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W.P.No.20601 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 18.10.2023

PRONOUNCED ON: 09.11.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P.No.20601 of 2009

and

M.P.No.1 of 2009

Mannangatti

... Petitioner

Vs.

1. The Union Territory of Puducherry,
Rep. by its Secretary, PWD, Govt of Puducherry,
Puducherry.
2. The Sub Inspector of Police,
Bahour, Puducherry – 607 402.
3. The Commissioner,
Bahour Commune Panchayat,
Puducherry.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus forbearing the respondents from dispossessing the petitioner from the lands measuring 39 acres and 63 centaries comprised in R.S.Nos.188/4 part and 189/3 part in Arachikuppam Village, Parikalpet Revenue, Bahoor Commune, Puducherry State unless due process of law.



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For Petitioner : Mr. D. Rajagopal
For R1 to R3 : Mr. V. Vasanthakumar,
Special Government Pleader,
Puducherry

ORDER

(Judgment of the Court was Delivered by K. Rajasekar, J.)

Writ Petition filed for issuance of Writ of Mandamus forbearing the respondents from dispossessing the petitioner from the lands measuring 39 ares and 63 centaries comprised in R.S.Nos.188/4 part and 189/3 part in Arachikuppam Village, Parikalpet Revenue, Bahoor Commune, Puducherry State.

2. The facts of the case in brief as follows:

2.1 The Writ Petitioner was in possession of his Patta Land comprised in R.S.Nos.188/2 and 188/3 to the extent of 1 acre 79 centiares in No.79, Chinna Arachikuppam Village, Parikkalpet, Bahoor Sub Taluk, Puducherry. Adjoining his lands there are Government lands in R.S.No.188/4 part and R.S.No.189/3 part and those lands were also in possession and enjoyment of the petitioner for nearly 45 years. His



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possession has been recognized by entering his name in the Encroachment Register as an occupier of the land. Thereafter, Public Works Department (hereinafter referred as PWD) has initiated Eviction Proceedings as per the Order in M.A.No.14 of 2022 dated 10.01.2002 on the file of the Principal District Court, Puducherry. The same was dismissed and the Principal District Judge, had directed the petitioner to surrender the lands and accordingly, he has surrender 2 ares 51 centiares. Thereafter, he has come forward to file a suit in the capacity of in former properties for claiming damages for the loss caused to the crops planted by him and the same is pending.

2.2 The petitioner has also sent several representations seeking assignment/lease of the land in his favour. While so, on 20.12.2007, P.W.D officials have entered into the petitioner properties and caused damages to the same. Hence, his wife lodged a police complaint. However, it was not entertained stating that the same is civil in nature. The petitioner is in possession of the land in R.S.No.188/4 and 189/3 part at Chinna Arachikuppam Village, Parikkalpattu Revenue, Bahour Commune, Puducherry and he has been paying necessary charges and tax. Since the petitioner's representation for assignment /



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lease of the lands to the petitioner was not considered, he sent a representation to the authorities to consider the same. Thereafter, he filed W.P.No.3610 of 2009 seeking direction from this Court to direct the respondents to consider his representation.

2.3 Subsequently, his representation was rejected on 12.08.2009 by the Executive Engineer, Puducherry on the ground that both the survey numbers are related to Sadakulam thangal (water body). Hence, he filed a Writ Petition by challenging the above Rejection Order in W.P.No.17418 of 2009 and the same is also pending. He has also filed Injunction Suit against the respondents in O.S.No.20 of 2006 and the same is also pending. The respondents are trying to take possession of the property, forcibly without following the procedure. Hence, he has come forward with the present Writ Petition seeking Writ of Mandamus forbearing the respondents from dispossessing the petitioner from the lands in R.S.No.188/4 part and 189/3 part in Arachhikuppam Village, Parikalpet Revenue, Bahoor Commune, Puducherry.

3. On the side of the respondents they have filed a detailed typed set of papers including the Eviction Order passed by the second



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respondent dated 30.10.2002 and the Judgment of the Principal District Judge, Puducherry in M.A.No.14 of 2002.

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4. Before the Principal District Court, the petitioner has taken a stand that the Estate Officer has initiated proceedings for evicting unauthorized occupation of the land in Survey No.188/4 part and claims that he shall not be evicted. Since, he is in enjoyment of the Government Agricultural Poramboke Land for nearly 30 years. The Principal District Judge, Puducherry has dismissed the Appeal filed by the petitioner stating that the petitioner does not have any right for the possession of the property and a direction was also issued to the Executive Engineer, Irrigation Division, Public Works Department, Puducherry, to strengthen the stone wall built along with the boundary line of the petitioner's land. The petitioner was also directed to vacate the land immediately.

5. It is contended by the counsel for the petitioner that since he is in possession of the lands and there is no Order passed by the Estate Officer for evicting him from the lands in Survey No.39 ares 63 centiares except 2 ares 51 centiares which was the subject matter of M.A.No.14 of 2002, he could not be evicted without due process of law.



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6. The Government Pleader has also produced the Order passed by the Executive Engineer, dated 12.08.2009, shows that the petitioner has also sought for assignment of land and the same was also rejected on the ground that since the water body could not be used for any other purpose except storing water and related activities.

7. At the threshold, it is apropos to point out that the Supreme Court, in Sarvepalli Ramaiah (dead) and Others v. District Collector, Chittoor District and Others (2019) 4 SCC 500, has held in unequivocal terms that water bodies should not be allowed to be alienated or encroached even in the event of they becoming dry. The relevant paragraphs from the said judgment read thus:

“48. The Single Bench as also the Division Bench of the High Court rightly held that it was well settled that poramboke (tank) cannot be alienated. No patta can be granted in respect of tanks and water bodies including those that might have dried up or fallen into disuse. The appellants and/or their predecessor-in-interest has not challenged the Gazatte Notification of 3-9-1984 notifying the entire Survey No.234 at Tiruchanoor as “Peddacheruvu Poramboke”, that is, tank.



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49. *This Court has time and again emphasised the need to retain and restore water bodies and held that water bodies are inalienable. Land comprised in water bodies cannot be alienated to any person even if it is dry. Reference may be made to the judgments of this Court in:*

(1) *Susetha v. State of T.N. [Susetha v. State of T.N., (2006) 6 SCC 543];*

(2) *M.C.Mehta v. Union of India [M.C.Mehta v. Union of India, (1997) 3 SCC 715]; and*

(3) *Intellectuals Forum v. State of A.P. Intellectuals Forum v. State of A.P., (2006) 3 SCC 549]*”

8. In ***Ahmedabad Municipal Corporation vs. Nawab Khan***

Gulab Khan [1997 (11) SCC 123], the Hon'ble Apex Court has observed as follows:

“ The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or re-passing of the pedestrians on the pavements



or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment.”

9. Admittedly, the land in occupation which is in encroachment of the petitioner herein is the water body and he is able to successfully in possession for very long years. The Writ Petition is filed in the year 2009 and it has been taken up for disposal only recently. Hence, this Court is of the view that further continuation of the encroachment by the petitioner herein is against the interest of the general public and he is in the habit of sending various representations and by filing Writ Petitions is able to continue the possession. Hence, the petitioner is liable to be evicted forthwith. Though it is a fit case to impose costs on the petitioner for filing litigations one after the other, this Court refrains itself from such imposition. Hence, finding no merits in this Writ Petition and the the same is liable to be dismissed.

10. Accordingly, the Writ Petition is dismissed as devoid of



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merits. The respondents are expected to follow the dictum laid down by

this Court in *V.B.R.Menon vs. State and others [W.P.No.13648 of*

2016] decided on 29.04.2018, in which one of us (SVNJ) was a party, in

addition to the mandate stipulated in the judgment of the Apex Court in

Kerala State Costal Zone Management Authority vs. Maradu

Municipality [(2021) 16 Supreme Court Cases 822]. No costs.

Consequently, connected MP stands closed.

(S.V.N.J.) (K.R.S.J.)

09.11.2023

ssi

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case : Yes/No

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Pre-delivery Order made in
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