

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.A.No.59 of 2013
and MP.No.1 of 2013

Sornalakshmi Spinning Mills (P) Ltd.,
Rep. by its Managing Director,
Mr.V.Kandasamy,
Ellapalayam Village,
Gurukkapuram Post.
Rasipuram Taluk
Namakkal District.

..Appellant

Vs.

1.The President cum Executive Officer,
Gurukkapuram Village Panchayat,
Gurukkapuram, Rasipuram Taluk,
Namakkal District.

2.The Village Administrative Officer,
Gurukkapuram Group,
Gurukkapuram, Rasipuram Taluk,
Namakkal District.

3.The Block Development Officer,
Village Panchayat,
Panchayat Union, Rasipuram,
Namakkal District.

.. Respondents

Prayer .: Writ Appeal filed under Clause 15 of Letters Patent against the order made in W.P.No.3767 of 2008 dated 28.6.2012, praying for an issuance of Writ of Certiorarified Mandamus, calling for the records from the file of the first respondent made in Na.Ka.No.17/2007 dated 13.01.2008 and quash the same and further direct the respondents not to interfere with the petitioner's peaceful possession and enjoyment of the land measuring about 25 cents in S.F.No.23/1 at Ellapalayam Village, Gurukkapuram Post,

Rasipuram Taluk, Namakkal District.

For Appellant : Mr. C.Kulanthaivel
For Respondents : Mr.A.S.Thambuswamy [for R1]
Mr. R.Vijaya Kumar
Additional Govt. Pleader [for R2]

ORDER

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

By consent, the writ petition is taken up for final disposal.

2. The deponent of the affidavit is the Managing Director of the petitioner's Spinning Mill, which is a private limited company and he would aver that the Spinning Mill is located in S.F.Nos.22/1 and 22/2, admeasuring to an extent of 2.38 hectares of land in Ellapalayam Village, Rasipuram Taluk, Namakkal District. It is further averred that the land in which the petitioner's Spinning Mill is located originally belonged to one Nalliappa Gounder, son of Kandappa Gounder, and apart from the said lands they were also in possession of 25 cents of "Mandaveli Poromboke [Grazing Land]" in S.F.No.23/1, which is located adjacent to their patta lands. It is further stated by the petitioner that he had purchased the patta lands as well as Mandaveli promoboke land through a registered sale deed bearing document no.1443 dated 08.3.1989, on the file of the Sub Registrar Office, Rasipuram, and ever since they are in possession and enjoyment of the said properties without any disturbance and necessary planning permission is also accorded by the Local Authority and they have also put up superstructures on the patta lands and the lands were classified as "Mandaveli Poromboke" [Grazing

Lands] and the petitioner had put up a compound wall for the protection of the mill.

3. It is also the case of the appellant/petitioner that though the lands in Survey No.23/1, is classified as Mandaveli Poromboke land, it was never vested with the Government nor with the Local Body on account of wrong possession and enjoyment and they got a right over the said property also. However, to its shock and surprise, the first respondent without any authority whatsoever, has issued the impugned notice in Na.Ka.No.17/2007 dated 13.01.2008, calling upon the petitioner to vacate and deliver vacant possession of the land admeasuring an extent 0.19.0 acres in Survey No.23/1, Ellapalayam Village, Gurukkapuram Village Panchayat, Rasipuram Panchayat Union, Namakkal District, within 48 hours from the date of receipt of notice, failing which appropriate action will be taken under the Tamil Nadu Panchayats Act, 1994, and the petitioner was also called upon to submit explanation within 24 hours from the date of receipt of notice. The appellant/petitioner, challenging the legality of the said notice, filed a writ petition in W.P.No.3767 of 2008. The said writ petition was entertained on 18.03.2008 and pending writ petition, an interim order was granted and it was made absolute on 01.10.2010.

4. Mr.C.Kulanthaivel, learned counsel appearing for the

appellant/petitioner has drawn the attention of the Court to the impugned notice as well the provisions of the Tamil Nadu Panchayats Act, 1994 and would submit that under Section 83 of the said Act, the Government may by notification, appoint any person, who shall, subject to such rules as may be prescribed, exercise the powers and perform the functions of the Executive Authority of a Village Panchayat, and admittedly, no such notification is being issued delegating such powers to the first respondent. It is the further submission of the learned counsel appearing for the appellant/petitioner that even for the sake of argument, the first respondent is not competent to order removal of encroachment, unless and until the jurisdictional Village Administrative Officer reports an encroachment and the procedure prescribed under Sub Section (2) of Section 131 of the said Act is followed, it is not open to the first respondent to remove the encroachment and therefore, prays for appropriate orders. The learned counsel for the appellant/petitioner in support of his submissions had placed reliance on the judgment rendered by the Hon'ble Division Bench of this Court in ***V.Balamurugan vs. The District Collector, Virudhunagar District, Virudhunagar and another*** reported in **[2007(3) CTC 56]**. It has been held in the said case that the President, who is an elected person, cannot be exercised with the powers conferred with the Executive Authority of a Village Panchayat, in terms of Section 83 and 84 of the Tamil Nadu Panchayats Act, 1994 and unless the procedures contemplated under Sub Section (2) of Section 131 of the said Act are followed, eviction cannot be ordered under the provisions of the Tamil Nadu Land Encroachment Act and in the light of

the same, the impugned notice issued by the first respondent warrants interference and prays for allowing of this writ appeal.

5. *Per contra*, Mr.A.S.Thambuswamy, learned counsel appearing for the first respondent has drawn the attention of this Court to the G.O.(Ms).No.225 of Rural Development (C.I.) Department dated 15.10.1996 and would submit that as per the notification issued by the Special Commissioner and Secretary to Government of the said Department, the Governor of Tamil Nadu, in exercise of the Powers conferred by Section 83 of the Tamil Nadu Panchayats Act, 1994 appoints the President of Village Panchayat, as Executive Authority to exercise the powers and perform the functions of the Executive Authority of that Village Panchayat . In the light of the same, the first respondent has the jurisdictional authority and is competent to issue impugned notice. In so far as the submission made by the learned counsel for the appellant as to the following of the procedure contemplated under Section 131 (2) of the said Act is concerned, it is the submission of the learned counsel appearing for the first respondent that if the removal of encroachment within the time stipulated, was not carried out, then the provisions of the land encroachment have to be resorted to and the petitioner, immediately after the receipt of the impugned notice, have approached this Court and obtained interim orders and as such, the said submission lacks merits and prays for dismissal of the writ appeal.

6. This Court paid its best attention and anxious consideration to the

rival submissions and perused the entire materials placed before it.

7. It is relevant to extract the G.O.(Ms).No.225 of Rural Development (C.I.) Department dated 15.10.1996 :

" 1.10 Appointment of Village Panchayat President as Executive Authority of the Village Panchayat

Rural Development (C.I) Department

G.O. (Ms) No.225

Dated 15.10.1996

ORDER

The appended notification will be published in the Tamil Nadu Government Gazette Extraordinary, dated the 16th October 1996.

(By order of the Governor)

S.NARAYAN
SPECIAL COMMISSIONER AND
SECRETARY TO GOVERNMENT

APPENDIX

NOTIFICATION

In exercise of the Powers conferred by section 83 of the Tamil Nadu Panchyats Act, 1994 (Tamil Nadu Act 21 of 1994), the Governor of Tamilnadu hereby appoints the President of Village Panchayat, as Executive Authority to exercise the powers and perform the functions of the Executive Authority of that Village Panchayat.

S.NARAYAN
SPECIAL COMMISSIONER AND
SECRETARY TO GOVERNMENT"

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Thus, under Section 83 of the Tamil Nadu Panchayat Act 1994, the Government may by notification, appoint any person, who shall, subject to such rules as may be prescribed, exercise the powers and perform the functions of the Executive Authority of a Village Panchayat and in the light of

the above Government Order, this Court is of the view that the first respondent has jurisdiction and competent to issue the impugned notice, as per the delegated powers of the Executive Authority.

8. It is also relevant to extract Section 131 (2) of the Tamil Nadu Panchayats Act :

"131(2) It shall be the duty of the Village Administrative Officer of every revenue village to report on encroachments on properties vested in Village Panchayats or Panchayat Union Councils to the Executive Authority or the Commissioner concerned and to the officer of the Revenue Department, and 2 [it shall be the duty of the Executive Authority or the Commissioner concerned either suo motto or on obtaining a report from the Village 69 Administrative Officer in this regard to institute proceedings under this Act] and secure the removal of the encroachments within such time as may be specified by the Government by general or special order. If the removal of the encroachments has not been secured within the period specified in such order, the officers of the Revenue Department shall institute proceedings under the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905) and secure such removal."

9. It is the primordial submission of the learned counsel appearing for the appellant that since the report of the Village Administrative Officer has not been obtained and in the absence of the same, the first respondent cannot come to the conclusion that the petitioner had encroached upon the

Mandaveli Poromboke / Grazing Poromboke lands.

10. It is the admitted case of the petitioner that knowing pretty well that the land admeasuring to a extent of 0.19.0 acres in Survey No.23/1, Ellapalayam Village, Gurukkapuram Village Panchayat, Rasipuram Panchayat Union, Namakkal District is classified as Mandaveli/Grazing Poromboke lands, still he had chosen to purchase the land through a registered sale deed bearing document No.1443 dated 08.3.1989, registered on the file of the Sub Registrar Office, Rasipuram, and in the light of the said admission, it is not necessary to get the report of the Village Administrative Officer. The first respondent under the impugned notice has granted 48 hours time to the petitioner to remove the compound wall put up on the said lands and also afforded an opportunity to the petitioner to submit his response within 24 hours from the date of receipt of the notice, and on receipt of the notice the petitioner has approached this Court and obtained interim orders.

11. In the event of the first respondent who has failed to remove the encroachment within the stipulated period in the notice, it is obligatory on his part to follow the procedure contemplated under Section 131 (2) of the Tamil Nadu Panchayats Act, read with Rule 9 of the Panchayats [Restriction and Control to Regulate the use of Porombokes in Ryotwari Tracts] Rules, 2000.

12. In the light of the above, the submissions made by the learned counsel

appearing for the appellant has to be rejected. The judgment rendered by the Division Bench cited supra, came to be rendered on the plain interpretation of the said provisions and the above stated Government Order was not brought to the knowledge of the Court at the time of interpretation of the said decision, and therefore it is distinguishable and has no application in the present case on hand.

13. This Court has carefully considered the rival submissions and upon scrutiny and analysis of the materials before it, is of the considered opinion that the writ appeal lacks merits and deserves to be dismissed and accordingly dismissed. However, in the circumstances, there shall be no order as to costs. The interim order granted by this Court on 21.01.2013 is vacated and M.P.No.1 of 2013 is also dismissed.

[M.S.N.J.,] [N.S.S.J.,]
27.07.2017

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Index : Yes / No
Internet : Yes / No

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M.SATHYANARAYANAN,J.,
and
N.SESHASAYEE,J.,

To:

- 1.The President cum Executive Officer,
Gurukkapuram Village Panchayat,
Gurukkapuram, Rasipuram Taluk,
Namakkal District.
- 2.The Village Administrative Officer,
Gurukkapuram Group,
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