

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23-5-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR
and
The Honourable Mr.Justice S.TAMILVANAN

Writ Appeal No.423 of 2006
W.A.M.P.No.901 of 2006
W.V.M.P.No.1067 of 2006

K.Saravanakumar,
President,
Parent-Teachers Association,
Government Girls High School,
Tiruvonnainallur - 607 203
Villupuram District. Appellant

Vs.

1. R.Dakshinamoorthy
2. State of Tamil Nadu
rep.by its Secretary to Government,
Revenue Department,
Fort St.George,
Chennai - 9.
3. The District Collector,
Villupuram
4. The Tahsildar,
Thirukoilur Taluk,
Villupuram District. Respondents

This writ appeal is preferred against the order of the learned single Judge dated 20.2.2006 made in WPMP No.35141 of 2005 in W.P.No.32217 of 2005.

W.P.M.P.No.35141/2005 Petition presented to this Court to grant an interim Injunction restraining the Respondents 2 & 3 their men, agents, officials and servants from interfering with the peaceful possession and enjoyment of the lands in Punjai Survey No.328 an extent of 66 cents in Survey No.496/21 and extent of 2.54 acres situated at Thiruvannainallur Village (North) Tirukoilur Taluk by the petition pending W.P.No.32217 of 2005 to issue a writ of Mandamus etc as stated within.

For Appellant : Mr.K.M.Vijayan, Sr.Counsel
for Mr.R.Sureshkumar
For 1st Respondent : Mr.N.G.R.Prasad
for S. Ambigapathi
For Respondents 2 to 4 : Mr.V.Ragupathy,
Government Advocate
Advocate Commissioner : Mr.K. Sugumar

J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

By consent of both sides, the writ appeal itself is taken up for final disposal.

2. This writ appeal is directed against the order of the learned single Judge dated 20.2.2006 made in W.P.M.P.No.35141 of 2005 in W.P.No.32217 of 2005. In the said WPMP, the respondents 2 to 4, who are the State of Tamil Nadu represented by the Secretary, Revenue Department, and other Revenue Officials were injuncted from interfering with the peaceful possession and enjoyment of the punjai land in S.No.328, an extent of 66 cents and in S.No.496/21, an extent of 2.54 acres situated at Thiruvennainallur (North), Tirukoilur Taluk, Villupuram District, pending disposal of the writ petition. Originally the injunction order was granted by the learned single Judge on 5.10.2005, which was made absolute on 20.2.2006.

3. The appellant, who was granted leave to file this writ appeal in W.A.M.P.No.698 of 2006, challenges the injunction order on the ground that by G.O.Ms.No.299 Education Department, dated 18.5.2005, the land to an extent of 1.03 hectare punja waste land in the village survey No.496/21 at Thiruvennainallur Village, Thirukoilur Taluk, Villupuram District, was allotted to the Government Girls High School, Thiruvennainallur, to build school building and for extension.

4. The appellant herein, who is the President of Parent-Teacher Association of the said School, as stated supra, obtained leave to file this appeal as he is interested in the welfare of the school and the students in particular. According to the appellant, pursuant to the allotment order issued by the Government by order dated 18.5.2005, the Superintending Engineer, PWD, Kumarasamipatti, Salem, issued tender notification on 24.6.2005 and an agreement to construct building was also executed on 16.8.2005 for a cost of Rs.64 lakhs and odd and the preparation work for raising construction had begun and when the construction work commenced, the appellant came to know about the interim order passed by this Court. Appellant further states that the land in question vests with the

Government pursuant to the orders of the Tahsildar, cancelling the patta in favour of Ponnurangampillai, in whose name the land originally stood, with a condition that it shall not be sold to the third party. After notice to the transferee Pakkirisamy, cancellation of patta proceedings commenced on 11.2.1983 and it was cancelled on 21.5.1983. The writ petitioner/first respondent herein, who is none other than the brother of Pakkirisamy/transferee, with the knowledge of the cancellation proceedings initiated on 11.2.1983, created another sale deed on 14.2.1983 and claimed title to the Government land, which assignment was cancelled as early as on 21.5.1983 by the competent authority. The cancellation of assignment was not challenged either by the said transferee Pakkirisamy or the subsequent transferee viz., the writ petitioner/first respondent.

5. The further case of the appellant is that after about ten years, the writ petitioner/first respondent filed a civil suit O.S.No.363 of 2003 for mandatory injunction, which was dismissed on 3.8.2004 and the civil suit Judgment and Decree were reversed by the appellate Court in A.S.No.126 of 2004. According to the appellant, the said civil Court decree is a nullity in view of section 14 of the Tamil Nadu Land Encroachment Act, 1905, which ousts the jurisdiction of the Civil Court to entertain any civil suit claiming right.

6. The learned Senior Counsel for the appellant submitted that suppressing all these facts, the first respondent herein filed the writ petition for issuing a writ of mandamus and obtained an interim order without even making the School as party respondent and without disclosing the cancellation of assignment of patta as early as in the year 1983 and the assignment issued by the Government in favour of the School through the above referred Government Order, and also the dispossession of the first respondent by following the procedures contemplated under the Tamil Nadu Land Encroachment Act, 1905 and also taking of possession as early as on 22.8.2005. It is also argued by the learned Senior Counsel for the appellant that the writ petition was filed in October 2005 i.e., two months after the possession was taken over by the revenue department from the first respondent. The learned Senior Counsel also argued that the land having been assigned to the Government Girls High School, if the order of injunction is not vacated, public interest will be affected and therefore the balance of convenience is in favour of vacating the interim order. Ultimately the learned senior counsel submitted that the writ petition itself is not maintainable because the prayer in the writ petition is to forbear the respondents 2 to 4, their men and agents, servants and officials from interfering with the peaceful possession and enjoyment of the said land since as on the date when the writ petition was filed and when the interim injunction was passed, petitioner was not in possession of the said land and therefore the interim injunction has been granted due to

suppression of fact by the first respondent in the above writ petition.

7. Per contra, the learned counsel appearing for the first respondent argued that the first respondent has got a Civil Court decree in A.S.No.126 of 2004, wherein the first respondent is treated as an encroacher in possession and he is entitled to continue in possession until he is evicted from the property by due process of law. The learned counsel further submitted that no appeal against the first appellate Court was filed by the respondents 2 to 4, who were parties to that proceeding. It is also contended by the learned counsel for the first respondent that mandatory procedure as contemplated under the Tamil Nadu Land Encroachment Act, 1905, viz. Section 7 notice was not issued to the first respondent/writ petitioner and consequently he is entitled to be in possession as he is not dispossessed in a manner known to law. The learned counsel cited a Division Bench decision of this Court reported in AIR 1990 Madras 350 (Hamsavalli and Others v. The Tahsildar, Vridhachalam) and a Full Bench decision reported in 2005 (2) CTC 741 (T.Ramaraju v. The State of Tamil Nadu) to show that unless and until the mandatory provisions are followed for evicting the encroacher, the eviction proceedings are vitiated. The learned counsel also cited a judgment reported in AIR 1994 Madras 222 (B.M.Habibullah and others v. State of Tamil Nadu and others) and contended that the procedures contemplated under the said Act is mandatory in nature. Therefore the learned counsel argued that the writ petitioner is entitled to be in possession as he is not evicted in a manner known to law and therefore the injunction granted by this Court is perfectly legal and valid.

8. The learned Government Pleader appearing for respondents 2 to 4 submitted that the order in A.S.No.126 of 2004 has been fully complied with and the eviction proceedings were initiated against the first respondent and all the formalities as prescribed under the Tamil Nadu Land Encroachment Act, 1905, were being followed and the possession from the first respondent was taken on 22.8.2005. The land was also assigned to the Government Girls High School through G.O.Ms.No.299 dated 18.5.2005 and construction of school building has already started and the writ petitioner is not in possession of the lands even on the date when he filed the above writ petition and obtained order of injunction.

9. We have considered the rival submissions made by the learned Senior counsel appearing for the appellant, learned counsel for the first respondent as well as the learned Government Pleader for respondents 2 to 4.

10. The point in issue in this writ appeal is whether the petitioner is entitled to get an order of injunction in October, 2005, when he was allegedly evicted on 22.8.2005.

11. The respondents 2 to 4 have filed a counter affidavit in the writ petition wherein it is stated that the first respondent/writ petitioner was vacated only after undergoing the procedures contemplated under the Tamil Nadu Land Encroachment Act, 1905, and the process of construction of Government Girls High School has also been commenced by the Public Works Department and the same is in progress. At this juncture, it is relevant to note that this Court on 3.4.2006 granted interim stay of the order of the impugned order in the writ appeal. On 9.5.2006, when the vacate stay petition was argued, this Court appointed an Advocate-Commissioner to inspect the disputed land and submit a report regarding the present position. The learned Advocate Commissioner submitted his report today and also produced photographs of the site. The relevant portion of the Advocate-Commissioner's report is extracted hereunder:

"... In this stretch of land also I do not find any crop and is kept barren. There are three rows of foundation pits of approximately 4½ feet depth; in each row 24 pits have been dug, thus 72 pits were seen and this has been marked as "A" in the Plan. Iron rods for erecting pillars were assembled and kept. Heaps of blue metal stones and bricks were found over the land. On the northern part of the land in the middle a small thatched leaves shed on poles without any brickwork was found and has been marked as "B" in the Plan. On the rear side of the land I found a temporary hut with thatched leaves roof over wall made of brickwork and unplastered, measuring approximately 50 feet by 20 feet and this has been marked as "C" in the plan. This hut had three portions wherein the first room cement bags were stored and other two portions remain vacant. Behind this hut portion I found two small separate portion of brickwork construction built upto two feet high from basement level and this has been marked as "D" in the Plan. In one portion on its eastern side brickwork has been done about four feet height partially. On the extreme rear side also I found small foundation pits of about 3 feet depth, in two rows, each row having 7 pits, thus 14 pits were seen and has been marked as "E" in the Plan. I have not taken measurement of the land or the referred brickworks. In the middle portion of the land in survey number 496/21, I found a borewell with PVC pipe. I also noticed a dismantled cement pole in the middle of the southern boundary of the land in survey number 496/21. Over the road a name board has been

erected reading as "Government Girls High School, Thiruvannainallur, Main Entrance" in front of a hut on the poromboke land."

It is pertinent to notice that no objection to the Advocate Commissioner's report has been filed before this Court.

12. A perusal of the said Advocate Commissioner's report reveals that construction of the school building has already commenced and there is no crop in the said land. Taking note of the said Commissioner's report and having regard to the assignment of land to the school and commencement of construction of school building, we feel it proper to hold that the first respondent/writ petitioner is not in possession of the land in question and the possession is with the school and that the construction of school building is in progress. The grievance of the first respondent that he was not duly evicted by following the mandatory procedures as contemplated under section 6 and 7 of the Tamil Nadu Land Encroachment Act, 1905, cannot be decided in this writ appeal. It is open to the first respondent/writ petitioner to establish his right in the main writ petition. As the construction of the School building has already commenced, the completion of the same will be subject to the result of the writ petition. It is made clear that the said finding is made by this Court only for the purpose of disposal of the writ appeal and the same shall have no bearing while deciding the rights of the first respondent in the writ petition.

13. In view of our above referred finding, the writ appeal is allowed. All other contentions raised by the learned counsels on either side are left open to be decided in the writ petition. No costs. Connected miscellaneous petitions are closed.

Sd/-

Asst. Registrar/
Vacation Officer

/true copy/

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Sub Asst. Registrar.

vr

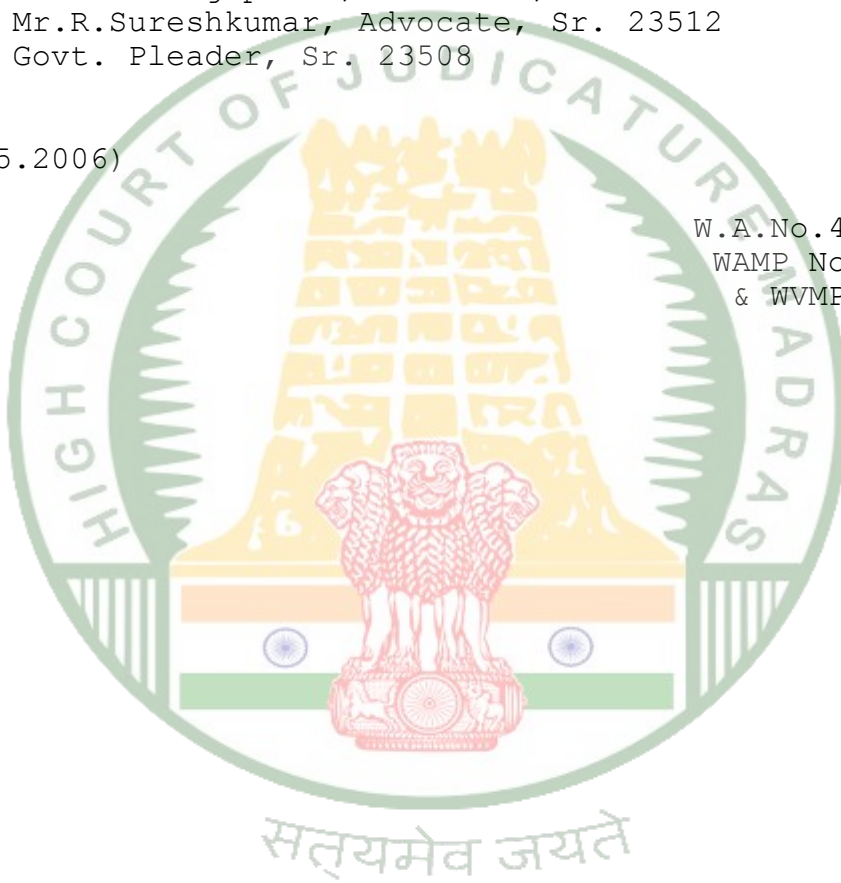
To

1. The Secretary to Government, Revenue Department,
Fort St.George, Chennai - 9.
2. The District Collector, Villupuram
3. The Tahsildar, Thirukoilur Taluk, Villupuram District.

1 cc to Mr.S. Ambigapathi, Advocate, Sr. 23490
1 cc to Mr.R.Sureshkumar, Advocate, Sr. 23512
1 cc to Govt. Pleader, Sr. 23508

NM(23.05.2006)

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& WVMP No.1067 of 2006



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