

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

And

THE HON'BLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.Nos.31755 and 31756 of 2017
and WMP.Nos.34903 and 34904 of 2017

Renuka .. Petitioner in W.P.No.31755 of 2017

Vijayakumar .. Petitioner in W.P.No.31756 of 2017

vs.

1.The District Collector,
Kancheepuram District,
Kancheepuram.

2.The Assistant Engineer (Water Resource)
Lake Renovation Scheme of the Public
Work Department,

Sub Division-Padappai,
Sreeperumpathoor Taluk,
Kancheepuram District -601 301.

3.The Tahsildar,
Tambaram Taluk, Tambaram.

.. Respondents in both W.Ps.

Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the notice dated 16.11.2017 bearing Letter No.D2/Adayaru Aakiramippu issued by the 2nd respondent and to quash the same and consequently direct the

respondents to allow the petitioners to continue the possession at Door Nos.16-A and 16 respectively, 6th Street, Sasivaradhan Nagar, Perunkalathoor Village, Tambaram Taluk, Kancheepuram District in S.No.411/2.

For Petitioner : Mr.R.Thirumoorthy
in both W.Ps.

For Respondents : Mr.A.N.Thambidurai,
in both W.Ps. Special Government Pleader

ORDER

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

By consent, these writ petitions are taken up for final disposal and are disposed of by this common order.

W.P.No.31755 of 2017

2. The petitioner claims to be the resident of Door No.16-A, 6th Street, Sasivaradhan Nagar, Perunkalathoor Village, Tambaram Taluk, Kancheepuram District, situated in S.No.411/2 and according to her, she belongs to below poverty line and she has put up small superstructure and residing their right from the year 1998 and the superstructure has been subjected to statutory levies and she has also been issued with Aadhar Card bearing No.2637 3527 7140. The petitioner, to her shock and surprise, was issued with a notice dated 16.11.2017, by the second respondent under Section 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 alleging that the petitioner had encroached upon water

body in S.No.411/1 and put up superstructure. The petitioner, in response to the same, has submitted an appeal along with a petition for stay to the Collector of Kancheepuram District and despite pendency of the same, attempts are being made to dispossess her from the land/superstructure in question and hence, she came forward with this writ petition.

W.P.No.31756 of 2017

3. The petitioner claims to be the resident of Door No.16, 6th Street, Sasivaradhan Nagar, Perunkalathoor Village, Tambaram Taluk, Kancheepuram District, situated in S.No.411/2 and according to him, he belongs to below poverty line and he has put up small superstructure and residing their right from the year 1992 and the superstructure has been subjected to statutory levies and he has also been issued with Voter Identity Card bearing No.ZUQ2526234. The petitioner, to his shock and surprise, was issued with a notice dated 16.11.2017, by the second respondent under Section 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 alleging that the petitioner had encroached upon water body in S.No.411/1 and put up superstructure. The petitioner, in response to the same, has submitted an appeal along with a petition for stay to the Collector of Kancheepuram District and despite pendency of the same, attempts are being made

to dispossess him from the land/superstructure in question and hence, he came forward with this writ petition.

4. Mr.R.Thirumoorthy, learned counsel appearing for the petitioners would submit that the petitioners had filed appeal before the first respondent challenging the legality of the notice dated 16.11.2017 issued by the second respondent along with a petition for stay and till the conclusion of the proceedings, they cannot be evicted except under due process of law. The learned counsel appearing for the petitioners has drawn the attention of this Court to “A” Register and would submit that the lands in S.No.411/1 alone has been classified as “Odai”[Water Body] and the petitioners are in possession of lands in S.No.411/2, for which the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 cannot be invoked and hence, prays for appropriate orders.

5. *Per contra*, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that the petitioners had encroached upon lands in S.No.411/2, Perunkalathoor Village, Tambaram Taluk, Kancheepuram District and put up unauthorized superstructures and the said lands has been classified as “Tharisu” [Waste Land] and for evicting the petitioners

herein, appropriate action would be initiated under the Tamil Nadu Land Encroachment Act, 1905.

6. This Court has considered the rival submissions and also perused the entire materials placed before it.

7. It is relevant to extract Sections 6, 7, 10 and 10-B of the Tamil Nadu Land Encroachment Act, 1905:

“6. Liability of person unauthorizedly occupying land to summary eviction: (1) Any person unauthorizedly occupying any land for which he is liable to pay assessment under Section 3 [or Section 3-A] may be summarily evicted by the Collector [or subject to his control] by the Tahsildar or Deputy Tahsildar or any other officer authorized by the State Government in this behalf (hereinafter referred to as the 'authorized officer'), and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector [or subject to his control, the Tahsildar or Deputy Tahsildar or authorized officer] may deem reasonable, be liable to forfeiture. Forfeitures under this Section shall be adjudged by the Collector [or subject to his control by the Tahsildar or Deputy Tahsildar or authorized officer] and any property so forfeited shall be disposed of as the Collector [or subject to his control, the Tahsildar or Deputy Tahsildar or authorized officer] may direct.

(2) An eviction under this section shall be made in the following manner, namely – By serving a notice in the manner provided in section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector [or the Tahsildar or Deputy Tahsildar or authorized officer] may deem reasonable after receipt of the said notice to vacate the land, and, if

such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstructed by any person, the Collector [or the Tahsildar or Deputy Tahsildar or authorized officer] shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector [or the Tahsildar or Deputy Tahsildar or authorized officer] for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for imprisonment in the civil jail of the district for the like period:

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under Sections 183, 186 or 188 of the Indian Penal Code in respect of the same facts.

[(3) Any authorized officer taking proceedings under this section shall make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction.]

7. Prior notice to person in occupation: Before taking proceedings [under Section 6] the Collector [or Tahsildar, (or Deputy Tahsildar or Revenue Inspector or any authorized officer or any officer of the Highways Department not below the rank of a Section Officer and not being an authorized officer) as the case may be] shall cause to be served on the person reputed to be in unauthorized occupation of land being [the property of Government] a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against [under section 6].

Such notice shall be served in the manner prescribed in section 25 of the [Tamil Nadu] Revenue Recovery Act, 1864 or in such other manner as the [State Government] by rules or orders under Section 8 may direct.

[Provided that no such notice shall be necessary in the case of any person unauthorizedly occupying any land, if he has been previously evicted from such land under section 6 or if he has

previously vacated such land voluntarily after the receipt of a notice under section 5-B or under this section:

Provided further that where the notice under this section is caused to be served by any Revenue Inspector or any officer of the Highways Department not below the rank of a Section Officer and not being an authorized officer, he shall require the person reputed to be in unauthorized occupation of the land to show cause against such notice to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction and shall also make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction.]

S.10.Appeal – An appeal shall lie (a) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar under this Act, and to such officer as may be specified by the State Government in this behalf (hereinafter referred to as the appellate authority) from any decision or order passed by an authorised officer under this Act and different appellate authorities may be specified for different classes of cases; and

(b) to the District Collector from any decision or order of a Collector passed otherwise than on appeal, and

(c) to the Commissioner of Land Administration from any decision or order of a District Collector passed otherwise than on appeal.

S.10-B. Stay pending decision in appeal or revision.- Pending the disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, the Appellate Authority, the Commissioner of Land Administration or the State Government, as the case may be, may by order, and subject to such conditions as may be specified therein, stay the execution of the decision or order appealed against or sought to be revised.”

8. This Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioners, grants liberty to the

third respondent to initiate appropriate proceedings under the provisions of the Tamil Nadu Land Encroachment Act, 1905 and till the culmination of the proceedings, shall defer further decision to evict/dispossess the petitioners from their land/superstructures in question. It is made clear that till the culmination of proceedings in the form of final orders, the petitioners shall not create any third party rights in respect of the land/superstructures in question and shall not alter its' physical features also.

9. These Writ Petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

[M.S.N., J.] [S.P.I., J.]
12.12.2017

Index : Yes / No
Internet : Yes / No
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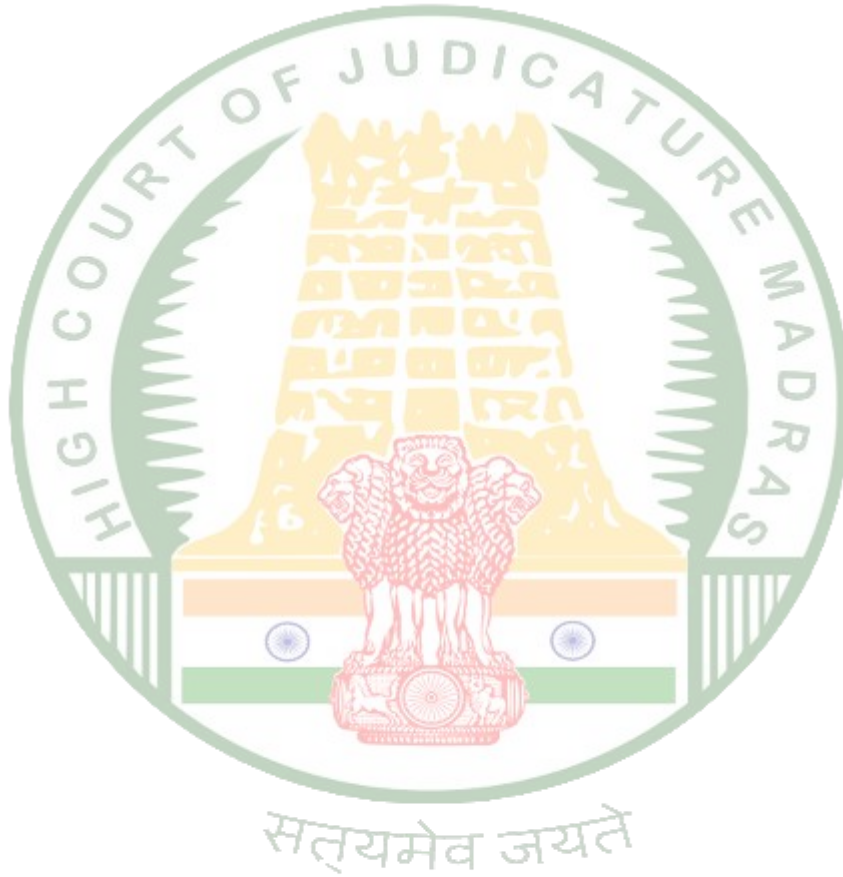
To

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M.SATHYANARAYANAN, J.,
and
SATRUGHANA PUJAHARI, J.



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