the lands were acquired for the purpose of allotment of plots to the beneficiaries as early as 1994 and after an house plan was prepared by the District Adi Dravidar Welfare Officer, it was allotted to the respective beneficiaries.

7. But, one section of the beneficiaries continued to insist that 10 plots should be kept as an open space and continued to indulge in agitations. The District Collector after examining the records also inspected the area and found that those 10 plots were situated abutting to Ariyalur -Jeyankondam Highway. In view of heavy vehicular traffic was in the Highways, if the said plots were kept as open space and developed as a park, or recreational area earmarked for the said Colony, the children may likely to be put to peril. Therefore, the said plots cannot be kept as open space. The Collector also found that when the beneficiaries were identified during the year 1995 and were given pattas in respect of the plots allotted to them, no motives were attributed and no specific complaints were

given regarding the allotment. However, only after four months, both groups, ie., a faction of Arunthathiyars and a faction of the Parayars started giving complaints against each other due to ill feeling and continued to obstruct a laudable scheme that was evolved by the State for providing house site pattas.

8. Therefore, when the High Court directed the Collector to decide on the representation of Tmt.Lakshmi, it was found by the District Collector that there was no necessity to change the earlier scheme of allotment on the basis of the plan prepared during the year 1995 and already the District Munsif, Ariyalur directed the authorities to adhere to the said plan and not to effect any change. Even though the State initially filed an appeal against the said judgment and decree, the lower appellate court had rejected it. Therefore, on the basis of the order passed by this Court and on the basis of the history of the last two decades, he directed the allotment of the plots to the respective beneficiaries.

9. Pursuant to the said order passed by this Court, the Special Tahsildar (Adi Dravidar Welfare), Ariyalur with the help of the police and in the presence of the District Adi Dravidar Welfare allotted 95 plots in terms of the directions issued by the District Collector. A list of allottees of the 65 plots belong to Arunthathiyar was also furnished. The plots were allotted to various beneficiaries showed continuous running number from Plot No. 33 to 95 were given to the Arunthathiyars.

10. When the matter stood thus, the first Writ Petition came to be filed before this Court being W.P.No.4153 of 2011 by one Saroja, wife of Karuppan of the same Colony seeking for a direction to take action on the representation dated 14.2.2011. The said representation, which is enclosed in page 14 of the typed set of papers was sent by one Chellamuthu of the same place. The subject of the representation showed that the State Government should see to it that no injustice was done to Arunthathiyars of the colony. It showed that the Special Tahsildar on 15.2.2011 had measured the plots in the presence of the Village Administrative Officer of Valajanagaram. Though he was cleaning the place, they have not specified as to how the allotments should be done. Therefore, the intervention of the State was requested.

11. When the said Writ Petition No. 4153 of 2011 came up on 22.2.2011, the learned Special Government Pleader was directed to take notice. It was rather unfortunate that subsequent to the notice was issued, the petitioner impleaded one Lakshmi, wife of Thangaraj as the 5th respondent to the Writ Petition. The said Lakshmi was the writ petitioner in W.P.No.27827 of 2010. It was in her Writ Petition this Court directed the District Collector, Ariyalur to take a further decision.

12. On notice from this Court, the Special Tahsildar has filed a counter affidavit dated 16.11.2011. When the matter came up on 10.3.2011, this Court directed the Special Tahsildar (Adi Dravidar Welfare), Ariyalur to file a status report on the issue. Accordingly a status report was filed on 29.3.2011. Even during the

pendency of the Writ Petition, the petitioner Saroja filed another Writ Petitions, being W.P.Nos.27642 to 27673 of 2011 challenging an order dated 27.5.1994, the original allotment orders given to her during the year 1994, namely the period of 17 years before. In those Writ Petitions also, the allotments made during 1994 was the subject matter of challenge.

13. When those Writ Petitions came up on 30.11.2011, this Court directed the said Writ Petitions to be tagged along with the previous Writ Petition filed by Saroja. Accordingly, all the Writ Petitions were grouped together and they were directed to be posted before this Court.

14. In the status report filed by the Special Tahsildar, it was indicated that while the survey was conducted in Valajanagaram Village, they found that there were 95 families of Scheduled Castes, who are houseless and for whom house sites were sought to be provided. Therefore, acquisition proceedings was initiated in respect of the Survey No. 140/5A in the same village to an extent of 1.25.5 Hectares, which is the dry land represented by pattadar. Acquisition proceedings were initiated in terms of the Act 31 of 1978.

15. An award was passed in Award No. 7/93-4 as early as 23.3.1994. After the acquisition proceedings were taken over, it was sub divided and handed over to all the 95 families identified by them. The beneficiaries belonged to two separate castes under the Scheduled Castes notified by the President of India. He found that approximately two-thirds belonged to Arunthathiyars and one-third belonged to Parayars. Initially the front side portion of the said lands was allotted to the people belonged to Parayar community and the rear side portion was allotted to Arunthathiyar. When the field staff went to measure the area to identify the plots for the beneficiaries, disputes arose between the two groups. The Arunthathiyars insisted for the entire front portion abutting the Ariyalur-Jayankondam Highways road to be left open as open space. They also insisted that the plots should be allotted on both sides of the pathway of the Eastern side to Arunthathiyar and the Western side to the Parayars. When the Land Acquisition Officer was examining their request, five beneficiaries belonged to Parayar community went to the Civil Court and obtained favourable orders as already described.

16. It was thereafter the Department had compelled the petitioner to the original plan of allotment in view of the finality of the Civil Suit. Even before any decision could be taken, the District Collector was directed to consider the representation of one Lakshmi as noted already and pursuant to the same, after examining all the records, the District Collector chose to adhere to the original plan of allotment and refused to provide the front portion as open space because it abuts the Highways and when children are likely to use the park, it may also be likely to endanger them. It was in that view, the matter was settled. If this proceedings are further stalled, the beneficial scheme was likely to be further delayed.

17. In the counter affidavit filed by the Special Tahsildar, it was also stated that

due to the proceedings of the District Collector on 11.2.2010, patta plots were measured, identified and shown to the beneficiaries on 15.2.2011. In this process, more than 16 years were delayed. It was also stated that lay out was not prepared by the 3rd respondent District Revenue Officer, Ariyalur as alleged by the petitioner. It was further stated that if any change in the lay out sketch made, it will cause enormous delay, which will make use of grant of pattas to the houseless poor Adi-Dravidars scheme as null and void. Hence, the request of the Arunthathiyars cannot be considered.

18. Mr.Valliappan, Learned Counsel for the petitioner was unable to state how and in what manner the rights of the petitioner were infringed. The petitioner is only beneficiary of a scheme. When the scheme has been intended to help them and compulsory land acquisition proceedings were initiated by the State after paying compensation from the State funds, it is for the petitioner to accept the plots allotted to them. If for any reason, if they do not want a particular plot, no one can compel them to accept such a plot. They may surrender the plots and go for a housing plot with their own funds. The petitioner has not made out any legal ground to entertain the Writ Petitions. The desire of the local people for getting house sites was fulfilled by the State. Under the above circumstances, the State cannot act contrary to the order of the civil court. In the absence of any legal or enforceable rights on the part of the petitioner, this Court is not inclined to entertain the Writ Petitions.

19. The circumstances under which a writ in the nature of mandamus can be issued came to be considered by the Supreme Court in several decisions. It is relevant to cite a few decisions which will have a bearing on the present case. In *Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another*, the Supreme Court set out the scope and the manner of exercise of power under Article 226 of the Constitution and in paragraph 17, it was observed as follows:-

17. Coming to the third question, which is more important from the point of consideration of the High Court's power for issuance of mandamus, it appears that the Constitution empowers the High Court to issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by Part III and for any other purpose under Article 226 of the Constitution of India. It is, therefore essentially, a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-fundamental or ordinary legal rights, which may come within the expression for any other purpose. The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, they must be exercised along the recognised lines and subject to certain self-imposed limitations. The expression for any other purpose in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Courts must exercise the same with certain restraints and within some parameters. One of the conditions for exercising power under

Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. Mandamus means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (*Kalyan Singh v. State of U.P.*). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.

20. Subsequently, in *Union of India (UOI) and Others Vs. C. Krishna Reddy*, the Supreme Court held that it is only in case of failure on the part of an Officer to discharge his statutory obligation, a direction will issue and there must be a legal duty imposed on the officer and the aggrieved party must have a legal right under the statute to enforce performance and in paragraph 13, it was observed as follows:-

13. It is well settled by a catena of decisions of this Court that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of the writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. Therefore, in order that a mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. [See *Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh*, AIR para 15, *Lekhraj Sathramdas Lalvani v. N.M. Shah, Dy. Custodian cum Managing Officer and Umakant Saran (Dr.) v. State of Bihar*.]

21. The Supreme Court held that unless there is subsisting right and enforceable in a court of law and corresponding legal duty on the part of the Government, no writ will lie and any direction can be issued only in consonance with law and not in violation of statutory provisions, vide its judgment in *State of U.P. and Another Vs. U.P. Rajya Khanij Vikas Nigam S.S. and Others*, and in paragraphs 45 and 46, it was observed as follows: ...The petitioners had prayed for a writ of mandamus

which presupposes a legal right in favour of the applicant. Such right must be a subsisting right and enforceable in a court of law. There must be corresponding legal duty on the part of the respondent Corporation or the Government which required the Corporation or the Government to do that which a statute required it to do. No such right of absorption has been shown by the petitioners. Nor could any such corresponding duty of the respondents be shown to the High Court by the employees.⁴⁶ It is well settled that a court of law can direct the Government or an instrumentality of State by mandamus to act in consonance with law and not in violation of statutory provisions.

In the view of the above legal precedents and in the absence of any legal or an enforceable right on the part of the petitioner and there being no obligation on the part of the State in allotting any particular plot to the beneficiaries, the Writ Petitions are misconceived. Hence, all the Writ Petitions will stand dismissed. However, the parties are allowed to bear their own costs. The connected Miscellaneous Petitions are closed.