

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 09.05.2018

CORAM

THE HONOURABLE MR.JUSTICE **V. PARTHIBAN**

AND

THE HONOURABLE MR.JUSTICE **P.D.AUDIKESAVALU**

W.P.No.12236 of 2018 and
WMP Nos.14287 & 14288 of 2018

1. Kuttiyappan
2. R.Sellayal
3. K.Gurusamy Gounder .. Petitioners

versus

1. The Additional Chief Secretary/Commissioner,
Land Administration,
Chepauk, Chennai-600 005.

2.The District Collector,
Erode District, Erode.

3. The District Revenue Officer,
Erode District, Erode.

4. The Estate Officer/Assistant Executive Engineer,
PWD/WRD, Canal Sub Division,
Gobichettipalayam, Erode District.

5. The Tahsildar,
Nambiyur Taluk, Nambiyur,
Erode District.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, to direct 2nd respondent to accept the alternative patta land offered by the petitioners for digging sub canal for avoiding to demolish the petitioners' house buildings situated in S.Nos.15/1, 15/2 and 15/3, Kurumandur village, Gobichettipalayam taluk, Erode District.

For Petitioner : Mr. C.Prakasam

For Respondents: Mr.E.Manohar, Addl.Govt.Pleader

ORDER

(Order of the Court was made by V.PARTHIBAN, J.)

The petitioner has filed this Writ Petition, seeking the following relief:

“To issue Writ of Mandamus, to direct 2nd respondent to accept the alternative patta land offered by the petitioners for digging sub canal for avoiding to demolish the petitioners' house buildings situated in S.Nos.15/1, 15/2 and 15/3, Kurumandur village, Gobichettipalayam taluk, Erode District.

2. It appears that the father of the petitioners, during his

life time, encroached S.Nos.15/1 and 15/3 of Kurumandur village, Gobichettipalaym taluk, Erode District and resided there for years together by constructing dwelling houses. After demise of their father, the petitioners had occupied the same and residing there. While so, on earlier occasion, 4th respondent issued eviction notices to the petitioners, invoking the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975. Aggrieved by the same, the petitioners approached this Court in W.P.Nos.25794 to 25796 of 2017, seeking for issuance of a Writ of Mandamus, to forbear the respondents therein, from demolishing the petitioners' houses situated in S.Nos.15/1, 15/2 and 15/3 Kurumandur village.

3. By order, dated 27.9.2017, a learned Division Bench of this Court dismissed the writ petitions, with the following observation:

"....Taking note of the fact that the petitioners are encroachers, their only grievance appears to be that though individual notices have been issued to the petitioners, there are about 20 houses in

the area and the petitioners' contention that they may not be evicted, cannot be accepted. As the petitioners are admittedly encroachers, the respondents/authorities shall remove the encroachment in question forthwith, and if the petitioners do not vacate the places within one week from the date of receipt of a copy of this order, the respondents are directed to evict the petitioners. The respondents shall also issue notice to the other encroachers in the area and take appropriate action in accordance with law. If there is any complaint with regard to the encroachment in the area in question, the complainant(s) shall also be heard before eviction of the encroachers. The Writ Petitions are dismissed with these observations and direction. No costs. W.M.Ps. are closed."

4. Be that as it may, it appears that the petitioners have made a representation on 10.11.2017 to 1st respondent, stating that they are ready and willing to offer their alternative patta land in lieu of the land encroached by them. In this regard, an enquiry was also conducted by 2nd respondent. However,

apprehending that the respondents/authorities will take initiative in evicting the petitioners by demolishing the houses, the petitioners are before this Court.

5. Admittedly, the petitioners are encroachers, having occupied the subject land illegally and the respondents/authorities had rightly issued notices of eviction against them and moreover, the learned Division Bench has already directed the respondents to take appropriate action in accordance with law to evict the petitioners. Now, the petitioners have come forward with an offer for exchange of encroached land with the proprietary land belonging to them. This, in our view, cannot be entertained since the petitioners cannot be permitted to perpetuate their illegal acts of encroachment on government land. In fact, we do not find any provision in the Act, which contemplates exchange of proprietary land with the government land. The petitioners cannot be permitted to create a situation by their illegal acts of encroachment on government land and then to offer exchange of the same with their proprietary land. No Court can be party to such a transaction. Having violated the law,

the petitioners cannot avoid eviction proceedings. Once it is found that petitioners have encroached upon a public land, the law should be allowed to take its own course and things should be taken to their logical conclusion.

6. In view of the above, we do not find any merits to entertain the writ petition. Accordingly, the Writ Petition is dismissed as devoid of merits. No costs. Consequently, connected WMP is closed.

(V.P.N.J.) (P.D.A.J.)

09.05.2018

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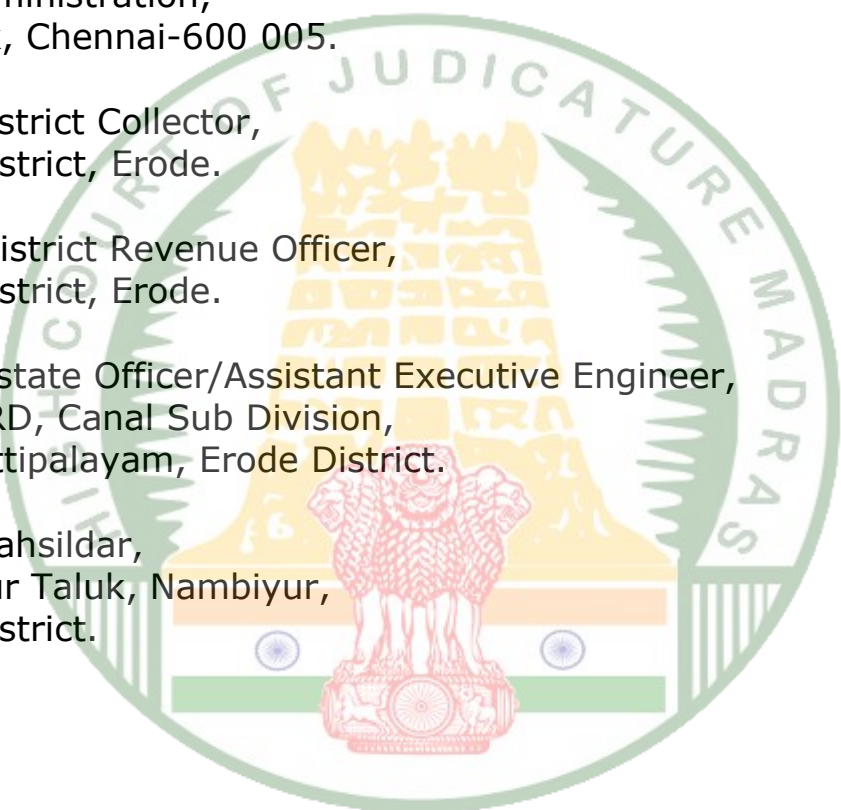
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The seal of the Madras High Court is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital of Ashoka in front of it. The gopuram is set against a background of the Indian national flag's saffron, white, and green horizontal stripes. The words "HONORABLE JUDICATURE MADRAS" are inscribed in a green circular border around the central image. Below the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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V.PARTHIBAN, J.

AND

P.D.AUDIKESAVALU, J.



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