

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.Nos.11393 to 11396 of 2018
and W.M.P.Nos.13300 to 13305 of 2018

Peter Selvadurai ... Petitioner in
W.P.No.11393/2018

Hieronimus ... Petitioner in
W.P.No.11394/2018

Xavier Selvadurai ... Petitioner in
W.P.No.11395/2018

Bonibas Mary ... Petitioner in
W.P.No.11396/2018

Vs

The Revenue Inspector
Karipatty Circle
Karipatty-636 106
Valapady Taluk
Salem District.

.. Respondent

Common Prayer in WP.Nos.11393 to 11396:- Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to impugned notice dated 05.03.2018 issued by the respondent herein to the petitioner under Sec 7 of the Tamil Nadu land Encroachment Act 1905 and quash the same.

For Petitioner : Mr.S.Udhayakumar for
(In all W.Ps') M/s.Karan and Uday

For Respondent : Mr.A.N.Thambidurai,
(In all W.Ps') Special Government Pleader.

COMMON ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J]

By consent, all these writ petitions are taken up and disposed of by this common order, as the issue to be decided is one and the same.

W.P.No.11393 of 2018

2. The petitioner claims to be in occupation of the land admeasuring to an extent of 2.50 cents in S.No.156, Karumapuram Village, Salem District and claims to be in possession for over 30 years and the properties are also subjected to statutory levies and according to the petitioner, the land has been given to them by way of conditional assessment in favour of people belonging to Ad-Dravidar community. The grievance expressed by the petitioner is that all of a sudden, he has been issued with a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and challenging the legality of the same, he came forward to file this writ petition.

W.P.No.11394 of 2018

3. The petitioner claims to be in occupation of the land admeasuring to an extent of 4.70 Acres in S.No.156, Karumapuram Village, Salem District and claims to be in possession for over 30 years and the properties are also subjected to statutory levies and according to the petitioner, the land has been given to them by way of conditional assessment in favour of people belonging to Ad-Dravidar community. The grievance expressed by the petitioner is that all of a sudden, he has been issued with a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and challenging the legality of the same, he came forward to file this writ petition.

W.P.No.11395 of 2018

4. The petitioner claims to be in occupation of the land admeasuring to an extent of 0.68 cents in S.No.156, Karumapuram Village, Salem District and claims to be in possession for over 30 years and the properties are also subjected to statutory levies and according to the petitioner, the land has been given to them by way of conditional assessment in favour of people belonging to Ad-Dravidar community. The grievance expressed by the petitioner is that all of a sudden, he has been issued with a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and challenging the legality of the same, he came forward to file this writ petition.

W.P.No.11396 of 2018

5. The petitioner claims to be in occupation of the land admeasuring to an extent of 0.75 cents in S.No.156, Karumapuram Village, Salem District and claims to be in possession for over 30 years and the properties are also subjected to statutory levies and according to the petitioner, the land has been given to them by way of conditional assessment in favour of people belonging to Ad-Dravidar community. The grievance expressed by the petitioner is that all of a sudden, he has been issued with a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and challenging the legality of the same, she came forward to file this writ petition.

6. The learned counsel appearing for the petitioners would submit that since the land in question are conditional assignment in favour of people belonging to Adi-Dravidar community, provisions of the Tamil Nadu Land Encroachment Act, 1905 have no application at all and without adverting to the relevant records, notice came to be issued erroneously and prays for interference.

7. Per contra, Mr.A.N.Thambidurai, the learned Additional Government Pleader, who accepts notice on behalf of the respondent, would submit that action has been taken strictly in accordance with law and as such, the petitioners cannot express any grievance.

8. This Court has carefully considered the rival submissions and also perused the materials placed before it.

9. It is relevant to extract Sections 6 and 7 of the Tamil Nadu Land Encroachment Act, 1905.

"Section 6: Liability of person unauthorisedly occupying land to summary eviction, forfeiture of crops etc.- (1) Any person unauthorisedly occupying any land for which he is liable to pay assessment under section 3 or section 3-A may be summarily evicted by the Collector or subject to his control, by the Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government in this behalf (hereinafter referred as the Authorised Officer) and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector or subject to his control, the Tahsildar or Deputy Tahsildar or authorised officer may deem reasonable, be liable to forfeiture. Forfeitures

under this section shall be adjudged by the Collector or subject to his control by the Tahsildar, or Deputy Tahsildar, or authorised Officer and any property so forfeited shall be disposed of as the Collector or subject to his control the Tahsildar or Deputy Tahsildar or authorised officer) may direct.

(2) An eviction under this section shall be made in the following manner namely: By serving a notice in the manner provided in section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector or the Tahsildar or Deputy Tahsildar or Authorised Officer may deem reasonable after receipt of the said notice to vacate the land, and, if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstructed by any person, the Collector or the Tahsildar, or Deputy Tahsildar or authorised officer shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector or of any Tahsildar or Deputy Tahsildar or authorised officer for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for imprisonment in the civil jail of the district for the like period.

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under sections 183, 186 or 188 of the Indian Penal Code in respect of the same facts.

(3) Any authorised officer taking proceedings under this section shall make a report in writing containing such particulars as may be specified in rules or orders made under Section 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction.

Section 7: Prior notice to person in occupation:
Before taking proceedings under section 6 the

Collector or ahsildar or Deputy Tahsildar or Revenue Inspector or any authorised officer or any other officer specified by the State Government in this behalf (not being an authorised officer) (hereinafter referred to as the 'specified officer as the case may be shall cause to be served on the person reputed to be in unauthorised occupation of land being the property of Government a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under section 6.

Such notice shall be served in the manner prescribed in 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.

Provided that no such notice shall be necessary in the case of any person unauthorisedly occupying any land, if he had been previously evicted from such land under section 6 or if he has previously vacated such land voluntarily after the receipt of a notice under section 5-B or under this section:

Provided further that where the notice under this section is caused to be served by any Revenue Inspector or any specified officer he shall require the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Collector, Tahsildar, Deputy Tahsildar or authorised person having jurisdiction, as the case may be and shall also make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar, Deputy Tahsildar or authorised person having jurisdiction, as the case may be".

10. Though the petitioners pray for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioners and also in the light of Sections 6 and 7 of the Tamil Nadu Land Encroachment Act, 1905, grants liberty to the petitioners to submit detailed representations by enclosing relevant and authenticated documents, to the respondent within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the respondent is directed to consider the same on merits and in accordance with law and pass appropriate orders within a further period of eight weeks thereafter and till such time, the respondent shall defer

further decision in terms of the impugned notice dated 05.03.2018. It is made clear that the petitioners, till the disposal of their representations, shall not create any third party rights in respect of the site/superstructure in question and shall not alter the physical features also.

11. These writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/--

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsm

To

The Revenue Inspector
Karipatty Circle
Karipatty-636 106
Valapady Taluk
Salem District.

+1cc to Government Pleader SR.No.32938

+4cc to Mr.Karan, Advocate Sr.No.32531 to 32534/18

RJI (CO)

sm:8.6.2018

W.P.Nos.11393 to 11396 of 2018

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