

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.14722 of 2017
and
W.M.P.No.15956 of 2017

Murugaiyan

... Petitioner

Versus

1. The District Collector,
Thiruvavarur District,
Thiruvavarur.
2. The Thasildar,
Thiruthuraipoondi Taluk,
Thiruvavarur District.

... Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent in Na.Ka.No.317/2016 Aa4 dated 15.12.2016 and quash the same as illegal and direct the respondents to permit the petitioner to live peacefully in his dwelling house 50, Kurukai Village, Kannanmedu, Thiruthuraipoondi Taluk, Thiruvavarur District.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader

ORDER

[Order of the Court was made by M.SATHYANARAYANAN.,J]

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents 1 and 2.

2. The petitioner in the affidavit dated 08.06.2017 filed in respect of this writ petition, would aver among other things

that he is in possession of 1.3 acres of Nanja land and had put up a Hut and adjacent to his Nanjai Land, there is a proramboke land and it is also in his possession ever since the year 2003 and prior to him his predecessors were also in possession of the said land for over sixty years. The petitioner would further aver that he has also constructed a dwelling house on the encroached land and the said superstructure is located far away from Nallar Water Way Poramboke. Even at the time of water flow, the location of the superstructure in the land is no way cause any hindrance to the flow of water. It is also stated by the petitioner that some of the residents of his Village with an oblique motive, filed a writ petition which resulted in the resurvey of the lands and the grievances expressed by the petitioner is that the respondents have not followed the procedures contemplated under the Tamil Nadu Land Encroachment Act, 1905 and Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007. The petitioner also claims that he is in possession of land for over sixty years and he cannot be dispossessed except in accordance with Provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [Central Act 30 of 2013]. The petitioner in this regard, has also submitted a representation dated 28.10.2016 stating that he has paying House Tax regularly and also paid electricity charges for the superstructure and also constructed the RCC house near to the house and his property alone has been targeted for the purpose of eviction and prays for interference.

3. Mr.R.Sankarasubbu, learned counsel appearing for the petitioner apart from drawing attention of this Court to the affidavit filed in support of this writ petition, has also invited the attention to the additional affidavit of the petitioner dated 24.07.2017 and would submit that the petitioner is the owner of the 1.3 acres vide registered document No.652 of 2003 dated 07.03.2003, registered at the office of the Sub Registrar, Thiruthuraipoondi and he is also in possession of the Poramboke land ever since the year 2003 and prior to him, his predecessor was also in possession and he has also get a Patta as per the particular Scheme of Tamil Nadu and his possession is also protected under the provision of Central Act 30 of 2013. Learned counsel for the petitioner has also invited the attention of this Court to the statement of objection to the Central Act 30 of 2013 and would submit that the petitioner is the person who depend upon the said land and as such, the possession of the land cannot be taken without recourse of acquisition proceedings under the said Act. Learned counsel appearing for the petitioner has also drawn the attention of this Court to the Sections 3(ii), n, r, s, x (v) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and would submit that

in the light of the definitions, though the petitioner can be termed as 'Encroacher', still the respondent cannot resort to eviction proceedings either under the Provision of Land Encroachment Act, 1905 or under the provision of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and only the course available to them, is to invoke the provision of Central Act 30 of 2013 and admittedly, they fail to do so. Hence, prays for interference.

4. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would contend that admittedly, the petitioner namely Murugaiyan is not in India and he is in abroad for the purpose of his livelihood and that his father alone, has participated in the enquiry and would further contend that the submission made by the learned counsel appearing for the petitioner for invoking the Provisions of Central Act 30 of 2013, is devoid of merits and substance and prays for dismissal of the writ petition with exemplary cost.

5. This Court paid it's best attention to the rival submissions and also peruse the materials placed before it.

6. On a perusal of the affidavit filed in support of this writ petition and the additional affidavit filed by the wife of the petitioner are bereft of any material particulars. Be that as it may, it is the claim made by the learned counsel appearing for the petitioner that the petitioner is eking out his livelihood by carrying agricultural operation. It is the primordial submission of the learned counsel appearing for the petitioner that though the petitioner is an encroacher, the land in question is located far away from the water course. Even otherwise, the remedy if any open to the respondents, is to invoke the provision of Central Act 30 of 2014 and that though there are very many encroachments located in the said area, the petitioner alone is targeted.

7. The Full Bench of this Court in the decision reported in 2015 [6] CTC 369 [T.K.Shanmugam, Secretary, CPI[M], North Chennai District Committee Vs. State of Tamil Nadu rep.by its Secretary to Government, Department of Revenue, Fort ST George, Chennai-9 and others] in which one of us was a party [M.SATHYANARAYANAN, J], has considered the Revenue Standing Orders, Part II, RSOs. 15(5) & 13(38)(ii) as well as the Provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and the Tamil Nadu Land Encroachment Act, 1905, with regard to the encroachment in Tanks-beds and water resources as well as also considered the issues relating to Water course Poramboke and Legality of Assignment of Tank-beds land and Water bed poramboke. It is relevant to extract the following:

"22.The common thread which runs through the manual of Revenue Administration is to preserve Water courses as such. Though certain Government Orders were issued during 1970s, permitting assignment of Tank-beds with due permission, if those Government Orders seek to regularise illegal encroachment in Tank-beds, Water Channels or area abutting and on margins of Water Channels to that extent the Manual of Revenue Administration and the Government Orders are deemed to have been superseded, more particularly in the light of the directions issued by the Hon'ble Supreme Court in the case of Jagpal Singh (supra). However, the manual of Revenue Administration does not specifically state about assigning Tank-beds for a different user of concession to house site, etc. after reclassification.

In para 45, the Full Bench has held as follows:

"45.In the light of the above cited judgment, assignment of Tank-beds with due permission, if those Government Orders seek to regularise illegal encroachment in Tank-beds, Water Channels or area abutting and on margins of Water Channels to that extent the Manual of Revenue Administration and the Government Orders are deemed to have been superseded, more particularly in the light of the directions issued by the Hon'ble Supreme Court in the case of Jagpal Singh (supra), the said land can neither be assigned nor regularised".

8. It was also observed in the above said judgment that section 11 of the Tank Act, specifically states that the operation of other laws not to be affected, as the provisions contained in the Tamil Nadu Protection of Tank and Eviction of Encroachment Act, 2007 shall be in addition to and not in derogation of any other law for time being in force. Water bodies which are not covered under the provisions of the Tank Act have to be necessarily removed by resorting to the procedure under the Land Encroachment Act.

9. It is also relevant to extract the following in the case of Jagpal Singh V. State of Punjab reported in 2011 [11] SCC 396:

" 19.In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in, etc. hence, they built a Pond attached to every village, a Tank attached to every temple, etc. These were their traditional Rain Water Harvesting methods, which served them for thousands of years.

20. Over the last few decades, however, most of these Ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country. Also, many Ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with Authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop."

10. Therefore, the claim made by the petitioner to the affidavit dated 27.07.2017 that he has entitled to Patta as per the claim per se lacks merits. In the considered opinion of this Court none of the provisions of the Central Act 30 of 2014 would come to the aid of the petitioner for the following reasons:

[1] Section 3 C(ii): defines "affected family" includes a family which does not own any land but a member or member of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right. The documents by the petitioner such as the tax receipts dated 31.01.2016 and Electricity Consumption cash do not evidence that he is carrying on and doing agricultural activities.

[2] Section 3(r): defines "Land Owner" includes any persons. It is also relevant to show Section 3(x) "Person Interest". The petitioner has failed to place any materials to show that he has come within the term of "Land Owner" as well as a "Person Interested". Even as per the affidavit and additional affidavit of the petitioner, he is admittedly an 'encroacher'. Moreover, if the Government resorting to acquisition of private land, the Central Act 30 of 2014 would come into play and as such, the petitioner is not entitled to avail any remedy under the provisions of the said Act and therefore, the submission made by the learned counsel appearing for the petitioner in this regard is highly imaginative and devoid of any merits.

11. The 2nd respondent has issued a notice dated 15.12.2016, indicating that the land encroached by the petitioner is the Water course Poramboke and the water used to get stored/percolated and is also a Tank-bed and in the event of rainy or flood seasons, there is bound to be storage of water and therefore, the respondents are left with no other option except to remove the encroachment.

12. The only apprehension expressed by the petitioner appears to be that he will be evicted without recourse to due process of law. In the considered opinion of this Court, the apprehension is wholly unfounded for the reason that the

respondents are always under obligation to follow the due process of law before removing the encroachment made by the petitioner.

13. The learned counsel appearing for the petitioner as a last resort, placed reliance upon the judgment reported in 1997 [11] SCC 121 [Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan and others] for the preposition with regard to removal of Pavement-dwellers who are encroachers and provision of alternate accommodation to them. Since, the petitioner has encroached upon the Water course Poramboke, he may not be entitled to get any alternate accommodation also and it is for the respondents to take a call.

14. This Court on a careful consideration and appreciation of the submissions made by the learned counsel on either side and the materials placed before it, is of the considered view that this writ petition lacks merits and substance.

15. In the result, the Writ Petition stand dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Thiruvavur District,
Thiruvavur.

2. The Thasildar,
Thiruthuraipoondi Taluk,
Thiruvavur District.

+1cc to the Government Pleader, S.R.No.53343

W.P.No.14722 of 2017

CS V
CA(22/08/2017)