

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.06.2015

DELIVERED ON: 09.06.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and

THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P. No. 5156 to 5158 of 2015

and

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

G. Arumugam ... Petitioner in W.P. No.5156 of 2015

A. Philip ... Petitioner in W.P. No.5157 of 2015

T. Arumugam ... Petitioner in W.P. No.5158 of 2015

vs.

1. The District Collector
District Collector Office
Kancheepuram District 631 501

2. The Joint Director
Town Panchayat
Kancheepuram Region
Kancheepuram District

3. The Tahsildar
Uthiramerur Taluk
Kancheepuram District 603 406

4. The Executive Officer
Uthiramerur Town Panchayat
Uthiramerur Taluk
Kancheepuram District 603 406 ... Respondents in all the WPs

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Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records from the office of the fourth respondent and quash the impugned notice issued by the fourth respondent herein dated 29.01.2015 in Na.Ka.No.117/2014/A1.

SCHEDULE OF PROPERTY (W.P. No.5156 of 2015)

All that piece and parcel of land situated at Kancheepuram District, Uthiramerur Taluk, No.46, Uthiramerur Village (Somanathapuram) Kulam Poramboke, Survey No.1209, a house site, covering an extent of 5 cents bounded on the

East by	Kulam
West by	Kancheepuram Main Road
North by	Raji's house
South by	Vacant site (Kulam poramboke)

including a cement sheeted residential house.

SCHEDULE OF PROPERTY (W.P. No.5157 of 2015)

All that piece and parcel of land situated at Kancheepuram District, Uthiramerur Taluk, No.46, Uthiramerur Village (Somanathapuram) Kulam Poramboke, Survey No.1209, a house site, covering an extent of 5 cents bounded on the

East by	vacant site (Kulam poramboke)
West by	Kancheepuram Main Road
North by	Kanniyappan's punja patta lands
South by	Raji's house

including a R.C.C. roofed residential house.

SCHEDULE OF PROPERTY (W.P. No.5158 of 2015)

All that piece and parcel of land situated at Kancheepuram District, Uthiramerur Taluk, No.46, Uthiramerur Village (Somanathapuram) Kulam Poramboke, Survey No.1209, a house site, covering an extent of 3 cents bounded on the

East by	Kulam
West by	Kancheepuram Main Road
North by	Vacant site (Kulam poramboke)
South by	Elumalai's house

including a cement sheeted residential house.

For petitioner in : Mr. N. Kumar
all the writ petitions for M/s. Kumar and Baskar

For RR 1-3 in : Mr. P.S. Sivashanmugasundaram
all the writ petitions Special Government Pleader

For R4 in
W.P. No.5156/2015 : Mr. D. Raja

For R4 in
W.P. No.5157 & 5158 : Mrs. P. Rajalakshmi
of 2015

COMMON ORDER

SATISH K. AGNIHOTRI, J.

The instant writ petitions are filed assailing the eviction notice dated 29.01.2015 issued by the Executive Officer, Uthiramerur Town Panchayat, Uthiramerur Taluk, Kancheepuram District, the fourth respondent herein.

2. The facts leading to the filing of the instant writ petitions, as culled out from the affidavits are that the petitioners have been in possession and enjoyment of the properties in question, which are tank poramboke, for the last two decades. While so, one M. Rajendran and some residents of the village in question have made a complaint dated 08.07.2014 alleging that some encroachments have been made in the Somanathapuram Tank bund and that the inmates therein were letting out sewage water into the tank, thereby causing health hazards to the public. Based on the same, the impugned notice has come to be issued, directing them to vacate the premises constructed and occupied by them, within a period of 30 days. In default, it was informed that they would be evicted by the Town Panchayat with the permission of the Revenue authorities and also with the help of police personnel.

3. According to the petitioners, they have been paying property tax, water tax and electricity charges and they are maintaining their houses in a clean manner and not as alleged in the impugned notice. They have made numerous representations to the authorities seeking patta for the place in question. Yet, pending their representations, with an ulterior motive, the impugned notice has been passed directing them to vacate the premises in question.

4. The main grounds of attack are that the fourth respondent does not have jurisdiction to issue the impugned notice invoking the Tamil Nadu District Municipalities Act, 1920 (for short "the Act, 1920") and it is only the Revenue authorities, who have the power to issue eviction notice under the Act, 1920. Further, inasmuch as the property in question is a tank poramboke, the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, (for short "the Act, 2007") ought to have been invoked.

5. The next contention of the learned counsel for the petitioners is that the impugned notice issued by the fourth respondent, viz., the Executive Officer, Uthiramerur Town Panchayat, is sans jurisdiction, as, under the provisions of the Act, 2007, the officer of the Public Works Department having control over such tanks alone is competent to exercise the power for eviction of encroachment, if any. Thus, the impugned notice being without jurisdiction, is liable to be quashed.

6. In response, the fourth respondent had submitted an affidavit stating therein that the petitioners were in possession and enjoyment of the properties for more than 24 years. The properties in question are tank poramboke and classified as poramboke land and as such, on the basis of communication received from the office of the Tahsildar, Uthiramerur, the fourth respondent is competent to initiate action for removal of the encroachment under the provisions of the Act, 1920.

7. A feeble attempt, on the basis of the affidavit of the fourth respondent, was made by M/s. D. Raja and P. Rajalakshmi, learned counsel appearing for the fourth respondents, to oust the jurisdiction of this Court, contending that this Court has no jurisdiction in view of exclusion of jurisdiction provision in Section 15 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (for short "the Act, 1975"). It is further contended that the jurisdiction of the High Court is ousted even under Section 352 of the Act, 1920 and as such, the writ petitions are liable to be thrown, at the threshold, as not maintainable.

8. We have heard the learned counsel for the parties and also perused the pleadings and documents appended thereto.

9. On a perusal of the impugned notice dated 29.01.2015, it is evident that the same was issued on the basis of the complaint made by one M. Rajendran and also the communication dated 20.11.2014 of the Tahsildar, Uthiramerur Taluk. The issue to be decided is as to

whether the properties in question fall within the ambit of definition of "tank" under Section 2(1) of the Act, 2007, to invoke the provisions of the said Act for the purpose of surveying and eviction thereon.

10. As regards the objection raised by the fourth respondent that this Court is barred from entertaining a petition, in view of Section 15 of the Act, 1975, which stipulates that no Court shall have jurisdiction to entertain any suit or proceeding in respect of eviction of any person, the fourth respondent has not produced any other material or judicial pronouncement except provision of Section 15 of the Act, 1975 itself. The said provision is usefully extracted hereunder:

"15. Bar of jurisdiction:

No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable under sub-section (1) of section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the Government or the corporate authority under sub-section (5) of Section 9 or any portion of such rent, damages or costs."

11. In the Act, 1975, the term "public premises" is defined under Section 2(e) as under:

(e) "public premises" means any premises belonging to or taken on lease or requisitioned by, or on behalf of the Government, and includes--

1) any premises belonging to, or taken on lease by, or on behalf of

i) any company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956) in which not less than fifty one per cent of the paid up share capital is held by the Government; and

ii) any corporation (not being a company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956) or a local authority) established by or under any law and owned or controlled by the Government; and

iii) any premises belonging to or vested in, a local authority or any Board constituted under any law;

12. Indisputably, the premises in question do not fall within the definition of "public premises", as aforesaid. Rather, it is a case of encroachment and as such, the definition of "public premises" would not be applicable. Even otherwise, exclusion of jurisdiction does not apply to the High Court inasmuch as the High Court exercises its extra-ordinary jurisdiction to protect the fundamental rights, legal rights and other rights of the people. It is a legal right of a person to be given an opportunity of hearing before an order prejudicial to his interest is passed. In that event, the High Court is fully competent to entertain the petition and pass appropriate direction or orders, as it deems fit and proper. The constitutional right of the people to approach the High Court for redressal of their grievances under Article 226 of the Constitution of India cannot be curtailed or restricted by any ouster clause of the statutory enactment. (See Srikant Kashinath Jituri and Others vs. Corporation of the City of Belgaum ¹). Thus, the objection of the fourth respondent qua the exclusion of jurisdiction of the High Court is mis-placed and not relevant to the facts of the case. Further, it is also to be noted that the impugned notice was not issued under the provisions of the Act, 1975.

13. At this juncture, it is pertinent to point out that, on the question as to whether the jurisdiction of the High Court under Article 226 of the Constitution of India can be curtailed by any enactment, the Supreme Court, in Sangram Singh vs. Election Tribunal, Kotah and Bhurey Lal Baya ², observed as under:

"12. But this, also, is no longer open to question. The point has been decided by three Constitution Benches of this Court. In Hari Vishnu v. Ahmad Ishaque the effect of Section 105 of the Representation of the People Act was not considered, but the Court laid down in general terms that the jurisdiction under Article 226 having been conferred by the Constitution, limitations cannot be placed on it except by the Constitution itself: see pages 238 and 242. Section 105 was, however, considered in Durga Shankar Mehta v. Raghuraj Singh and it was held that that section cannot cut down or affect the overriding powers of this Court under Article 136. The same rule was applied to Article 226 in Raj Krishna Bose v. Binod Kanungo and it was decided that

¹ (1994) 6 SCC 572 – para 10

² AIR 1955 SC 425

Section 105 cannot take away or whittle down the powers of the High Court under Article 226. Following those decisions we hold that the jurisdiction of the High Court under Article 226 is not taken away or curtailed by Section 105.

13. The jurisdiction which Articles 226 and 136 confer entitles the High Courts and this Court to examine the decisions of all tribunals to see whether they have acted illegally. That jurisdiction cannot be taken away by a legislative device that purports to confer power on a tribunal to act illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say they are legal. The legality of an act or conclusion is something that exists outside and apart from the decision of an inferior tribunal. It is a part of the law of the land which cannot be finally determined or altered by any tribunal of limited jurisdiction. The High Courts and the Supreme Court alone can determine what the law of the land is vis-a-vis all other courts and tribunals and they alone can pronounce with authority and finality on what is legal and what is not. All that an inferior tribunal can do is to reach a tentative conclusion which is subject to review under Articles 226 and 136. Therefore, the jurisdiction of the High Courts under Article 226 with that of the Supreme Court above them remains to its fullest extent despite Section 105."

14. In another case, in *Custodian, Evacuee Property, Punjab and others Vs. Jafran Begum*³, while considering the provisions of Section 46 of the Administration of Evacuee Property Act 31 of 1950, which stipulates ouster of jurisdiction of Courts, the Supreme Court held as under :

"10. It may be added that the only question to be decided under Section 7 is whether the property is evacuee property or not and the jurisdiction of the Custodian to decide this question does not depend upon any finding on a collateral fact. Therefore there is no scope for the application of that line of cases where it has been held that where the jurisdiction of a tribunal of limited jurisdiction depends upon first finding certain state of facts, it cannot give itself jurisdiction on a wrong finding of that state of fact. Here under Section 7 the Custodian has to decide whether certain property is

3 AIR 1968 SC 169

or is not evacuee property and his jurisdiction does not depend upon any collateral fact being decided as a condition precedent to his assuming jurisdiction. In these circumstances, Section 46 is a complete bar to the jurisdiction of civil or revenue courts in any matter which can be decided under Section 7. This conclusion is reinforced by the provision contained in Section 4(1) of the Act which provides that the Act overrides other laws and would thus override Section 9 of the Code of Civil Procedure on a combined reading of Sections 4, 28 and 46. But as we have said already, Section 46 or Section 28 cannot bar the jurisdiction of the High Court under Article 226 of the Constitution, for that is a power conferred on the High Court under the Constitution."

15. The aforesaid proposition of law was referred to subsequently with approval in *Shankara Cooperative Housing Society Limited Vs. M.Prabhakar and others*⁴.

16. That apart, Section 352 of the Act, 1920 referred to in the impugned notice, pleaded by the fourth respondent for ouster of jurisdiction, provides for indemnity to the Government, Collector, Revenue Divisional Officer, Municipal authorities, officers and agents in exercise of their powers in respect of anything done in good faith under the provisions of the said Act. The said section is not applicable to the facts of the instant cases, as there is no personal grievance against the officers exercising power under the Act, 1920. Thus, we refrain ourselves from dealing with the matter at length in respect of ouster of jurisdiction under this provision in the facts of the case which is not relevant in the case on hand.

17. On a perusal of the impugned notice, it appears that the petitioners have not been afforded an opportunity of hearing. Thus, the impugned notice be deemed as a show cause notice affording three weeks' time to the petitioners to put forth their case before the authorities. The petitioners can also raise the issue of jurisdiction before the authorities, if so advised. If any objection/representation is filed by the petitioners pointing out the issue of jurisdiction, the authorities are obliged to advert to each and every issue/ objection raised by the petitioners, before taking a final decision for removal of encroachment, if any. It is further required to have a proper survey and inspection in the presence of the persons concerned. Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

⁴ (2011) 5 SCC 607

18. The writ petitions stand disposed of with the above observations. Costs made easy. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cad

To

1. The District Collector
District Collectorate Office
Kancheepuram District - 631 501
2. The Joint Director
Town Panchayat
Kancheepuram Region
Kancheepuram District
3. The Tahsildar
Uthiramerur Taluk
Kancheepuram District - 603 406
4. The Executive Officer
Uthiramerur Town Panchayat
Uthiramerur Taluk
Kancheepuram District - 603 406

+3cc's to M/s.Kumar & Baskar, Advocate, S.R.No.27824,27823 & 27822
+1cc to the Government Pleader, S.R.No.28443

W.P. Nos.5156 to 5158 of 2015

BR(CO)
CA(17/06/2015)

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