IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/11/2002

CORAM

THE HONOURABLE MR. JUSTICE K.P.SIVASUBRAMANIAM

WRIT PETITION No.8762 of 1995

Seaiyur Government High School
Development Welfare Association,
Selaiyur, Madras – 600 073,
represented by its Secretary ..... Petitioner.

-Vs-

1. Commissionr, Tambaram Municipality]
Tambaram, Madras – 45.

2. Secretary to Government of
Tamil Nadu,
Revenue Department,
Madras-9.

3. The Collector of Chengai-MGR
District,
Kancheepuram.

4. Principal,
Sri Sankara Vidyalaya
Matriculation Higher Secondary
School,
162, Velachery Road,
Tambaram East,
Madras – 59. ..... Respondents.

Petition filed under Article 226 of the Constitution of India
praying for the issue of a writ of certiorarified mandamus as stated therein.

For petitioner : Mr.R.Ganesan

For first respondent : Mr.V.Subbarayan

For respondents 2 and 3 : Mr.V.Velumani,
Addl. Govt. Pleader.

For fourth respondent : Mr.S.W.Kanagaraj

:ORDER

The petitioner being a Welfare Association of Selaiyur Government High School, have prayed for the issue of a writ of certiorarified mandamus to call for the records of the second respondent in G.O.Ms.No.4 61, Revenue Dated 30.5.1995, to quash the said order and to direct respondents 1 to 3 to assign the extent of 3.22 acrees of land in R.S. No.84/B1 and 84/B3 of Selaiyur Village, in favour of the Government High School, hereinafter called as petitioner-school for convenience.

2. The petitioner being the President of the Parent-Teachers' Association, has contended that an extent of 3.22 acres as stated above is classified as cattle stand poramboke in the revenue records. The Villagers have been in possession and enjoyment from time immemorial. There was a Middle School belonging to Tambaram Municipality which has been in existence over 80 years. The Villagers had made a representation to the Government even before Independence requesting for establishment of a High School. The Chairman of the then District Board was also requested by the Villagers as early as 1950. The villagers had renewed the request in November, 1951. Thereafter, the villagers levelled the petition lands and entrusted the same to the Middle School for the purpose of Play grounds for the School during 1967 and ever since the said period, the lands have been used as a Play ground for the students. Iron fencing was done subsequently. Tambaram Municipality had also passed a Resolution in Resolution No.270/70 requesting the Government to upgrade the petitioner-School as High School. In fact, a Physical Education Instructor was appointed and his services were originally dispensed with on the ground that there was no sufficient play ground. However, after the above lands were entrusted to the School for play ground, the appointment of Physical Education Instructor was restored.

3. In 1978, the Municipal Council passed another Resolution requesting the Collector to assign the lands to the petitioner-School and another Resolution was passed on 3.5.1982 recommending the upgradation of the School. The Director of School Education required an Endowment Deposit of Rs.22,500/-. The Villagers collected the said amount through donations from the villagers and the said amount was also deposited on 16.12.1981. Subsequently, the Middle School was upgraded as High School from the Academic year 1985-86. In the proposal, the land in question has been shown as play ground in possession of the petitioner-School.

4. It is further stated that at the request of the School proposals were sent by the Tahsildar during 1989 recommending the assignment of the said land in favour of the petitioner-School. It is further stated that in the same extent of 3.22 acres three class rooms were constructed in the year 1991. In a further extent of 2200 sq. ft., class rooms were intended to be constructed and foundation was also laid for the said work. The total strength of the students in the High School is about 700 in the High School and in the Elementary section is about 1200.

5. At this juncture, the petitioners were surprised to be informed that by virtue of the impugned order, the Government had granted a lease of an extent of 1 acre of the land in question for a period of 20 years in favour of the fourth respondent School to be used as a Play ground by them on an annual lease for a rent of Rs.1,000/-. The petitioner contends that there is absolutely no justification in granting the lease in favour of the fourth respondent. When the fourth respondent tried to take possession of the land, villagers have resisted by organising a demonstration and prevented the entry of the fourth respondent school.

6. In the counter filed by the fourth respondent, it is stated that the fourth respondent School is an unaided institution. It was established in the year 1978. The School is functioning from a building donated by a philanthropist and the School is managing with a very small piece of land which is hardly sufficient for use as a play ground even for the primary Classes. In 1983, the fourth respondent had applied for assignment of the land in question. The said land is ideally situate for locating the fourth respondent school. The Special Commissioner and Land Administration Commissioner, by his letter dated 22.1.1987, recommended the assignment of the land. The District Administration however, expressed inability to assign for the reason that the land was classified as "Meikkal Poramboke". However, it was understood that the classification was only as "Mandaveli Poramboke". The third respondent by Resolution No.309, dated 30.8.1993 responded in their favour. They recommended the allocation of one acre of land out of 3.24 acres. Finally by virtue of the impugned G.O.E.No.461 dated 30.5.1995, lease of one acre was granted in favour of the fourth respondent on an yearly rent of Rs.1,000/-. The allotment was fair and equitable and the objections of the petitioners cannot be upheld. The fourth respondent School was also being run for the welfare of the locality. The requirement of the petitioner school is satisfied with 1.02 acres and they have no locus standi to agitate an imaginary claim. The petitioner-School is not made a party and the Association cannot represent the interest of the School. The villagers have no right to claim any right over the property. The payment alleged to have been made by the petitioner-school was only for the purpose of upgradation and that has nothing to do with the possession of or the right over the land. There is no evidence to show that the villagers were promised with the assignment of the land. The construction as alleged by the petitioner was also denied. Such constructions have no sanction from the local authorities. The land is admittedly a poramboke land and the petitioner cannot claim to be in possession and enjoyment. The contention that the entire extent of 3 acres was in possession and enjoyment of the Selaiyur Government High School, was false. The authorities in pursuance of the impugned order granting the lease, attempted to measure and earmark the land leased out to the fourth respondent. However, this was thwarted by an unruly mob organised by the petitioner. The Director of the School has not approved the possession of the land by the petitioner-school and he is not the competent authority to give any such assurance for upgrading the School. The Government is the permanent title holder and have the right to assign or lease the land to any one in their choice.

7. A reply affidavit has been filed by the petitioner denying

the contentions in the counter affidavit of the fourth respondent. The contention that the Government High School should be satisfied with 1.0 2 acres of land is not correct. In fact, the Headmaster of the Government High School has made a representation on 14.6.1995 stating that the entire extent of 3.22 acres of land is in possession of the School for the past 25 years and that class rooms have been constructed in the land. He has also requested the Government that the land should be kept in possession and enjoyment of the Government High School. There is no distinction between the "cattle poramboke" and " Mandaveli Poramboke" and the villagers have every right of make use of it for the common use of the villagers. The action of the Government in leasing out the land for 20 years by relaxation of the Rules as a special case was arbitrary and illegal act. The legitimate resistance of the villagers and the students cannot be called as unruly.

8. Neither the Local Body, the first respondent, nor the Government namely, respondents 2 and 3 have filed any counter.

9. Mr. R.Ganesan, learned counsel contends that the petitionerSchool had been established more than 75 years ago and had grown into the present shape and upgraded as a High School gradually by contribution of funds from the local residents for the welfare of their children. The development of the School was undertaken by the villagers at every stage and in order to ensure that their children should have the necessary facility of the High School education within a reasonable distance and by a school run by the Government or Local Body. They cannot afford the high cost of education of the schools run by private institutions. At every stage including the stage at which the proposal for upgradation was under consideration, the villagers had collected the necessary funds and deposited with the Educational Authorities. Even in the proposal for the upgradation, the land in question had been shown as a play ground in the possession of the school without which the upgradation would not have been granted. If the impugned order is given effect to, the school will not only be deprived of the play ground, but also the very upgradation of the School as a High School will be endangered and liable for cancellation.

10. Per contra, Mr.S.W.Kanagaraj, appearing for the fourth respondent school would contend that it is not as though the order in favour of the fourth respondent was passed in any secretive manner. The proposal by the fourth respondent school was made even during 1982 or 1 983. The order was passed only after due enquiry and as there were no objections, a decision was taken by the Local Authority after taking into account the entire facts and circumstances. Even as early as 1987, the Special Commissioner for Land Administration by his letter dated 22.1.1987 had endorsed the request of the fourth respondent School and had requested the Revenue Department to pass orders on the request of the fourth respondent. The Tambaram Township also by their Resolution dated 30.8.1993 had resolved to lease one acre of land in favour of the fourth respondent. Learned counsel further contends that there was no question of any estoppel in favour of the petitioner since at no point of time any promise had been made in favour of the petitioner. Learned counsel relies on the decision of the Supreme Court in MADRAS CITY WINE MERCHANTS' ASSOCIATION v. STATE OF TAMIL NADU (1995 (II) M.L.J., 2) in

support of his contention that in the matters of policy, if there is a change in the policy, no question of legitimate expectation would arise. The Local Authority as well as the Government, in consideration of the prevailing circumstances had changed policy as regards the usage of the land only to be on lease, and have accepted the offer of the fourth respondent by lease on payment of rent. Therefore, this action cannot be challenged on grounds of estoppel or legitimate expectation. Reference was also made to another judgment of the Supreme Court in STATE OF BIHAR v. SUBODH GOPAL (A.I.R. 1968 S.C., 281) in support of his contention that a person or body of persons cannot claim any customary or communal right over a common property, belonging to the community as a whole and under the control of the Government/Localbody.

11. I have considered the submissions of both sides. One of the issues to be decided in this writ petition is whether the petitioner is entitled to invoke the principle of legitimate expectation. There are certain undisputed facts relating to the claims of the petitioner school which has been in existence for over 25 years. The possession of the land by them and also the consideration of the said fact which had weighed with the authorities for the upgradation of the middle School as High School, have not been specifically denied by the fourth respondent in their counter. The correspondence between the villagers, revenue authorities and educational authorities clearly recognise possession of the land by the petitioner-school. It is also pertinent to note that no counter has been filed either by the Local Authority or by the Government. The petitioner-School has grown from the stage of Middle School to the status of a High School and the recognition of the School as a High School is interlinked with the the fact of the disputed property being retained as a play ground. In the said background the question which arises for consideration is as to whose claims are better than the other. On the one hand, is the petitioner-institution which caters to the need of the poor residents who cannot afford high cost of education, and also the very upgradation of the institution, depends on the possession of the property. The upgradation was also granted only on the petitioner's School satisfying the infrastructure, minimum area for putting the building and a play ground as a condition precedent for the upgradation of the High School. Pursuant to the said object, the Parent-Teachers Association had also paid necessary charges for the said upgradation. It is obvious that the villagers had taken so much of pains to collect the funds and had also collectively represented for the upgradation only with the expectation that they should have a high school run by the Government/Localbody within their vicinity which would be within their economical reach. Now if they are to be deprived of the said facility and the School should lose its upgradation as a High School, the consequences would be not only detrimental to the School, but also to the students now studying in the higher classes. In comparison we have, on the other hand, the fourth respondent School is a private school which generates its own funds and which has come into existence much later in point of time. The fees and other expenses for educating the children in that school are bound to be on the higher side, which the poor section of the residents cannot afford. The fourth respondent School has till now not spent any amount nor has incurred any expenses as incurred by the petitioner-institution and the villagers by collecting funds from the residents of the village and the Parents' Association. These are the facts which are relevant for deciding as to whose claim stands on a better footing.

12. The quantum of Rs.1,000/- per year fixed as rent for an extent of one acre, is in my opinion a farce and pretence of charging rent. If the right or the need to collect the said rent alone was the real motive for passing the impugned order, then the said offer could have been made to the petitioner-school whose claims stand on better footing and whose existence as a High School depends on retention of the land in question. The petitioner- sc hool is run by the Localbody/Government and very large number of students are studying in that School. These facts are not disputed. Therefore, the decision to slice away one acre of land in its possession and to hand it over to a private institution by charging Rs.1,000/- per annum as rent does not reflect good motives. A further question which arises for consideration is as to why the petitioner- school who is in possession of the land, was not put on notice before the impugned order was passed considering that they were already using the property and they have also asked for assignment of the land. A perusal of the orders passed in favour of the fourth respondent would disclose that the claims of the petitioner-School have not at all been taken into account, to put it mildly, if not deliberate disregard of the requirements and demands of the petitioner-school. The request for upgradation of the petitioner-School was made much prior to the proposal forwarded by the fourth respondent School. In the year 1982 itself the Township of Tambaram by its Resolution dated 3.5.1982 had resolved to hand over possession of the property to the School subject to the approval by the Government. In spite of all these antecedent facts and the possession of the property by the petitioner-school, while dealing with the request of the fourth respondent school for leasing a portion of the property, certain wrong statement of facts have been made in the letter of the Special Commissioner, Local Administration, addressed to the Special Commissioner, Revenue Department, dated --.1.1987. In paragraph No.2 of the said letter, a query is raised for consideration as to whether in view of the claims of the petitioner-school, was there any objection in the local authority to grant the lease in favour of the fourth respondent school. In paragrap h 6, it is stated that there is no objection from any quarters. Such a statement is made without any discussion with or communication to the petitioner-school. In my opinion, that is a wrong statement in view of the subsisting claims made by the petitioner-school. The very notice Board put up on the land by the School will disprove it. Another statement is also made in paragraph No.4 that even though there was a Board in the land stating that the petitioner- school intended to put up construction, no such request has been made either by the School or the Educational Authorities. The said contention is wrong considering the Resolution of the Municipality dated 3.5.1982 in its 68th Meeting. In that Resolution it has been clearly stated that the extent of 3.22 acres can be handed over to the School subject to approval by the Government. All these facts and the positive claims of the petitioner-school are totally ignored in the letter of the Special Commissioner as aforesaid. Subsequently also, villagers have been fighting for retaining of the land in question by the petitioner- school and several representations have been sent in this context as could be seen from the typed set of papers filed by the petitioner. Even as on 4.4.1989 the villagers have sent a representation to all the authorities concerned including the Chief Minister and the Education Minister. Their representation was also accompanied by a letter of the Member of Parliament dated 11.9.1989, representing the area.

13. In spite of all the aforesaid facts, the Government/Localbody, has proceeded as though there was no objection from the public for leasing out the land in favour of the fourth respondent. It is also not disputed that the request of the petitioner's school for assignment of the land in their favour, is also pending for consideration. Even if the Government is not agreeable for assigning the land for any one which issue does not arise for consideration in this writ petition, the question is as to whether the decision of the Government in the impugned order to lease out the land in favour of the fourth respondent is justified.

14. For the aforesaid reasons, I am inclined to hold that considering the larger interest of the villagers and the petitioner-school having invested considerable amounts paid by the villagers for the development and the upgradation of the school and considering that the school caters to the needs of the poor residents of the area, there is no justification for the decision of the respondents to have leased out the lands for a paltry sum in favour of the fourth respondent which is a private unaided school, who can generate their own funds for finding out an alternative land. Though the land is classified as a Mandaiveli poramboke, it is not disputed that the land cannot be put to any use for the cattle. Therefore, the wishes of the villagers to utilise the property for a common cause and use by the petitionerschool must prevail.

15. In the result, the impugned Government Order dated 30.5.1995 is quashed. But the writ petition is partly allowed and the prayer for the direction to respondents 1 and 3 to assign the extent of 3.22 acres, is however, subject to further decision of the Government. The issue of assignment of the land for the petitioner-school or whether it should be leased to petitioner-school, has to be separately considered on merits and in accordance with law. Subject to the above observations the writ petition is partly allowed. No costs.

Index: Yes.
Internet : Yes.
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To
1. The Commissionr,
Tambaram Municipality,
Tambaram,
Madras – 45.

2. The Secretary to the
Government of
Tamil Nadu,
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3. The Collector of Chengai-MGR
District,
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