

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.09.2018

Pronounced on : 09.10.2018

CORAM
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.20261 of 2008
and
M.P.Nos.1 and 2 of 2008

1.Venkatalakshamma
2.Ramesh
3.Suresh
4.Ravi
5.Murali
6.Mohan
7.Jayammal
8.Prema

... petitioners

Vs.

1.The District Collector,
Dharmapurai.

2.The Thasildar,
Denkanikottai Taluk,
Dharmapuri District.

3.D.R.Raja Ram Naidu,
President,
Selection Grade Town Panchayat,
Denkankottai.

4.The Executive Officer,
Selection Grade Town Panchayat,
Denkankotta.

... Respondents

This Writ Petition filed Under Section 226 of the constitution of india for issuance of a Writ of Mandamus to direct the respondents to restore the possession of the petitioners in respect of the house property situate at Door No.13 A, 5th lane, Kidwai Street, Denkanikottai, Dharmapuri District and further to them to pay Rs.5,00,000/- towards compensation for the loss, monetary and mental caused to the petitioners.

For petitioners: Mr.Sarath Chander for Mr.V.Ragavachari

For Respondents: Mr.D.Surya Narayanan
Additional Government Pleader for R1 & R2
No appearance for R3 & R4

O R D E R

The above writ petition has been filed by the petitioners to direct the respondents to restore the possession of the property situated at the door No. 13 A, 5th lane, Kidwai Street, Dennakottao, Dharmapuri District and to compensate them for an amount of Rs.5 lakhs for the monetary loss sustained by the petitioners.

2.The petitioners claim that the husband of the 1st petitioner and father of the other petitioners purchased subject property for a valuable consideration on 8.5.1974. The petitioners claim a house with a mangalore tile roofing was built and they were in continuous occupation of the same and were paying property tax over a period of time. Originally the documents were in the name of the husband of the petitioner and the father of the other petitioners and thereafter after his demise they were changed to 1st petitioner's name.

3.In 1987, the 1st petitioner was called upon to pay increased tax as per the revised rules. The petitioners claim to have also been given telephone connection for the aforesaid premises

4.Earlier, O.S.No.237 of 1999 was filed for relief in respect of above property. Petitioners further submit that they had filed another civil suit vide O.S. No.5 of 2000 before the District Munsif Court for a declaration and for a permanent injunction to restrain the respondents from interfering with their peaceful possession of the subject property. Later the suit was also decreed ex parte on 20.2.2001. The 1st petitioner also filed O.S.No. 53 of 2002 which also came to be decreed as against respondent Nos.1 and 2 on 22.2 2002.

5.Despite the same the respondents demolished the house property on 12.12.2007 that was located at the above address. The petitioners have therefore prayed for the above relief.

6.The 4th respondent has filed two counters. The first counter was filed in 2011 and a fresh counter in 2018, wherein they have stated that no person can have a title over a Government property either to purchase or sell or occupy the same except the permission of the government.

7.They have stated that the so-called sale deed dated 8.5.1974 of void in the law. The fact that the description of the property has no survey no and boundary except for the door number itself shows that the petitioners have no legal title over the land. According to the respondents, in the Town Panchayat Tax Collection Register also such a door number did not exist. The respondents have further stated that the tax and the electricity bills do not relate to subject property. Further, it was contended that in O.S. No.237 of 1999 the Door No of the property is stated as 14 and not 13-A.

8.It was further submitted that in O.S No. 237 of 1999, the petitioners have deliberately not impleaded the District Collector, Dharmapuri. Similarly Thasildar, Denkanikottai also has not been impleaded as a defendant. It has been stated by them that the property situated at Survey Number 165/1 of Denkanikottai is classified as a poromboke land.

9.The 4th respondent further stated that as per the orders passed by the Hon'ble High Court all encroachments on the Eri Poromboke (Water Resource) have to be removed and in pursuance of the said order, the Government of Tamil Nadu issued GO.Ms. No.411, NM 5 (1) Department dated 26.07.2000, wherein all encroachments on the banks of river were directed to be removed and the government was asked to take possession and to transfer the land in Survey No.165/1 to the Executive Officer, Town Panchayat for the purpose of constructing bus stand and commercial complexes.

10.It is pursuant to proceeding dated 23.4.2004 bearing reference Na.Ka.No.58698/2003 H1, encroachment of the land in Survey No.165/1 were taken and the encroachers were evicted. The petitioners resisted the notice which was sought to be served on them on 10.12.2007.

11.The District Collector, Krishnagiri, Dharamapuri District vide his proceedings dated 23.04.2004 advised the Executive Officer, Thenkanikottai Town Panchayat to use the subject land for the purpose for which the land was transferred.

12.The respondents claims to have issued notice dated 10.12.2007 to the people residing on the banks of lake on 12.12.2007 at 1.00 p.m and thereafter, the respondents also issued notice dated 11.12.2007 to the TNEB to disconnected the Electric connection in the location to facilitate the eviction activities. It is further stated that the petitioners refused to receive the notice and vacate the house on 12.12.2007. The Superintendent of Police was therefore requested to persuade the petitioners to vacate the premises. The petitioners vacated the premises later on the same day at 2.00 p.m.

13.There is also discrepancy in the property as only the door number is mentioned in the documents and not the survey number.

14.It appears from the documents filed by the respondents that a decision to construct Bus stand at the place where the petitioners' house located was taken preceds the eviction letters dated 10.02.1998, 22.03.1992 and 12.05.2000 of the respondents. Subsequently, a decision was taken to clear encroachment and partly lay brick work and the balance at a later point of time in terms of letter dated 23.04.2004 bearing Na.Ka.No.58698/2003 H1.

15.Under Section 12 of the Tamil Nadu Land Encroachment Act 1905, the respondents are obliged to serve notice specifying the name of the person in occupation of land belonging to Government stating why proceedings should not be taken under Section 6 of the Act. Notice has to be served in the manner prescribed under 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.

16.The only exception to the above requirement is under Section 7 on the person who is in unauthorized occupation of the land, who had been previously evicted

from such land under Section 5 or if he has previously vacated such land voluntarily after the receipt of a notice under Section 5(B) or under the Section.

17.It appears from the facts narrated, notice may have been served on the petitioners earlier which led to filing of three suits by the petitioners. However, details of those proceedings are not available except for ex-parte order dated 20.02.2001 in O.S. No.5 of 2000 and ex-parte order dated 22.04.2002 in O.S. No.53 of 2002.

18.In the present case, there are several disputed questions of fact relating to the correct address and ownership over the property. Whether the petitioners are owner or not of the land cannot be decided in this writ petition.

19.In Habibullah vs, The State of Tamil Nadu, AIR 1994 Mad.222, the Revenue Authorities were directed to restore the premises occupied for evicting the occupants contrary to Sections 6 & 7 of the Tamil Nadu Land Encroachment Act, 1905.

20.In the case of Hamsavalli vs Tahsildar Virudachalam, AIR 1990 Mad.350, it was held that non-issuance of notice under Section 7 of the Act, vitiated the proceedings and therefore notice issued under Section 6 was quashed.

21.It is noticed earlier W.P.No.6407 of 2008 was also filed for an identical relief as in the present case by the petitioners. However, it was withdrawn on 13.03.2008 with liberty to file a fresh writ petition after making appropriate representation with the authorities concerned and on fresh cause of action.

22.However, the present writ petition also came to be filed on the same date on 13.03.2008, though in the typed set of papers dated 13.03.2008, an undated representation has been filed along with acknowledged card dated 24.03.2008 and 30.03.2008. In the index it is dated 19.03.2008. It appears these documents were filed after filing of the writ petition and included in the original type set of documents.

23.Be that as it may, from the counter filed by the respondents, it appears that a Government Bus Stand has come up at the place in question. Therefore, the restoration of the premises is not possible for the alleged violation of Sections 6 & 7 of the aforesaid Act at this point of time. The petitioners can be compensated only as per the law and based on the fresh cause of action for which they had obtained leave. However, there is no such change in circumstances on the date of the filing of the writ petition.

24.The respondents also could not have considered the representation dated 19.03.2008 filed as document No.15 in the typed set of papers subsequent to filing of the writ petition. It is evident no fresh cause of action would have arisen on 13.03.2008 both on the same date of the filing of the present writ petition and dismissal of W.P. No.6407 of 2008.

25.Therefore, the petitioners have not made out a case for relief as prayed for based on the averments in the affidavit and documents on record.

26.The petitioners are therefore given liberty to file fresh representation before the concerned authority within a period of two weeks from the date of receipt of a copy of this order detailing their grievance.

27.The respondents shall thereafter pass a fresh order after considering the representation of the petitioners and after following principle of natural justice.

28.It is made clear that the respondents shall clearly set out entire history of the land in question and rights if any of the petitioners while passing a fresh order. The above exercise shall be carried out within a period of 12 weeks from the date of receipt of this order.

29.The above writ petition is disposed with the above observations. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CS v)

//True Copy//

Sub Assistant Registrar

kkd/ia

To:

1.The District Collector,
Dharmapurai.

2.The Thasildar,
Denkanikottai Taluk,
Dharmapuri District.

+1cc to Mr.Mr.V.Ragavachari , Advocate SR.No. 69964

W.P.No. 20261 of 2008

ASK(14/11/2018)



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