

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 2-4-2008

CORAM

THE HON'BLE MR. JUSTICE H. PAUL VASANTHAKUMAR

W.P.No.50052 of 2006 and M.P.Nos.1 & 2 of 2006 & 1 of 2007
W.P.No.2034 of 2007 and M.P.Nos.2 of 2007, 1 of 2008

H.M. Immanuvel ... Petitioner in W.P.50052 of 2006

Mugappair West Garden
Residents Welfare Association,
rep. by its Secretary
J. Govindarajan,
Plot No.64, HIG-II
Mugappair West Garden,
Mugappair West,
Chennai - 600 037. ... Petitioner in W.P.2034 of 2007

Vs.

1. State of Tamil Nadu,
rep. by its Secretary,
Revenue Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector,
Tiruvallur District.
3. The President,
Nolambur Village Panchayat,
Nolambur.
4. Nethrodaya Trust,
rep. by its Founder
C. Govinda Krishnan,
No.8, Spartan Nagar,
Mugappair East,
Chennai - 600 037.

... Respondents in both writ petitions

Common Prayer: These writ petitions are filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorari/sified mandamus calling for records relating to the impugned order of the first respondent in G.O.(Permanent) No.748, Revenue Department, dated 20.11.2006 and quash the same and consequently direct the respondents to consider for assigning S.No.46/2, Nolambur Village, in favour of the 4th respondent.

For Petitioner in W.P.No.50052/2006 : Mr.S.M.Loganathan
For Petitioner in W.P.No.2034/2007 : Mr.R.Muthukumaraswamy,
Senior Counsel,
for Mr.U.Karunakaran
For Respondents 1 & 2 : Mr.M.R.Jothimani
Government Advocate
For 3rd Respondent : Ms.P.Selvi
For 4th Respondent : Mr.P.M.Prasad,
for Mr.K.Sampathkumar

COMMON ORDER

By consent of both parties, the writ petitions are taken up for final disposal.

2. The issue involved in both these cases being one and the same, viz., challenging G.O.(Permanent) No.748 Revenue Department, dated 20.11.2006, and for consequential direction to the respondents 1 to 3 to consider for assigning S.No.46/2, Nolambur Village in favour of the 4th respondent, these writ petitions are disposed of by this common order.

3. The case of the petitioners is that the Nolambur Panchayat, Ambattur Taluk consists of several hamlets such as Nolambur, China Nolambur, Periy Nolambur, part of Mogappair as well as a portion in Ambattur Town, which is surrounded by various residential areas promoted by the Tamil Nadu Housing Board. There are private properties in and around Nolambur Panchayat, which is closely associated with the Chennai City. The 4th respondent is a Trust, established for the purpose of promoting the welfare of physically challenged persons. The said Trust has applied on 18.11.2003 for allocation of Government land in S.No.47/1 of Nolambur Village, Ambattur Town. According to the petitioner, public notice was not issued calling objections, if any, for allotting the said lands to

the 4th respondent Trust for construction of school for the blind and the lands in S.No.46/2 is more advantageous place for the visually challenged persons and therefore the petitioners have suggested the said alternate site. Without taking note of the said suggestion made and objections raised for allotting the said land viz., S.No.47/1, the first respondent through the impugned order allotted the said land to the 4th respondent by way of lease for 30 years at the rate of Rs.5,000/- per annum as rent.

4. The above said order is challenged in W.P.No.50052 of 2006 by an individual and the Mogappair West Garden Residents Welfare Association in W.P.No.2034 of 2007 by contending that the said land being a poromboke land, before granting assignment or lease to any person, the respondents are bound to ascertain the objections from the general public and of the Panchayat, since the lands are vested with the Panchayat. The said land is treated as Mandavelli (Cattle stand) Poromboke and the same cannot be classified without assigning any valid reason. As the Mandavelli Poromboke is intended for the benefit of the Panchayat, first respondent ought to have considered the views of the Panchayat. Petitioner also suggested the difficulties in respect of the lands allotted and suggested the alternative land viz., S.No.46/2 by contending that the suggested lands by the petitioners are located just 20 metres from the bus stop whereas the lands for which lease is now granted situate 2 k.m away from the bus stand and therefore the blind people can easily reach the alternatively suggested land than the one for which lease is granted by the Government. The further ground taken is that during the local inspection, the respondents failed to consider the objections raised by the petitioners and the relaxation for granting lease of cattle stand Poromboke land also is not in order. Hence the petitioners have filed these writ petitions to quash the grant of lease to the 4th respondent and are praying to consider the grant of assigning of land in S.No.46/2 of Nolambur village in favour of the 4th respondent.

5. The second respondent filed counter affidavit contending as follows:

(a) The 4th respondent Trust is taking care of the visually impaired persons and the said Trust submitted an application on 22.5.2004 for alienation of Government Poromboke land measuring an extent of 0.14.0 Hectares in S.No.47/1 classified as cattle stand poromboke, for construction of a Home for the blind. The Tahsildar, Ambattur, through his A-1 notice dated 19.7.2004 invited objections from the villagers, if any. No objections were received either by Tahsildar or by the Village Administrative Officer within the stipulated time of 15 days from the date of publication of A-1 Notice. Hence the Tahsildar conducted enquiry in the village on 20.8.2004. The Village Administrative Officer and the Villagers of the Nolambur village were enquired into and after enquiry, the

Tahsildar recommended to the second respondent that the said land may be alienated to the Trust.

(b) Thereafter, the Tahsildar submitted proposal and recommended on 16.12.2004 to the Sub-Collector either to alienate or to lease out part of the land to the 4th respondent Trust on free of cost or on rental basis. The Sub-Collector, Ponneri, through letter dated 10.12.2004 recommended the proposal to the Divisional Revenue Officer, Tiruvalur, who in turn submitted his recommendations on 16.2.2005 to the Government through the Special Commissioner and Commissioner of Land Administration for allotment of land on free of cost. The Special Commissioner and Commissioner of Land Administration by letter dated 30.1.2006 recommended the proposal to the Government.

(c) The Government, after examining the proposals, issued orders on 20.11.2006 allotting land measuring 0.11.5 H in S.No.47/1 at Nolambur Village to the Trust on lease basis for a period of 30 years, subject to the conditions laid down in R.E.No.27A on payment of a nominal lease rent of Rs.5,000/- per annum. The said order was issued by the Government by relaxing the guidelines issued in G.O.Ms.No.186, Animal Husbandry and Fisheries Department, on 11.10.2001 and G.O.Ms.No.959, Revenue Department, dated 23.6.1987, in which the Government issued ban orders for alienation or leasing of Government Lands classified as cattle stand and grazing ground and also in belt areas of metropolitan areas. The said relaxations were given for the grant of lease to the 4th respondent taking note of the object behind the establishment of Home for the blind, which is for a noble cause.

(d) The second respondent in the counter affidavit further states that pursuant to the grant of lease, 4th respondent was handed over possession on 12.12.2006. The contention that objection raised by the petitioner was not considered is answered by stating that the petitioner did not participate in any proceeding in spite of issuing public notice by the Tahsildar as well as by the Village Administrative Officer. Petitioner being an elected member of the local body, instead of supporting the policies of the Government for a noble cause, has chosen to file this writ petition, which is against the public interest and also contrary to the pledge he has taken while assuming his office.

(e) It is also stated in the counter affidavit that some of the lands were shown for the construction of Home for the blind, which were not found suitable for their utility either due to lack of access from the nearest bus stand or the lands were otherwise selected for some other purpose. The land which is now leased out, is found to be free from encumbrance and found to be suitable for the requirement of the Trust. Therefore the Government considered every aspect before finalising the lease and granted the same to the 4th respondent on lease basis in S.No.47/1 of Nolambur Village, Ambattur Town.

(f) It is further stated in the counter affidavit that the leased out land and the alternative lands suggested by the

petitioners are contiguous in nature. Hence the contention that the leasehold lands have no accessibility is without any merit. It is stated in the counter affidavit that "the petitioner is claiming shelter like a wolf crying when the sheep drenches".

(g) The plan approval for the building to the leasehold land was also given by the President of Nolambur Village Panchayat, who is also an elected public representative and therefore the petitioner has no locus-standi to challenge the impugned order. It is also stated that the Government has chosen the said land with a noble idea and also bearing in mind the security of the blind people, who are to be safeguarded and also to avoid psychological feeling that the blind people are deprived of their birth right and also to claim confidence among themselves to lead a normal life on par with other people in the society.

6. The 4th respondent also filed counter affidavit stating that the 4th respondent Trust was formed as a Charitable Trust on 11.6.2002 with the main object of giving assistance to the visually impaired by constructing hospital for temporary shelter etc. From 2.10.2002 the Trust is providing shelter and training in various trades in braille system to the visually impaired by taking two buildings on rent and giving accommodation to 30 boys and five girls. The said 35 visually impaired inmates are provided with all facilities and more people could not be accommodated due to lack of space. The premises occupied by the 4th respondent being very small and inadequate, the Trust applied before the Government for allotment of lands and after thorough verification and enquiry the said land is given on lease basis for 30 years on yearly rent of Rs.5,000/-. After measuring the land by a Head Surveyor, the Trust was given possession of the land and on 12.12.2006 it is also given electricity service connection. The Trust spent Rs.32,000/- for digging borewell and as of now it has constructed a compound wall by spending Rs.3.20 lakhs. It is further stated in the counter affidavit that the land now allotted on lease is situated in an advantageous position to the visually impaired people and the disadvantages portrayed by the petitioners are superficial and these writ petitions are filed by stating that the land is allotted near the residential areas and also a school is likely to come up in the same location, which shows extraneous reasons for opposing the grant of lease by the Government to the benefit of blind people.

7. Mr.R.Muthukumaraswamy, learned Senior Counsel appearing for the petitioner in W.P.No.2034 of 2007 submitted that the Petitioner Association is not opposing the grant of lease of land by the Government to the 4th respondent and their only objection is that when more advantageous lands are available to the visually challenged persons for construction of Home, the Government instead of giving the alternate lands suggested by the petitioners, has granted lease of the land, which is in residential area and therefore petitioner's claim may be considered by setting aside the impugned order.

8. Mr.S.M.Loganathan, learned counsel appearing for the petitioner in W.P.No.50052 of 2006 also made submissions on the above lines.

9. Mr.K.Sarpathkumar, learned counsel appearing for the 4th respondent submitted that the noble object of rehabilitating the blind people having been recognized by the Government and the land in question having been leased out to the 4th respondent Trust after inviting objections from the General public and villagers and after thorough inspection, enquiry by the Tahsildar and Village Administrative Officer, petitioners cannot oppose the grant of lease by the Government as it is the prerogative of the Government in giving lease of its land to any one as the Government thought fit to grant. The learned counsel also submitted that possession is given to the 4th respondent Trust in December, 2006, and enormous amount is also invested by digging borewell, putting up compound wall, securing service connection, etc., and at this stage, the said lease of land cannot be set aside.

10. Mr.M.A.Jothimani, learned Government Advocate on the basis of the counter affidavit filed by the second respondent submitted that the petitioner has no locus standi to oppose the grant of lease of land to the 4th respondent. He also produced the file for perusal.

11. I have considered the rival submissions made by the learned counsel for the petitioners as well as respective respondents.

12. The bona fide claim of the 4th respondent for construction of Home for the visually challenged persons is not in dispute. The 4th respondent applied for the grant of assigning or leasing out land by the Government. The Government considered the recommendations of the Divisional Revenue Officer and taken note of the registration of 4th respondent Trust on 11.6.2002 under Document No.320/2002 and also the object of the Trust in rendering assistance to the under privileged for visually impaired and to carry on the activities for charitable purpose. The Government also sanctioned a sum of Rs.5,00,000/- to the 4th respondent Trust through G.O.Ms.No.86, Social Welfare and Nutritious Meal Programme Department, dated 4.6.2004, for establishment of a Braille Library and Research Centre. The Tamil Nadu Housing Board also stated that there is no land available for allotment to the 4th respondent Trust.

13. From the perusal of the file it is also seen that the Tahsildar, Ambattur, issued A-1 notice on 19.7.2004 in Nolambur Village and invited objections, if any, in respect of transfer of the land in S.NO.47/1 measuring 0.14.0 H, for which no objection was received from the villagers or from the petitioners. Consequently, the Tahsildar, Ambattur, inspected the land and reported that the

proposed land lies within 2 kms. from the Mogappair bus stand. There are no trees, tombs, religious monuments, buildings in the land, no high tension line is passing through in the field. He also found through local enquiry that the 4th respondent Trust is a public trust taking care of the blind students by providing shelter, clothes, and education and no amount is being collected from the students. The expenses are being met by getting donation from various social volunteers. The Trust is functioning in a rented building at Mogappair Village, which is not adequate to admit so many disabled persons and therefore the Trust requires more space for enlarging its activities and requested six grounds for allotment. The Trust also obtained exemption under section 80G of the Income Tax Act, and it is a public charitable trust registered with Sl. No. 317/02-03.

14. From the above narrated facts, it is evident that neither the petitioner nor any of the villagers have submitted any objection for the allotment of the subject matter of the land to the 4th respondent Trust. Petitioners having not submitted any objection and the land having been given on lease by the Government after taking note of the noble object of rehabilitating the blind people, I am of the view that the petitioners are not entitled to challenge the impugned Government Order in these writ petitions.

15. Admittedly the land is owned by the Government and it is the prerogative of the Government to grant lease of the said land to the 4th respondent, which is doing charity for the upliftment of the blind people. It is the bounden duty of the Government as well as all the persons, particularly the Panchayat President, to encourage such kind of charitable trust, which are doing charity, without any benefit. There is no complaint against the 4th respondent Trust even according to the petitioners. The suitability of the land leased out to the 4th respondent was also assessed and determined during inspection as more convenient to the blind people and hence the petitioners are not justified in contending that more suitable place is available to the blind school and the land now leased out is not advantageous to the blind people. Further the 4th respondent is already given possession of the land as early as in December, 2006, and the Trust also put up compound wall and spent huge amounts to meet some of the minimum requirements, by collecting donations. Petitioners have no vested right to claim that the said land cannot be given to the 4th respondent on lease. In the absence of any right to the petitioners, they are not entitled to maintain the writ petitions.