

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2018

CORAM:

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

W.P.No.4803 of 2018 and
W.M.P.No.5945 of 2018

- 1.Vijayalakshmi
- 2.Madheshwari
- 3.Sakthivel
- 4.Rani
- 5.Kannammal
- 6.Kandhasamy
- 7.Pazhaniyammal
- 8.Valliyammal
- 9.Sulochana
- 10.Vasantha
- 11.Mohan Kumar
- 12.Lakshmi
- 13.Sivagami
- 14.Rukkumani
- 15.Lakshmi

... Petitioners

Vs.

1. The District Collector,
Erode District, Erode.
2. The Asst. Commissioner of Corporation,
Corporation of Erode,
Erode.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writs of Certiorari to call for the records of the second respondent notice dated 08.11.2017 issued to the petitioners on 11.01.2018 and quash the same.

For Petitioners : Mr.K.Gandhi Kumar
For Respondents : Mr.R.Venkatesh, Govt. Advocate for R-1
Mr.M.Rajamathivanan for R-2

ORDER

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

The Petitioners have filed the above Writ Petition praying for issuance of Writ of Certiorari to call for the records of

the second respondent notice dated 08.11.2017 issued to the Petitioners and quash the same.

2. Heard the learned counsel for the Petitioners. Mr.R.Venkatesh, Learned Government Advocate takes notice for the 1st Respondent and Mr.M.Rajamathivanan, Learned Counsel takes notice for the 2nd Respondent. With the consent on either side, the Writ Petition is taken up for final disposal.

3. According to the Petitioners, they are residing in Manal Medu Street of Erode-638 001, together with their families and engaged in Coolie work. Apart from them, there are 113 families living in Manal Medu area, Erode Town, for more than 30 years by constructing houses. They are paying house tax, water tax and property tax to the Revenue Authorities and also obtained electricity connection and water connection to their houses. All the said 113 family members have constructed the house in Nagaravai New Survey Number in S.Nos.46/2, 63/2, 66/2 and 122/3, which were originally classified as "Odai Poramboke Land".

4. The Learned Counsel for the Petitioners submitted that the Government had issued G.O.Ms.No.342, Revenue (A2) Department, dated 12.04.1996, by changing the classification from "Odai Poramboke" to "Natham Land" and direction had been obtained from the Government to assign patta. For more than 25 years, the people had constructed houses in the upper area of the said 'Odai' and they are not having any source to live in other places. In the said 'Odai', only drainage water is flowing and the 'Odai' was not used for irrigation purpose. The conversion of lands is in upper area and it would not affect the assignments and there was no chance for upcoming rain water in that place. Added further, the first respondent prepared a list containing 113 people to assign the house-site pattas to those who are living in 'Manal Medu Kudisaikal'.

5. When the facts stood thus, all of a sudden, the 2nd Respondent served notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, on the Petitioners, by mentioning the land classification as "Odai", without mentioning the survey number. The grievance of the Petitioners is that the 2nd Respondent, without considering the change of classification of the land in the said G.O.Ms.No.342, dated 12.04.1996, had issued the impugned notice. In this connection, Learned Counsel for the Petitioners projects a plea that as per Section 7 of the said Act, only the Revenue Authority has got power to issue the notice in respect of eviction and that the 2nd Respondent had only mentioned the name and Door Number in a stereo-type fashion and the notice was served on the Petitioners and the other 113 persons. As a matter of fact, the explanation has been sought for from the Petitioners and others, to be submitted on or before 27.01.2018. Further, one Sundari sent reply on 13.01.2018

for herself and also the other 112 people to the Respondents herein and also the Revenue Divisional Officer and the Tahsildar and also requested for issuance of assignment pattas. Till date, the 1st Respondent has not considered the application of the Petitioners to issue the patta. Hence, the Petitioners have filed the present Writ Petition.

6. Per contra, it is the submission of the Learned Counsel for the 2nd Respondent-Assistant Commissioner of Erode City Municipal Corporation that the location was originally "Odai Poramboke Land" and later, it was classified as "Natham Land" as per the order in G.O.Ms.No.342, Revenue (A2) Department, dated 12.04.1996. Also that, a decision was taken to issue patta to the Petitioners, but it was found out later that during rainy seasons, enormous rain water flow through the 'Odai' inundating the "Natham Land" also, and hence, the issuance of patta was with-held.

7. It is represented on behalf of the Respondents that in the upper area of "Odai", houses were constructed in a haphazard fashion and no doubt, the water flowing through the "Odai" is not being used for any irrigation purposes. It is incorrect to state that the conversion of the land is in the upper area and that there are no chances for upcoming rain water in that place. As a matter of fact, the 1st Respondent has prepared a list of people to whom pattas were proposed to be given, but the past experience has proved that during rainy season, the 'Odai' water used to flow even into some houses and hence, the issuance of pattas was with-held.

8. In regard to the plea taken by the Petitioners that the 2nd Respondent has no power to issue the impugned notice, it is the contention of the Learned Counsel for the 2nd Respondent that G.O.No.186, Revenue Department, dated 29.04.2003 confers power on the part of the Corporation also and they are very much empowered to take action on the obstruction of water-bodies and only in such context, based on the aforestated G.O., dated 29.04.2003, the notice was issued. Therefore, it the submission of the Learned Counsel for the 2nd Respondent that the plea of the Petitioners that the 2nd Respondent has no power to issue the impugned notice, is incorrect in the eye of Law.

9. Considering the fact that G.O.No.186, Revenue Department, dated 29.04.2003 confers power even on the 2nd Respondent-Assistant Commissioner of Erode City Municipal Corporation in regard to the removal of encroachment, the impugned notice issued by the 2nd Respondent to and in favour of the Petitioners and others, in the considered opinion of this Court, cannot be found fault with. In short, the impugned notice is in conformity with the tenor and spirit of the said G.O.No.186 and also in accordance with Section 7 of the Tamil Nadu Land Encroachment

Act, 1905. Hence, the contention of the Learned Counsel for the Petitioners that the person who issued the notice under Section 7, is not the competent authority, is rejected.

10. Admittedly, in the present case, the Petitioners had submitted their individual representations, dated 27.01.2018 (in person) before the 2nd Respondent, and till date, no final orders have been passed. Hence, the 2nd Respondent is directed to look into the said representations/ objections of the Petitioners and if the 2nd Respondent finds any substance in the said representations/objections, then, the 2nd Respondent is directed to pass final, reasoned and speaking orders, on merits, of course, after providing necessary opportunity of hearing to the Petitioners, Complainant and others concerned, if any, and after adhering to the Principles of Natural Justice, within a period of four weeks from the date of receipt of a copy of this order. It is open for the Petitioners to raise all factual and legal pleas before the 2nd Respondent, who has to take into consideration all those factual and legal pleas and to advert to each and every points raised by the Petitioners in the representations/objections and thereafter, come to a conclusion in a fair, free, just and unbiased and also in a dispassionate manner, especially uninfluenced and untrammelled by any of the observations made by this Court. Till such final orders are passed in the subject matter is issue, the authorities shall ensure that the possession of the Petitioners from the subject land(s), shall not be disturbed by anyone in whatever manner possible, within the aforesaid time limit.

11. Before parting with the case, this Court observes that as per Section 7 of the Tamil Nadu Land Encroachment Act, 1905, read with G.O.No.186, Revenue Department, dated 29.04.2003, the person who has issued the notice under Section 7, is an authorised officer. After issuance of the said notice, if final orders are passed within the time that may be adumbrated by this Court, after affording an opportunity of hearing in person to the Petitioners and others concerned, including the Complainants, the available remedy for the Petitioners/aggrieved persons, is only to prefer an Appeal/Revision as the case may be in terms of per Section 10 or 10-A of the Tamil Nadu Land Encroachment Act, 1905 and seek appropriate remedy thereto, in the manner known to Law and in accordance with Law. After the orders attaining finality, for removing the encroachment in question, the appropriate authority shall take the assistance of Police if any resistance is offered, if situation so warrants.

12.With the aforesaid observations and directions, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The District Collector,
Erode District,
Erode.
2. The Asst. Commissioner of Corporation,
Corporation of Erode,
Erode.

+1 CC TO MR.K.Gandhi kumar, Advocate SR. No.16499
+1 CC TO MR.M.Rajamathivanan, Advocate SR. No.16496
+1 CC TO The government Pleader SR.NO.17432

KJ (CO)
RMP (26/03/2018)

W.P.No.4803 of 2018

सत्यमेव जयते

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