

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.12.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31412 of 2006

and

M.P.No.2 of 2006

1.G.Kannan
2.Smt.Sowmiya
3.M.Nagarajan

..Petitioners

vs

1.The District Collector,
Kancheepuram District
Kancheepuram.

2.The Revenue Divisional Officer,
Kancheepuram District,
Kancheepuram.

3.The Tahsildar,
Tambaram Taluk,
Tambaram.

4.The Inspector of Police,
Kancheepuram Head Qtrs.
Kancheepuram.

5.The Sub-Inspector of Police,
Kancheepuram Head Qtrs.
Kancheepuram.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents from interfering with the petitioner's peaceful possession and enjoyment of the property bearing S.No.18 part to the extent of 1.85 acres, S.No.18 part to the extent of 70.50 cents situate at Ammanambakkam Village, Sriperumbadur Taluk, Kancheepuram District and S.No.306 to the extent of 2 acres situate at No.82, Varadarajapuram, Sriperumpudur Taluk, Kancheepuram District and to the life of the petitioners.

For Petitioner : Mr.B.Gopalakrishnan
for M/s.E.M.K.Yashwanth Rao

For Respondents : Mr.G.B.Rajesh
Government Advocate

O R D E R

The relief sought for in this writ petition is to forbear the the respondents from interfering with the petitioner's peaceful possession and enjoyment of the property bearing S.No.18 part to the extent of 1.85 acres, S.No.18 part to the extent of 70.50 cents situate at Ammanambakkam Village, Sriperumbudur Taluk, Kancheepuram District and S.No.306 to the extent of 2 acres situate at No.82, Varadarajapuram, Sriperumpudur Taluk, Kancheepuram District.

2.The learned counsel for the writ petitioner states that the petitioners 1 and 2 are the residents at Chennai. They are in possession and enjoyment of the property to an extent of 2 acres bearing Survey No.306, situated at No.82, Varadarajapuram, Sriperambudur, Kancheepuram and the petitioners 1 and 2 are enjoying the land property bearing Survey No.18 of the extent of 1.85 acres and 50 cents respectively situated at Ammanambakkam Village, Sriperambudur Taluk, Kancheepuram District for more than 30 years.

3.It is contended that on 06.04.1970, the father of the 3rd petitioner Mr.Muniasamy applied for issuance of Ryotwari patta. However, the petitioners were also applied for issuance of patta in their favour. The land was originally classified as "Odai" and the land was in the possession and enjoyment of the ancestors of the writ petitioner for a continuous period.

4.The grievances of the writ petitioners are that they are in possession and enjoyment of the land described in the present writ petition for long years and patta / assignment was also granted in favour of the writ petitioners in respect of the land described in the present writ petition. In spite of the revenue document in favour of the writ petitioners, the respondents are interfering with the peaceful possession and enjoyment of the property. Thus, the petitioners are constrained to move the present writ petition.

5.The learned Government Advocate appearing on behalf of the respondents made a submission that the writ petition itself is not maintainable and the land in question is classified as "Odai Poramboke" and therefore, the same cannot be assigned nor any

patta can be granted in favour of the individual persons. Vast extent of land is in illegal possession and enjoyment of the writ petitioners. Such water bodies and water resources can never be assigned and no patta can be granted by the revenue officials in favour of the individuals.

6.The learned Government Advocate, on instructions, informed this Court that the revenue officials concerned had colluded with the writ petitioners and their relatives and, illegally issued patta / assignment in their favour without obtaining proper orders from the superior officials and without following the procedures as contemplated. Those officials, who issued such documents in favour of the writ petitioners/their ancestors were placed under suspension and disciplinary proceedings also were initiated against all those officials, who committed such illegalities. Thus, the writ petitioners are not entitled for any relief as such sought for in the present writ petition.

7.This Court is of an opinion that on account of the growing market value in and around Chennai City, some greedy men are tempted to encroach upon the Government lands, water bodies and water resources. On account of such activities of the land mafias and other local persons, large extent of Government lands, water bodies and water resources are under encroachment and people living both inside the city and sub urban areas are facing frequent disasters and other ill consequences. The State though duty bound to maintain the water bodies and water resources and other public properties, are not effectively initiating actions to curb and to evict all such encroachers. On account of the omissions and commissions of these officials, the constitutional rights of the people residing are infringed. The law abiding citizen are affected on account of large scale illegalities and irregularities being committed by few greedy men. Thus, the executives are to be punished for their illegal and collusive activities without any leniency or misplaced sympathy.

8.This Court had already passed several orders in respect of the eviction of encroachers in water body, water resources and other Government Poramboke lands. The District Collectors are also in the process of identifying all such encroachments and started evicting the encroachers by following the procedures as contemplated under the encroachment and all other relevant laws. Under these circumstances, the executives concerned are colluded with the individual persons and issued some bogus pattas / assignment order in the present writ petition. Though disciplinary proceedings were initiated against those officials as per the submission of the learned Government Advocate, this Court is of an opinion, that is not sufficient and all those

officials as well as the individuals are to be prosecuted under the provisions of the Prevention of Corruption Act, 1988.

9. Though the Prevention of Corruption Act is comprehensive in nature, enabling the authorities to prosecute both the persons, who all are demanding and accepting corruption as well as the persons, who are abetting the crime of corrupt activities. However, the actions are initiated in respect of the persons, who are demanding and accepting bribe. However, the persons, who all are abetting the crime of corruption is not prosecuted by the Police officials. Such an attitude require a drastic change in order to minimize the corrupt activities in our great Nation. In the event of prosecuting the persons, who are Assisting / abetting corruption, it is possible to restrict the corrupt activities to some extent possible. Though Section 12 of the Prevention of Corruption Act, 1988 categorically enumerates that "Whoever, being a public servant, in respect of whom either of the offences defined in section 8 or section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine."

10. The said provision has not been invoked by the Police officials, while receiving complaints in respect of abetment of the crime of corruption. The reasons are well known to officials, who all are dealing with the corruption cases. However, this Court is of an opinion that attitude of the executives in not prosecuting the abettors cannot be condoned and they are duty bound to execute the laws in its strict sense and by following the procedures as contemplated.

11. The Prevention of Corruption Act, which is one of the important legislation, must be implemented strictly in its sense and by understanding the provisions in its letter and spirit. In our Great Nation, the corruption is growing like a cancer. Large Scale corruptions are frequently noticed and people are frustrated on account of large scale corruption both in Government machineries and in other public services. Thus, the State is duty bound to control such corrupt activities in public offices in respect of the public services to be provided to the citizen in general under the constitutional schemes. It is the mandate on the part of the State to ensure that the public services are provided as per the scheme to the citizen at large and all such corrupt activities are to be curbed and there cannot be any leniency in respect of dealing with the corruption cases.

12. When Section 8 of the Prevention of Corruption Act deals

with Taking gratification, in order, by corrupt or illegal means, to influence public servant. Section 12 deals with Punishment for abetment of offences defined in section 7 or 11. Thus, both the abettors and the persons, who are committing crime of corruption are to be prosecuted and therefore, a proper circular / instructions are to be issued by the State in this regard to all the law enforcing agencies to ensure that the cases of corruption are registered strictly, in accordance with the provisions of the Prevention of Corruption Act, enabling the authorities to prosecute both the offenders as well as the persons, who are abetting the commission of offence.

13. In respect of the present writ petition on hand, the learned Government Advocate made a submission that the officials had colluded with few individuals and issued bogus revenue documents based on which, the present writ petition is filed. Therefore, the respondents are bound to initiate criminal prosecution against the officials as well as the abettors of the crime in this regard, an F.I.R is to be registered in respect of issuance of bogus patta / assignment in favour of the individuals and the offenders are to be prosecuted, thereafter by conducting an investigation.

14. The learned counsel for the petitioner genuinely raised an apprehension that all those persons, who are fighting against corruption also may suffer under the category of abettor. This Court is of an opinion that while conducting investigation or enquiry, the officials concerned are bound to identify the abettors, in its strict sense. The meaning of the abettor is defined in Indian Penal Code. Chapter V, Section 107 of the Indian Penal Code denotes an Abetment of a thing, which reads as under:

“A person abets the doing of a thing, who-

First - Instigates any person to do that thing; or

Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing.”

15. Section 107 of the Indian Penal Code must be read along with Section 34 as well as Section 120 B of the Indian Penal Code. Thus, the executives / Police officials, while registering the cases, must conduct a preliminary investigation / enquiry and find out, whether the ingredients of the abetment are satisfied or not. In the event of the fact that the ingredients stipulated in the provisions of the Indian Penal Code, are satisfied, then those abettors alone should be prosecuted with

reference to Section 12 of the Prevention of Corruption Act, 1988.

16. For instance, a person, who is offering a corruption or gratification to a public servant, if his intention is to trap the public officials, then he cannot be construed as an abettor. A person, who commits an illegal act of abetment for providing gratification or corruption with an intention and such intention is falling within the ambit of Section 107 read with Section 34 and 120-B of the Indian Penal Code, then those abettors are to be prosecuted under the provisions of the Prevention of Corruption Act. Thus, a clear distinction is to be drawn between the categories and persons, who all are committing the offence with an intention to commit alone is to be prosecuted and not all the innocent persons, or the persons, who are arranging a trap or who are attempting to trap a public servant.

17. There is a definite complaint from the public at large that Touts and brokers are engaged by some public officials for the purpose of demanding and receiving bribe. Such Touts and brokers are moving around the public offices and in certain public places. These persons are also to be prosecuted for abetting the crime of corruption. When these Touts and brokers received money for the purpose of bribing the public officials, the competent authorities must prosecute all those persons, who all are aiding for corrupt activities. However, rarely such actions are initiated by the Vigilance Department and by the Police officials. Thus, a consolidated instructions are to be issued with reference to the provisions of the Prevention of Corruption Act and suitable directions are also to be issued for the purpose of prosecuting the abettors.

18. In this view of the matter, the following directions are issued:

(i) The relief as such sought for in the present writ petition stands rejected.

(ii) The respondents are directed to evict all the encroachments, falling within the jurisdiction of the 1st respondent including that of the writ petitioner by following the procedures as contemplated under the Tamil Nadu Land Encroachment Act, 1905.

(iii) The Secretary to Government, Home, Prohibition and Excise Department, Fort St. George, Chennai -600 009 is directed to issue consolidated instructions / circular to all the subordinate officials across the State to register cases against the abettors, under the Prevention of Corruption Act, who all are involved in the cases of corruption and prosecute them along with other offenders by following the procedures as contemplated. Such circular / consolidated instructions are to be issued within a period of four weeks from the date of receipt

of a copy of this order.

(iv) The Director of Vigilance and Anti-Corruption, 293, MKN Road, Collectors Nagar, Alandur, Chennai, Tamil Nadu, 600 016 is directed to prosecute the abettors of the crime of corruption with reference to the relevant provisions of the Prevention of Corruption Act, 1988 with immediate effect.

(v) If any enquiry is in progress in respect of the case of the writ petitioner, the same shall be proceeded with and a final order shall be passed within a period of four weeks from the date of receipt of a copy of this order.

19. With these directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Post this matter after six weeks for reporting compliance.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Kancheepuram District
Kancheepuram.
2. The Revenue Divisional Officer,
Kancheepuram District,
Kancheepuram.
3. The Tahsildar,
Tambaram Taluk, Tambaram.
4. The Inspector of Police,
Kancheepuram Head Qtrs.
Kancheepuram.
5. The Sub-Inspector of Police,
Kancheepuram Head Qtrs.
Kancheepuram.
6. The Secretary to Government,
Home Prohibition and Excise Department,
Fort St. George, Chennai-9.

7.The Director of Vigilance and
Anti Corruption,
293, MKN Road, Collectors Nagar,
Alandur, Chennai-16.

+1cc to Mr.B.Gopalakrishnan, Advocate, S.R.No.84944

W.P.No.31412 of 2006

KJI (CO)
CS/22/01/2019



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