

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.938 to 942 of 2018
and
W.M.P.Nos.1130 to 1139 of 2018

C.Kumar ... Petitioner in W.P.No.938 of 2018
M.Chinnakannu ... Petitioner in W.P.No.939 of 2018
Chinnammal ... Petitioner in W.P.No.940 of 2018
C.Rajendran ... Petitioner in W.P.No.941 of 2018
M.Murugesan ... Petitioner in W.P.No.942 of 2018

Vs.

1. The District Collector, Salem District.
2. The Tahsildar, Omalur Taluk Office, Salem.
.. Respondents in all the Writ Petitions

Common Prayer:

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of Writs of Certiorarified Mandamus and call for the records from the second respondent pertaining to the impugned eviction notices dated 05.12.2017, but they were given on 03.01.2018 and quash the same and consequently direct the respondents to re-classify the lands as Grama Natham and to grant patta to the petitioners' houses, Boominayakkanpatti, Omalur Taluk and Salem District to give alternative places to the petitioners in order to construct houses.

For petitioners : Mr.P.Vijendran

For respondents: Mr.A.N.Thambidurai, Spl.G.P.

ORDER

(The Order of the Court was made by M.Venugopal, J)

Heard the learned counsel for the petitioners and the learned Special Government Pleader appearing for the respondents.

By consent of the learned counsel appearing for the parties, the main Writ Petitions themselves are taken up for final disposal.

2. According to the petitioners, they have been residing at Boominayakanpatti for more than 90 years. Originally, the lands were assigned to the petitioners by the land owner and then the land owner had constructed a lake which was, after some time, belatedly taken by the Government for public purpose and it is called as Boominayakanpatti Lake. The grandfather of the petitioners is having three sons, namely Chinnapaiyan, Mniyan and Sadaiyan and their children and legal heirs are residing there. The stand of the petitioners is that they belong to very poor family and they have put up thatched houses on the bank of the lake, which is far away from the water catchment area and Survey No.176/2, spread over 1.07 acres. Both the water sources have become cultivable land and also became the residential place and that the electricity connection and water connection were obtained.

3. The version of the petitioners is that the land owners had injected the Block Development Officer, Omalur Panchayat Union and issued the impugned notices as if they had occupied the water course. Immediately, W.P.Nos.30630 to 30634 of 2014 were filed by the petitioners and order was obtained on 28.11.2014 and thereafter, nothing had happened. Now, at the instance of private person who instigated the second respondent, the notices were issued and that happened to be the reason for the cause of action.

4. At this juncture, learned counsel for the petitioners submitted that the impugned notices dated 05.12.2017, given on 03.01.2018 is invalid and illegal, because of the reason that according to the second respondent/Tahsildar, Omalur Taluk, Salem, Survey No.176/2 was classified as Kuttai, i.e. pond. In this connection, learned counsel for the petitioners comes out with a plea that if it is correct that the land is Kuttai, namely pond, then the second respondent/Tahsildar, Salem has no locus-standi to issue such notices under the Tamil Nadu Land Encroachment Act, 1905, whereas the concerned person is the Assistant Engineer of P.W.D. and this type of executive action cannot be countenanced in the eye of law.

5. Yet another argument put forward by the learned counsel for the petitioners is that the impugned notices in S.No.176/2 shown as Kuttai (pond), but the Revenue Records shows it as poramboke land and therefore, the proceedings themselves are illegal. Furthermore, the petitioners and their predecessors have been enjoying the land more than 134 years and in fact, the petitioners had sent a representation to the respondents on 30.11.2016 with all relevant documents, but no reply was issued by the respondents and in fact, the respondents should have provided reasonable opportunity to the petitioners to explain their cause, but only simple notices were given and a direction

was given to evict within seven days' period, which is in negation of the principles of natural justice.

6. Learned counsel for the petitioners strenuously contended that the petitioners were not heard at the time of issuance of notices, dated 05.12.2017, which was given to the petitioners on 03.01.2018, and as such, the impugned notices are illegal. Moreover, the petitioners' grandfather gave a representation and demanded patta to the residential place.

7. Earlier, in W.P.No.31164 and 31169 of 2005, this Court, on 23.09.2005, at paragraph 3, had observed as follows :

"3. It appears, the impugned order has been passed by taking note of the judgment of the Division Bench of this Court in the case of L.Krishnan Vs. State of Tamilnadu (2004 (5) C.T.C. 1). Though the respondents are entitled to take action for eviction of encroachment from the lake poramboke, the Division Bench was also categorical in directing that such an action could be taken only by following due process of law. As the averment of the petitioners is that no such notice under Section 7 of the Tamil Nadu Land Encroachment Act was issued and by the impugned order, the petitioners have been straightaway directed to vacate the land in question, in my opinion, the petitioners could be evicted only by following due process of law as directed by the Division Bench. In that view of the matter, both the writ petitions are disposed of with liberty to the respondents to take action against the petitioners by following due process of law. Till such time, such a procedure in issuing notice to the petitioners calling for explanations and after considering the explanations and final order is passed, the eviction based on the impugned order shall be kept in abeyance. No costs. Consequently, connected W.P.M.Ps. are closed."

8. Further, it comes to be known that this Court in W.P.No.27523 of 2005 etc. batch, between K.Subramani and others Vs. District Collector, Collectorate, Salem District, and others, on 09.12.2009 at paragraph 17 to 20, had observed the following:

"17. Therefore, there is an obligation on the part of the respondents to consider the claim of the petitioners in the light of G.O.Ms.No.854 and also in view of the provisions of Protection of Tanks and Eviction of Encroachment Act, 2007. For this purpose, necessary exercise will have to be undertaken since the petitioners are sought to be non-suited on the ground that G.O.Ms.No.853 is under stay and that ground is no longer available now. The Division Bench

has also interpreted both the Government Order of the year 2006 and the Act of the year 2007 and has given certain guidelines. It is for the respondents to apply those guidelines and arrive at an appropriate conclusion.

18. It is also brought to the notice of this Court that in some of the cases, the subordinate Revenue Officers themselves have recommended the case for grant of patta stating that the lands are not objectionable. In all the counter affidavits, a common objection was raised by the respective Tahsildars. Paragraph 9 of the counter affidavit reads as follows:

"9. I submit that the petitioner in Para-5 has prayed for consideration of his claim for Patta as per one time scheme vide G.O.Ms.No.854 / Rev.L.D.1(2) Department dated 30.12.2006. The above G.O. has its limitations about encroachment of water bodies and water course Poramboke. The petitioner is in occupation of village tank area. The village tanks, water courses and water ways are vested with the concerned village panchayats for administration maintenance etc and the tanks are being desisted deepened and bunds are strengthened for the increased storage of rain water for the benefit of the farmers and the general public to recharge the public drinking water wells and irrigation wells. The particular Nallappan Kuttai tank act as the ground water source for our 200 wells in both villages of Karuppur and Vellakkalpatti. Therefore, in public interest and welfare, the encroachments of village tanks are cleared as a policy of Government. The Honourable High Court in W.P.No.22274 of 2007 dated 02.06.2007 has stayed the operation of the Government orders in G.O.Ms.No.854/Rev.Dept/Dated 30.12.2006 in so far it related to water bodies and water course poramboke lands."

19. Whether the said statement has been made in terms of ground reality or on the basis of old records is an issue which will have to be considered by the District Collector, Salem and he should not go by mere records, as found by the Division Bench in Sivakasi

Region Tax payers Association case (cited supra) in paragraph 27, which is as follows:

"27. While there cannot be any dispute regarding the sentiments expressed in such decision, the question remains that if any particular pond or water channel, artificial or may be even natural has fallen into disuse for a very long period, whether a direction can be issued for eviction irrespective of the question as to whether the persons who have encroached upon such land have acquired any right under the Law relating to limitation or under any policy of the State where the State Government in its wisdom decides to confer certain right on such persons."

20. In the light of the above binding legal precedent and factual matrix, all these writ petitions will stand disposed of with a direction to the first respondent-District Collector to consider the case of the petitioners in accordance with law and in the light of the observations made herein. The first respondent shall take an appropriate decision within a period of three months from the date of receipt of the order and shall communicate the result to the petitioners. Till such time, status quo as on date shall continue. No costs. Consequently, connected miscellaneous petitions are closed."

9. As far as the present case is concerned, it is seen from the letter dated 10.01.2018 addressed by Block Development Officer, Omalur to the Tahsildar, Omalur, that the date for removal of encroachment was fixed on 18.01.2018 pursuant to the directions/orders passed by this Court in W.P.Nos.30630 to 30634 of 2014, and therefore, this Court is of the considered view that the second respondent/Tahsildar had taken necessary action for removal of encroachments made by the petitioners pursuant to the order passed by this Court in the said W.P.Nos.30630 to 30634 of 2014 and there is no infirmity in the impugned notices issued by the second respondent.

10. Apart from that, the petitioners, along with others, had moved this Court time and again by filing Writ Petitions one after the other from the year 2005 and in all those cases, the petitioners were unsuccessful.

11. At this stage, learned counsel for the petitioners makes a plea before this Court that the petitioners may be provided with an alternative site and in this regard, the petitioners may be provided with an opportunity to make necessary

representations before the concerned authorities.

12. Furthermore, it must be borne in mind that even though in W.P.Nos.27523 of 2005, etc. batch, one of the petitioners therein filed W.P.No.30121 of 2005 therein and sought for an alternative site, the entire arguments therein are for providing an alternative site, but the same was not considered. At the risk of repetition, this Court relevantly points out that from the year 2005, the petitioners are knocking at the doors of this Court and having occupied the pond in S.No.176/2, the petitioners cannot be allowed to remain or stay in or live in a pond. The relief sought for by the petitioners, apart from merits of the case, is also hit by the principle of constructive 'Res-judicata'. It is to be noted that 'Res-judicata' applies to the Writ Petitions, as per the decision of the Honourable Supreme Court reported in AIR 1986 SC 391 (Forward Construction Co. Vs. Prabhat Mandal (Regd.), Andheri).

13. In fact, dismissal of a Writ Petition under Article 226 of the Constitution of India operates as 'Res-judicata' and bars the petitioner under Article 32 of the Constitution of India, even though no notice was given to the opposite party before dismissing such Writ Petition by speaking order, as per the decision of the Hon'ble Supreme Court reported in AIR 1968 SC 1196 (Virudhunagar S.R.Mills Vs. The Government of Madras).

14. Besides these, in the decision reported in AIR 2007 Karnataka 29 (Prakash Babu Rao Pundapal Vs. Land Tribunal, Belgaum), it is observed and held that the Writ Petitions on the same cause of action, would be barred by 'Res-judicata'.

15. To put it succinctly, successive writs on the same subject matter, are barred, as per the decision of the Orissa High Court reported in 94 (2002) CLT 494 = MANU/OR/0274/2002 (Chakradhar Mohapatra Vs. The Vice-Chancellor and Chairman, Board of Management, Q.U.A.T. and another).

16. In regard to the aspect of providing alternative site and removal of encroachment, it is nothing but an independent act and one act has no bearing over the other. Hence, till the alternative site is provided, it cannot be said that the petitioners cannot be evicted and the arguments of the learned counsel for the petitioners in this regard, are not acceded to by this Court. However, this order will not preclude the first respondent/District Collector from considering the petitioner's representations for providing alternative site, if there are no legal impediments.

17. In view of the fact that the impugned notices issued by the second respondent do not suffer from any material irregularity or patent illegality in the eye of law and this Court, while disposing of the present Writ Petitions, directs the first respondent/District Collector to consider the petitioners' request for an alternative site, so that they can live peacefully. In this regard, the petitioners are directed to make a written representation to the first respondent/District

Collector within a period of two weeks from the date of receipt of a copy of this order, and thereafter within a period of four weeks, the first respondent/District Collector shall take a decision by considering the petitioners' case sympathetically and with humane approach. In the meantime, the petitioners are granted ten days' time from the date of receipt of a copy of this order, to voluntarily vacate from the encroached portions in question.

18. With the above observations/directions, the present Writ Petitions are disposed of. No costs. Consequently, W.M.Ps. are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector, Salem District.

2. The Tahsildar, Omalur Taluk Office, Salem.

+1cc to Mr.P.Vijendran, Advocate SR.No.3261

+1cc to Government Pleader SR.No.3674

NRI (CO)

sm:6.2.2018

W.P.Nos.938 to 942 of 2018

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