

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10-06-2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR. JUSTICE M. VENUGOPAL

W.P.Nos.16395 to 16399 of 2015

and

M.P.Nos.1,1,1,1,1 and 2 of 2015,

E. Anandan,
S/o Erusan,
No.218 Puthupattinam Main Road,
Ayapakkam Village
Thirukazhukundram Taluk
Kanchipuram District.

...Petitioner
(In WP No.16395/2015)

S. Amutha,
W/o Sekar,
Mariyamman Koil Street,
Nallathur Village ,
Thirukazhukundram Taluk
Kanchipuram District.

...Petitioner
(In WP No.16396/2015)

S. Anitha,
W/o Saravanan,
No.166, Salai Street,
Nallathur Village ,
Thirukazhukundram Taluk
Kanchipuram District.

...Petitioner
(In WP No.16397/2015)

V.M.Anandan,
S/o Mekkavan,
No.158 Ayapakkam Village,
Thirukazhukundram Taluk
Kanchipuram District.

...Petitioner
(In WP No.16398/2015)

D. Anushya,
W/o Duraisamy,
No.265 Pudupattinam Salai Street,
Bommarajapuram,
Nallathur Village,
Thirukazhukundram Taluk
Kanchipuram District.

...Petitioner
(In WP No.16399/2015)

Vs

- 1 State Government of Tamil Nadu
Rep. by its Secretary, Department of Revenue
Fort St. George, Chepauk, Chennai-5.
- 2 The District Collector
Kanchipuram District.
- 3 The Revenue Divisional Officer
Chengalpet Taluk, Kanchipuram District.
- 4 The Tahsildar
Thirukazhukundram Taluk
Kanchipuram District.
- 5 The Assistant Engineer
Public Works Department
Irrigation Section
Thirukazhukundram-603109.

...Respondents
(In all the W.Ps.)

Petitions in WP Nos. 16395 & 16398 of 2015 filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the records of the 5th Respondent Impugned proceeding dated 25.05.2015 and quash the same and further issue necessary direction to the Respondents 1 to 4 for issuance of assignment order pertaining to the land measuring 150 M² under possession of the Petitioner situated in Survey Field No.109, & 105 Ayapakkam Village Thirukazhukundram Taluk Kanchipuram District in favour of the Petitioner.

Petitions in WP Nos. 16396 and 16399 of 2015 filed under Article 226 of the Constitution of India praying for a writ of Certiorari to call for the records of the 5th Respondent Impugned proceeding dated 25.05.2015 and quash the same and further issue necessary direction

to the Respondents 1 to 4 for issuance of assignment order pertaining to the land measuring 100, M² under possession of the Petitioner situated in Survey Field No.120 & 112, Bommarajapuram Village, Thirukazhukundram Taluk Kanchipuram District in favour of the Petitioner respectively.

Petition in WP Nos. 16397 of 2015 filed under Article 226 of the Constitution of India praying for a writ of Certiorari to call for the records of the 5th Respondent Impugned proceeding dated 25.05.2015 and quash the same and further issue necessary direction to the Respondents 1 to 4 for issuance of assignment order pertaining to the land measuring 100, M² under possession of the Petitioner situated in Survey Field No.190 Nallathur Village, Thirukazhukundram Taluk Kanchipuram District in favour of the Petitioner respectively.

For petitioner /s : Mr.A. Prabhakaran, G. Santhanam
K. Ramesh, S. Mohanraj &
S. Vasumathi

For respondents : Mr. P.S.Sivashanmugasundaram
Spl. Govt. Pleader

COMMON ORDER

(Order of the Court is made by SATISH K. AGNIHOTRI,J.)

All the petitioners are having commonality of facts as they are residing in the villages situated in Thirukazhukundram Taluk, Kanchipuram District on the purported water canal. Thus, these writ petitions are being taken up together and decided by this common order.

2 All these petitions arise from the separate but identical notices dated 25.5.2015 issued under Sub Rule (1) of Rule 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 (for short "Rules, 2007").

3 The petitioners claiming to be residents of Bommarajapuram village, Nallathur village and Ayapakkam villages, Thirukazhukundram Taluk, Kanchipuram District, submit that they are in legal possession and occupation of the properties spread in Survey Field Nos.33, 37, 38, 39, 112, 115, 116, 120, 124, 190, 200, 207, 208, 331, 355/27, 109, 105 and 71 of Bommarajapuram village, which has been classified as Water canal leading to river Palar. According to the learned counsel for the petitioners, the petitioners have been in possession

of the said properties for a long period and also made several representations for assignment of the said land to the District Collector, which is still pending consideration awaiting decision and the orders of the Collector. The impugned notices under provisions of Sub Rule (1) of Rule 6 of Rules, 2007, have been issued calling upon the petitioners to remove the encroachment within a period of 21 days, in default, it was intended to remove the encroachment and impose the cost of removal of encroachment.

4 It is further contended that the petitioners have been paying property tax and other statutory taxes. The petitioners are poor villagers, having no shelter to cover their heads. Thus, the petitioners may be granted assignment of land in question. It is next contended that the Government is competent to alienate any part of tank poramboke land, which is under the control of Public Works Department without interfering with storage capacity and water quality and as such, a direction be issued to the authorities concerned to exercise power under the provisions of Section 12 of the Tamil Nadu Protection of Tanks & Eviction of Encroachment Act, 2007 (for short "Act, 2007"), for assignment / alienation of the said property, which is admittedly on water canal.

5 Mr. P.S.Sivashanmugasundaram, learned Special Government Pleader , appearing for the respondents submits that the petitioners have preferred representations after the receipt of the impugned notices, which is pending consideration. The authorities will examine the said representations and decide the dispute on its own merit and pass appropriate orders. Thus, at this stage, no cause of action has arisen, seeking indulgence of this Court in the writ jurisdiction.

6 Heard the learned counsel for the parties and perused the pleadings and documents appended thereto.

7 There is no denial or dispute by the petitioners themselves that they are residing on the properties, which is classified as water canal. Under the provisions of Act, 2007, the authorities the Public Works Department are obliged to make survey of all tanks with reference to records available with the revenue department and thereafter, take necessary steps on the basis of the report of the survey officer for eviction of the encroachment. Section 12 of the Act, 2007 empowers the Government to alienate or assign any part of the tank poramboke land in public interest, without interfering with the storage capacity. Rules framed thereunder provides for eviction of encroachment.

8 In the case on hand, it is an admitted position that the notices, as contemplated under sub rule (1) of rule 6 of Rules, 2007,

have been issued, affording an opportunity of hearing to the petitioners to submit an explanation putting forth their cases. As found on perusal of the record that explanations / representations, pursuant to the said notices, have been submitted by the petitioners. The only question which arises for consideration is as to whether this court, in exercise of its power under Article 226 of the Constitution of India, can direct the State Government / respondents to alienate, assign the said properties, which is admittedly a water canal, to the petitioners, who claim to be in possession of the same for a long period.

9 The lakes, rivers, forests are National wealth. They belong to the community and the same have to be protected for the benefit of the people and for the posterity. It is apt to quote the observations of the Supreme Court rendered in Intellectuals Forum, Tirupathi Vs. State of A.P. and others¹, which reads as under :

86. The judicial wing of the country, more particularly this Court, has laid down a plethora of decisions asserting the need for environmental protection and conservation of natural resources. The environmental protection and conservation of natural resources has been given a status of a fundamental right and brought under Article 21 of the Constitution. This apart, the directive principles of State policy as also the fundamental duties enshrined in Part IV and Part IV-A of the Constitution respectively also stress the need to protect and improve the natural environment including the forests, lakes, rivers and wildlife and to have compassion for living creatures.

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91. It is true that the tank is a communal property and the State authorities are trustees to hold and manage such properties for the benefits of the community and they cannot be allowed to commit any act or omission which will infringe the right of the Community and alienate the property to any other person or body."

¹ (2006) 3 SCC 549

10 It is the bounden duty of each and every citizen, particularly the Government, to protect the national wealth, which is in the form of water canal, pond, tank, forest, etc., and as such, no such direction can be given which erodes the national wealth and causes climatic hazard to other people and also to the posterity. However, in the facts of the case, if, on enquiry, it is found that the petitioners are hapless, poor people having no land even for house sites, the authorities are expected to consider the same and make an alternate arrangement so as to provide at least basic need of shelter. Needless to state that no eviction order can be passed without taking a final decision on the aforestated representations / explanations made by the petitioners.

11 With the aforestated observations and directions, the writ petitions stand disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ra

To

- 1 The Secretary,
State Government of Tamil Nadu
Department of Revenue
Fort St. George, Chepauk, Chennai-5.
- 2 The District Collector
Kanchipuram District.
- 3 The Revenue Divisional Officer
Chengalpet Taluk, Kanchipuram District.
- 4 The Tahsildar
Thirukazhukundram Taluk
Kanchipuram District.

5 The Assistant Engineer
Public Works Department
Irrigation Section
Thirukazhukundram-603109.

4 CCs to Mr.A. Prabhakaran, Advocate SR.No. 28209 to 27212

1 CC to the Government Pleader, SR.No. 28074

W.P.No.16395 to 16399 of 2015
and Connected Mps.

RJ (CO)
PSI (19.06.2015)



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