

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 12.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. Nos.27325 to 27328 of 2005

Elavarasan ... Petitioner in W.P.No.27325 of 2005
Rajendran ... Petitioner in W.P.No.27326 of 2005
Kolanjinathan ... Petitioner in W.P.No.27327 of 2005
Veeramuthu ... Petitioner in W.P.No.27328 of 2005

versus

1.The District Collector,
Perambalur,

2.The Tahsildar,
Sendurai Taluk,
Perambalur Taluk

... Respondents in all Writ Petitions.

Writ Petitions filed under Art.226 of the Constitution of India praying for a Writ of Certiorari to call for the notice of the 2nd respondent in Na.Ka.A1/2585/04, dated 9.8.2005 and quash the same.

For petitioners ... Mr.S.Muthkrishnan

For respondents ... Mr.Akhil Akbar Ali, Government Advocate

COMMON ORDER

The eviction notice issued by the second respondent in proceedings dated 9.8.2005 is sought to be quashed in the present Writ Petitions.

2. The learned counsel for the petitioners states that there are temple lands in Thalavai South Senthamedu Village in S.F.No.446/5. The petitioners claim that they are in possession and enjoyment of five cents of lands for the past 25 years. The above said land is described as "punjai land" in revenue "A" register. The Writ Petitioners themselves have stated that the land belongs to Senthamangalam Arulmigu Vinayagar Alayam. The said temple and the land mentioned above are not under the control of Hindu Religious and Charitable Endowment Department

and other persons are also living in the above said land for many years.

3. The learned counsel for the respondents states that the land belongs to the temple and therefore, the action initiated for eviction by the revenue officials are in accordance with the provisions of the Tamil Nadu Land Encroachment Act, 1905 and there is no irregularity as such.

4. This Court is of the opinion that encroachment is a social evil. Encroachment can never be permitted in respect of public lands, temple lands or lands belonging to religious institutions. Encroachments are to be dealt with by following the procedures contemplated under the Encroachment Act. Mere continuance in a public property or temple property will not confer any right on a person to claim continuous possession or right to continue in respect of public properties/temple properties. The Writ Petitioners themselves admit that the land belongs to temple. In the affidavit filed in support of the Writ Petitions, it is stated that the petitioners are in possession and enjoyment of five cents of land and the said land is classified as punjai lands in the Revenue A Register wherein it is mentioned that the land belongs to Senthamangalam Arulmigu Vinayagar Alayam. When the petitioners themselves admit that the temple is the owner of the property, they have no right to continue in possession in respect of the land belonging to the temple. The temple authorities have submitted an application before the competent District Revenue Authorities and the authorities have taken steps to evict all such encroachments. However, the petitioners and their men created law and order problem. Therefore, the second respondent has issued the impugned notices.

5. A Writ Petition cannot be entertained against notice issued under the provisions of the Encroachment Act in a routine manner. Notice issued under the Encroachment Act can be challenged if the same has been issued by a Competent Authority having no jurisdiction or if there is an allegation of mala fides. The authorities against whom such mala fides are attributed have to be arrayed as respondents in their personal capacity. In the absence of any one of the legal grounds, no challenge could be made in respect of eviction notice. The person who received such notice should submit his objections and the authorities competent are bound to take a decision and act by following the procedures contemplated under the Statute. Thus, the present Writ Petitions filed challenging the notice cannot be entertained. It is left open to the Writ Petitioners to submit their explanation / objection if any to the respondents and on receipt of such explanation / objection, the respondents shall take a decision to evict the encroachers.

6. Under these circumstances, the Writ Petitioners are permitted to submit their explanation / objection to the notice within a period of two weeks from the date of receipt of a copy of this order and on receipt of such explanation / objection, the respondents shall consider the same and proceed further in accordance with the provisions of the Tamil Nadu Land Encroachment Act, 1905 and evict the encroachers without any leniency or misplaced sympathy.

7. With these observations, the Writ Petitions are dismissed. No costs. Consequently, W.P.M.P.Nos.29740, 29742, 29743, 29745 of 2005 and W.V.M.P.Nos.2384, 2385, 2386, 2387 of 2005 are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tar

To

1.The District Collector,
Perambalur,

2.The Tahsildar,
Sendurai Taluk,
Perambalur Taluk

+4 cc's to Mr.S.Muthukrishnan, Advocate Sr.No.86004
+1 cc to The Government Pleader, Sr.No.86256

सत्यमेव जयते

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KJ(CO)
CSL/29.01.2019

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