

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.P.No.2816 of 2020
and
W.M.P.No.3260 of 2020

S.V.Subbiah

... Petitioner

Vs.

1. The Bar Council of Tamil Nadu & Puducherry,
Represented by its Secretary,
Gate No.4, High Court Campus,
N.S.C.Bose Road, Chennai - 600 104.
2. The District Collector,
Coimbatore District,
Office of the District Collector,
Coimbatore District.
3. The Sub Collector,
Pollachi Taluk,
Coimbatore District.
4. The Tahsildar,
Pollachi Taluk,
Coimbatore District.
5. K.Damodaran

6. T.P.Ramaraj
7. The Government of Tamil Nadu,
Represented by its Secretary,
Municipal Administration and Water Supply Department,
Fort St.George,
Chennai.
8. The Government of Tamil Nadu,
Represented by its Secretary,
Revenue Department,
Fort St.George,
Chennai.
9. The Government of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes and Registration Department,
Fort St.George,
Chennai.

[R7 to R9 *suo motu* impleaded as per order
dated 06.02.2020 made in W.P.No.2816 of 2020
by NKKJ, RPAJ]

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st respondent to expeditiously complete the enquiry against the 5th respondent based on the complaint given by the petitioner herein U/s 35 of the Advocates Act, 1961 and submit a report before this Hon'ble Court within a time frame.

For Petitioner : Mr.M.Purushothaman

For R1 : Mr.C.K.Chandrasekar

For R2 to R4 and
R7 to R9 : Mr.T.Chandrasekaran
Special Government Pleader

For R5 : Mr.S.Thirumavalavanan

For R6 : Mr.N.Manokaran

ORDER

(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)

The writ on hand has been instituted to direct the first respondent to expeditiously complete the enquiry against the 5th respondent based on the complaint given by the petitioner herein U/s. 35 of the Advocates Act, 1961 and submit a report before this Court.

2. This Court while hearing the matter on 06.02.2020 raised several questions and issues to be answered by the parties. Thereafter, the matter was not listed for long time and when the matter is taken up by this Bench, we have directed the jurisdictional Tahsildar to submit a Report regarding the allegations. Mr.V.Sivakumar, Tahsildar, Anaimalai submitted a Report regarding the history of the subject property and the classifications prevailing as on today in the Revenue Records. The Report reads as under:

“One Thiru.Nachakkal, W/o. Thillapuri, has purchased an extent of 0.03 cents vacant site in ThathaRawthanputhur, Oorkattu, Hamlet of Marchanayackenpalayam Village as per the sale deed No.715 of 1921 registered in Anaimalai Sub Registrar Office.

..... Oorkattu means village people residential habitation area, which is classified as Natham in Revenue records. The purchased site lies in the S.F.No.263/A of Marchanaickenpalayam Village. The S.F.No.263/A Registered as Natham Prompoke in the Revenue Records as per the Resurvey settlement register sold in 1984 in Updating Registry scheme After that Natham settlement scheme was introduced during 1994, in order to issue manai patta to each and every resident house holders in the Oorkattil i.e. Natham. During the Natham settlement 1994, the property covered in this writ petition has been subdivided as Natham Subdivision No.1293/1 for an extent of 0.0140 Sq.mt. with a remark of Natham vacant site.

One Tmt. Ramathal, W/o. Ponnusamygounder purchased a separate house site in the Oorkattil Natham, Which belonged to the above Nachakkal as per the sale deed of, purchased site, 1134/1965 of Anaimalai Sub Register office. In which the sale deed was shown as vide 'A" schedule of the property. The vacant site already purchased by the Nachakkal as per Doc.715/1921 was shown as "B" schedule of the property and the 'B' schedule property was shown as the property for security to the 'A' scheduled property.

Tmt. Ramathal, W/o. Ponnusamygounder has written an settlement deed to his son T.P. Mylsamy gounder including the 'B' schedule property which was already shown as the security property in the sale deed Doc.No.1134/1965, vide Registered Settlement Doc.No.3918 of 2010 of Anaimalai Sub Register Office.

Later the Settlement Property holder T.P. Mylsamygounder, has given the rights of the above said property to his brother P. Ramaraj as per the Registration Settlement 1550 of 2014, Anaimalai Registration Office.

It is understood from the above sale deed 1134 of 1965, the property covered under the writ was not purchased by the Tmt. Ramathal, where in the Doc. itself, the property was shown as the property for security for an another site purchased in the same sale deed.Tmt. Ramathal misunderstood that she has also right over property shown as the security property which was shown in the Doc. itself and given up to his son and the same was registered by the Sub Registrar, Anaimalai as Settlement Doc. No.3918/2010.

It is assumed that in Natham survey settlement, 1994, the property covered under this writ was found to be a vacant site and no person came forward to claim their rights over the property with documentary evidence, and the house site was Sub divided as 1293/1 with a remark of Natham vacant site as Govt. Promboke.

..... *The 6th Respondant T.P. Ramaraj not knowing the fact that the property acquired by him through settlement deed, was classified as Govt. Promboke with the remark of vacant site in the Revenue records, proceeded to construct a house in that property. Hence the petitioner Thiru.S.V.Subbiah sent submitted the petition to the District Collector, Coimbatore in order to take action against the 6th Respondent regarding encroaching the Govt. Promboke Land.*

Accordingly the 3rd Respondent, the Sub Collector, Pollachi issued an order to stop the construction work and not to proceed the construction work till further order. The 6th Respondent P. Ramaraj filed O.S.No.27 of 2018, before the III Additional District Court, Coimbatore challenging the order issued by the Sub Collector, Pollachi vide Na.Ka.No.2880/17/A dt. 25-01-2018 meanwhile Thiru.S.V.Subbiah the petitioner has filed IA in 671/2018 and IA in 672/2018 before the Trial Court, Coimbatore to implead him as a Defendant in OS No 27/2018, The Trial Court dismissed the Petition filed by Thiru. S.V.Subbiah petition of the Writ. property was shown as the property for security for an another site purchased in the same sale deed.Tmt. Ramathal misunderstood that she has also right over property shown as the security property which was shown in the Doc. itself and given up to his son and the same was registered by the Sub Registrar, Anaimalai as Settlement Doc. No.3918/2010.

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Hence, the petitioner filed the writ petition in W.P.No.2816 of 2020 before the Honorable High Court, Madras and as per the Revenue Records, Natham S.F.No.1293 of 1 of Thatharawthanputhur

H/o. Marchanaickenpalayam was Registered as Govt.Poramboke with the remark of Natham vacant site and no Title Deed or Nathampatta was issued to the 6th respondent in respect of the above Natham Sub Division No.1293/1 till date. The action of constructing house in the vacant site by the 6th respondent was also stayed by the 3rd respondent, Sub Collector Pollachi.”

3. Mr.M.Purushothaman, learned Counsel appearing on behalf of the petitioner would contend that large scale allegations are raised against the Government Pleaders in District Judiciary, wherein many civil ligations against the Government ended with *exparte* decrees. Public lands to larger extent are encroached upon and dealt in an illegal manner for unjust personal gains. On account of sky rocketing of market value of lands across the State of Tamil Nadu, illegal activities of land grabbings are in ascending mode. In many District Courts, there are allegations against the Government Pleaders representing the Government as they are not properly defending the cases of the Government and allowing the Courts to pass *exparte* decrees in land matters and the Authorities are not initiating any appropriate actions to safeguard the Government properties.

4. No doubt, High Court frequently witnessing many such *ex parte* orders against the Government. Doubt arises, whether the Government Pleaders are representing the Government cases properly in the District Judiciary. In the event of not defending the case of the Government, it is a serious misconduct and an offence, since the public properties are to be protected under various Statutes and it is the Constitutional mandate. Government is duty bound to protect the public properties in the manner contemplated under law. It is the joint responsibility of the Officials of the Government and the Government Pleaders, who all are conducting cases on behalf of the Government in such land matters in District Courts and higher Judiciary. Any lapses, negligences and dereliction of duty on the part of the Government Pleaders in defending the Government cases are to be viewed seriously and appropriate actions are to be initiated not only to safeguard the public property and also to initiate appropriate action against those Officials and the Government Pleaders, who have committed such lapses, dereliction, negligence, misconduct and offences.

5. The case on hand is one such case, where the petitioner raised several allegations against the conduct of the Government Pleaders in District

Court at Coimbatore. Several complaints are filed by the petitioner to various Authorities. Since no action has been taken, the present writ petition came to be instituted. The Report filed by the Tahsildar, Anaimalai also reveals that the subject land 'Government Poramboke' classified as 'Natham land'. Classification or re-classification cannot be made by the District Level Authorities. Classification or re-classification of lands are to be done by the Commissioner of Land Administration with the approval of the Government. Therefore, the manner in which such lands are classified or re-classified are to be inquired into.

6. The Hon'ble Supreme Court of India in the case of ***Salem Advocate Bar Association, Tamil Nadu vs. Union of India*** reported in ***MANU/SC/0450/2005*** in paragraph nos.39 and 40 held as follows:

“Section 80

39. section 80 (1) of the Code requires prior notice of two months to be served on the Government as a condition for filing a suit except when there is urgency for interim order in which case the Court may not insist on the rigid rule of prior notice. The two months period has been provided for so that the Government shall examine the claim put up in the notice and has sufficient time to send a suitable reply. The underlying object is to curtail the litigation. The

object also is to curtail the area of dispute and controversy. Similar provisions also exist in various other legislations as well. Wherever the statutory provision requires service of notice as a condition precedent for filing of suit and prescribed period therefore, it is not only necessary for the governments or departments or other statutory bodies to send a reply to such a notice but it is further necessary to properly deal with all material points and issues raised in the notice. The Governments, Government departments or statutory authorities are defendants in large number of suits pending in various courts in the country. Judicial notice can be taken of the fact that in large number of cases either the notice is not replied or in few cases where reply is sent, it is generally vague and evasive. The result is that the object underlying section 80 of the Code and similar provisions gets defeated. It not only gives rise to avoidable litigation but also results in heavy expense and cost to the exchequer as well. Proper reply can result in reduction of litigation between State and the citizens. In case proper reply is sent either the claim in the notice may be admitted or area of controversy curtailed or the citizen may be satisfied on knowing the stand of the State. There is no accountability in the Government, Central or State or the statutory authorities in violating the spirit and object of section 80.

40. These provisions cast an implied duty on all concerned governments and States and statutory authorities to send appropriate reply to such notices. Having regard to the existing state of affairs, we direct all concerned governments, Central or State or other

authorities, whenever any statute requires service of notice as a condition precedent for filing of suit or other proceedings against it, to nominate, within a period of three months, an officer who shall be made responsible to ensure that replies to notices under section 80 or similar provisions are sent within the period stipulated in a particular legislation. The replies shall be sent after due application of mind. Despite such nomination, if the Court finds that either the notice has not been replied or reply is evasive and vague and has been sent without proper application of mind, the Court shall ordinarily award heavy cost against the Government and direct it to take appropriate action against the concerned Officer including recovery of costs from him.”

7. In the present case, the Secretary to Government (Municipal Administration and Water Supply Department, Secretary to Government (Revenue Department) and Secretary to Government (Commercial Taxes and Registration Department) are impleaded as respondents in the writ proceedings by this Court.

8. The said respondents are bound to issue guidelines to the District Collectors and all appropriate Authorities to monitor the Government cases pending before the District Courts, more specifically, relating to public

properties and such guidelines must contain the actions to be initiated against the erring Officials and the Government Pleaders, who all are committing misconducts, offences, negligence, dereliction or lapses. The guidelines must be issued to all the Government Department Officials and to the Government Pleaders, so as to ensure that the Government cases are defended properly and the cases are decided on merits and in accordance with law. In the event of allowing the Courts to pass *exparte* decrees, action must be initiated against the concerned Officials and the Government Pleaders responsible and accountable for such *exparte* decrees.

9. The learned Counsel for the petitioner would raise several allegations, which all are disputed facts and we cannot adjudicate in the present writ petition. It is for the petitioner to initiate all appropriate actions and in the event of receiving any such complaint along with the materials, appropriate actions are directed to be initiated in the manner known to law.

10. The respective learned Counsels appearing on behalf of the contesting respondents would state that the petitioner is filing complaint frequently. Therefore, the writ petition is to be rejected. A civil suit instituted is also pending.

11. In reply, Mr.M.Purushothaman, the learned Counsel for the petitioner would contend that instead of blaming the petitioner, the Authorities ought to have gone into the nature of the complaint given by the petitioner. Only after filing the writ petition, few facts came out from the Revenue Authorities. Therefore, the actions of the petitioner are made only for public good. It is further contended that valuable properties of the Government are grabbed and sold illegally by creating forged documents. All these allegations are to be looked into by the Authorities competent.

12. In view of the facts and circumstances, the following orders are passed:

(i) The respondents 7, 8 and 9 are directed to issue appropriate Circulars/Guidelines/Instructions to all the District Collectors, competent Authorities and to the Government Pleaders indicating that the Government cases in land matters are to be conducted by properly defending the Government on merits and in accordance with law. The concerned Officials should have effective co-ordination with the Government Pleaders for the purpose of defending the Government cases before various courts across the State of Tamil Nadu.

(ii) In the event of any *ex parte* decrees by the courts or on identification of improper conduct of cases both by the Officials concerned and the Government Pleaders, the competent Authorities must ascertain the facts and initiate all appropriate actions against the Government Officials concerned and the Government Pleaders for their lapses, negligence, dereliction of duty, offences and misconducts committed and prosecute them under the relevant laws.

(iii) The respondents 7, 8 and 9 are directed to issue consolidated Circulars/Guidelines/Instructions to all the Government Officials, District Collectors, competent Authorities and the Government Pleaders within a period of three (3) weeks from the date of receipt of a copy of this order.

(iv) Mr.T.Chandrasekaran, learned Special Government Pleader made a submission that he will ensure that such Circulars/Guidelines/Instructions is issued in a comprehensive manner.

(v) The 1st respondent is directed to expedite the enquiry initiated against the 5th respondent.

13. Accordingly, the Writ Petition stands **disposed of**. No costs.

Connected miscellaneous petition is closed.

14. List the matter before this Bench for reporting compliance on 11.07.2024.

[S.M.S., J.] [C.K., J.]
19.06.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

1. The Bar Council of Tamil Nadu & Puducherry,
Represented by its Secretary,
Gate No.4, High Court Campus,
N.S.C.Bose Road, Chennai - 600 104.
2. The District Collector,
Coimbatore District,
Office of the District Collector,
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S.M.SUBRAMANIAM, J.
AND
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Order in
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