

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 10.10.2018

JUDGMENT PRONOUNCED ON : 02.11.2018

CORAM

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

W.P.Nos.25140, 25141, 25163 to 25165, 25372, 25374, 25375, 25377, 25378, 25381 to 25384, 25386, 25389, 25390, 25392, 25395, 25397, 25399, 25402, 25403, 25405, 25408, 25409, 25412 to 25415, 25422, 25423, 25426, 25427, 25429, 25430, 25432, 25439, 25444, 25450, 24855 and 25370 of 2018

and

W.M.P.Nos.28894, 29209, 29210, 29233, 29234, 29235, 29518, 29519, 29521, 29524, 29525, 29527, 29531, 29532, 29535, 29536, 29539, 29540, 29541, 29549, 29551, 29552, 29558, 29559, 29560, 29562, 29564, 29566, 29567, 29569, 29571, 29580, 29581, 29585, 29586, 29587, 29589, 29590, 29600, 29604 and 29605 of 2018 and WMP.No.29516 of 2018

K.ESAKKIMUTHU ... PETITIONER in WP.No.25140 of 2018
ESWARI ... PETITIONER in WP No.25141 of 2018
SATHIYA ... PETITIONER in WP No.25163 of 2018
SUBRAMANI ... PETITIONER in WP No.25164 of 2018
S.SHANTHI ... PETITIONER in WP No.25165 of 2018
M.MEENAL ... PETITIONER in WP No.25372 of 2018
P.KALAVATHY ... PETITIONER in WP No.25374 of 2018
KRIBAKARAN ... PETITIONER in WP No.25375 of 2018
P.PONPANDI ... PETITIONER in WP No.25377 of 2018
M.RAJENDRAN ... PETITIONER in WP No.25378 of 2018
N.ANGAMMAL ... PETITIONER in WP No.25381 of 2018

POONKODI ... PETITIONER in WP No.25382 of 2018

G.ANJALAI ... PETITIONER in WP No.25383 of 2018

G.DEVI ... PETITIONER in WP No.25384 of 2018

P.MURUGESAN ... PETITIONER in WP No.25386 of 2018

A.MUTHAIAH ... PETITIONER in WP No.25389 of 2018

P.SUGUNA ... PETITIONER in WP No.25390 of 2018

K.PADMAVATHY ... PETITIONER in WP No.25392 of 2018

AMIRTHAVALLI ... PETITIONER in WP No.25395 of 2018

R.VASANTHA ... PETITIONER in WP No.25397 of 2018

A.RAJESHWARI ... PETITIONER in WP No.25399 of 2018

D.BASKARAN ... PETITIONER in WP No.25402 of 2018

G.ABIRAMI ... PETITIONER in WP No.25403 of 2018

SUBBAMMAL ... PETITIONER in WP No.25405 of 2018

K.LAKSHMI ... PETITIONER in WP No.25408 of 2018

M.SELVI ... PETITIONER in WP No.25409 of 2018

S.INDIRANI ... PETITIONER in WP No.25412 of 2018

P.GOWRI ... PETITIONER in WP No.25413 of 2018

P.KARUPPASAMY ... PETITIONER in WP No.25414 of 2018

K.PECHIAMMAL ... PETITIONER in WP No.25415 of 2018

S.RANI ... PETITIONER in WP No.25422 of 2018

RAMU ... PETITIONER in WP No.25423 of 2018

KAVITHA ... PETITIONER in WP No.25426 of 2018

R.THIRUMANI ... PETITIONER in WP No.25427 of 2018

RADHIKA ... PETITIONER in WP No.25429 of 2018

SELVI ... PETITIONER in WP No.25430 of 2018

KRISHNAMMAL ... PETITIONER in WP No.25432 of 2018

MURUGESWARI ... PETITIONER in WP No.25439 of 2018

NAVATHA ... PETITIONER in WP No.25444 of 2018

SUBRAMANI ... PETITIONER in WP No.25450 of 2018

M/S.THELUNGU PATTY CHETTY
COMMUNITY HALL,
REP.BY ITS MANAGING TRUSTEE,
AT SRI KAMATCHI AMMAN, M.RAMESH

... PETITIONER in WP No.24855 of 2018

M.THETHIAMMAL ... PETITIONER in WP No.25370 of 2018

Vs.

1. The District Collector,
Office of the Collector,
Kancheepuram.

2. The Tahsildar,
Pallavaram,
Kancheepuram District - 74.

3. The Junior Engineer,
PWD Adyar Water Division,
St. Thomas Mount,
Chennai - 600 016.

... Respondents 1 to 3 in
all WPs except
in W.P.24855 of 2018

4. The Tamil Nadu Slum Clearance Board,
Rep.By its Managing Director,
(R4 suo motu impleaded as per
court order dated 26.09.2018
WP.No.25140 of 2018)

.. 4th Respondent in
WP.Nos.25140, 25141, 25163, 25164,
25165, 25372, 25374, 25375, 25377,
25378, 25381, 25382, 25383, 25384,
25389 and 25370 of 2018

Junior Engineer,
PWD/Water Resources Department,
Adyar Division, St.Thomas Mount,
Chennai-16.

.. Respondent in WP.24855 of 2018

Common Prayer in all Wps.Except in W.P.24855 of 2018:-

These Writ Petition are filed under Article 226 of the Constitution of India to call for the records of the 3rd respondent herein dated 21.08.2018 in Form-3/S-6(1) targeting the petitioner as encroacher of Odai Poromboke lands in Survey No.248 and S.No.253 respectively of Pozhichalur Village, Kancheepuram District, in which petitioners have been living with their family for four decades and more, and quash the said notice by issue of a writ of certiorari or any other appropriate writ, order or direction and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in WP.No.24855 of 2018:-

Forbearing the respondent from taking any eviction proceedings against M/s.Thelungu Patty Chetty Community Hall attached with the Sathavarayan Temple at No.2/209 Sathavarayan Koil Street Vinayagar Nagar Pozhichalur Chennai-74 on the basis of the impugned notice dated 21.08.2018 issued by the respondent herein till the disposal of the petitioners representation dated 07.09.2018

For Petitioners : Mr.P.Gunaraj in WP.No.24855/2018

Mr.Kalyanasundaram, Senior Counsel,
for M/s.R.Vasudevan in all other WPs

For Respondents : Mr.J.Pothiraj,
Special Government Pleader in all WPs

Mr.M.Rajasekar,
for Tamil Nadu Slum Clearance Board
(suo-moto impleaded) in Wps.Nos.25140
25141, 25163 to 25165, 25372, 25374,
25375, 25377, 25378, 25381 to 25384,
and 25389 of 2018.

C O M M O N O R D E R

R.SUBRAMANIAN, J.

1. The challenge in all these writ petitions is to the notices of eviction issued in Form 3 under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

2. The primary ground on which the notices are challenged is that the petitioners have been residing in the lands in question situate in S.No.248, Pozhichalur Village for a considerably long

time and they cannot be evicted summarily without any notice to them. The petitioners would further claim that the land in S.No.248 does not fall within the limits of the Adyar River. It is also their contention that the eviction of the occupants is being carried out in a selective manner according to the whims and fancies of the Authorities concerned.

3. The petitioners would claim that there are about 150 families who are occupying around two cents of land each in S.No.248 and 253 of Pozhichalur Village adjoining Adyar River. They have been in occupation of the land for more than 40 years by putting up permanent and semi-permanent structures. It is also claimed that the Government had levied penalty by issuing "B" memos and they have been provided with electricity connection.

4. It is the further contention of the petitioners that the impugned notices issued under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 are invalid and illegal since they are based on classification of the land made almost a century ago. According to them, in view of the urbanization, the streams have disappeared and they have been converted into house sites. It is also claimed that the impugned proceedings are in violation of Article 14 of the Constitution of India, since, according to the petitioners, no action has been taken for evicting the encroachers of other lands which are classified as stream in the revenue records.

5. The petitioners would also claim that their right to livelihood is affected. It is also the contention of the petitioners that there is an obligation on the part of the Government to provide shelters to vulnerable homeless people. It is also claimed that the impugned notices violate Article 300A of the Constitution of India.

6. Notices were issued in all these writ petitions and a common counter affidavit has been filed by the District Collector of Kanchipuram. Wherein, it is stated that the petitioners and several others had encroached upon the Adyar River bed, resulting in substantial reduction of the water spread area of the river. According to the respondents, it is because of these encroachments among others Chennai city faced a disastrous flooding in 2015.

7. It is also submitted that nearly 1242 encroachments have been identified along the Adyar river and proceedings have been initiated to evict all the encroachers. Proceedings could not be initiated immediately, since, a cohesive action by the Revenue Officials and the Officials of the Tamil Nadu Slum Clearance Board was required, in order to facilitate alternative accommodation being provided to the encroachers who have been

living in the river bed for a considerable length of time. Once the alternative accommodation is made ready, eviction notices were issued to all the encroachers.

8. It is also stated that a survey of entire area was conducted as required under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. During such survey a chart was also prepared showing the details of encroachment and the charts have been published in the manner contemplated under Section 6 of the said Act. According to the respondents, the petitioners have also been provided alternative house sites and many of them have accepted the same. Therefore, according to the respondents, none of the contentions of the petitioners deserve any consideration by this Court.

9. A reply affidavit has been filed by some of the petitioners stating that they have not accepted the alternative accommodation and the records produced showing that they have accepted alternative accommodations are not correct.

10. We have heard Mr.M.Kalyanasundaram, learned Senior Counsel appearing for Mr.R.Vasudevan and Mr.P.Gunaraj, learned counsel appearing for the petitioners and Mr.J.Pothiraj, learned Special Government Pleader appearing for the respondents.

11. Mr.M.Kalyanasundaram, learned Senior Counsel appearing for the petitioners would vehemently contend that the action of the Authorities in evicting the petitioners without even an opportunity of hearing is illegal. He would also submit that the selective action on the part of the respondents in attempting to evict the petitioners who were in occupation of a portion of the land which is classified as stream leaving out others amounts to discrimination and constitutes to violation of right to equality guaranteed under Article 14 of the Constitution of India. He would also submit that the action of eviction is in violation of the constitutional right to life guaranteed under Article 21 of the Constitution of India.

12. Per contra Mr.J.Pothiraj, learned Special Government Pleader appearing for the respondents would contend that the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 is a special enactment which has been enacted with a view to safeguard water bodies from unscrupulous encroachments. He would submit that the Act is a special legislation and it apply to a special class of people viz., the encroachers of water bodies. Therefore, the petitioners' claim that the Act offends the equality doctrine cannot be countenanced.

13. It is the further contention of the learned Special Government Pleader that all the encroachers have been allotted alternative accommodation and most of them have agreed to avail

the opportunity and shift to the alternative accommodation. It is only very few petitioners who have chosen to challenge the notices. As regards the claim that the action in evicting the encroachments affect the right to life under Article 21 of the Constitution of India, the learned Special Government pleader would submit that the Government has offered alternative accommodations for all the encroachers and nearly 1205 encroachers have been evicted on the stretch of Adyar River in Pozhichalur and other adjacent areas and almost all of them have been offered alternative accommodation.

14. Denying the claim of the petitioners that the Authorities are discriminating between the encroachers in the matter of eviction the learned Special Government Pleader would point out that action has been taken to remove all the encroachments from the lands which have been classified as stream/ odai/ odai poramboke. The procedure contemplated under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 has been scrupulously followed.

15. In the light of the submissions made by the learned Senior Counsel for the petitioners, we had required the respondents to produce the 'A' Register of the Pozhichalur village as well as the Village map. The original 'A' Register was placed before us and a Xerox copy of the same has been given to the petitioners also. A perusal of the 'A' Register shows that the land in S.Nos.248 and 253 have been classified as stream/ odai.

16. In paragraph 6 and 7 of the counter affidavit filed by the 1st respondent viz., District Collector, Kancheepuram had set out various Survey numbers that are classified as Odai and has made it clear that instructions have been issued to the Authorities to remove the encroachments in all the lands which has been classified as odai and as such there is no discrimination in evicting the encroachers. It is also the contention of the learned Special Government Pleader that the encroachers being illegal occupants cannot claim right to equality.

17. As regards the claim of the petitioners that their right to life has been affected and there is a serious violation of the constitutional guarantee made under Article 21 of the Constitution of India, the learned Special Government Pleader would submit that all the encroachers have been offered alternative accommodation.

18. The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 has been enacted only with a view to provide a special procedure for eviction of encroachers from lands that are classified as water bodies. A Scheme to evict the encroachers was formed because of the flooding that affected the entire Chennai City during the year 2015. He would also further point out that the encroachments have reduced the size of the Adyar River to almost half, resulting in the free flow of water in the river during rainy season being obstructed indiscriminately leading to floods.

19. He would also point out that invariably during every monsoon season these encroachers who live on the river banks are affected by the overflowing river and the Government was forced to dole out compensation for losses caused to these encroachers. Therefore, according to him, a comprehensive plan for re-settlement of these encroachers have been evolved and the same has been put into operation.

20. We have considered the rival submissions. It is a common knowledge that all water bodies viz., Tank or lake or stream or river particularly in the cities have been indiscriminately encroached upon and in some cases, thanks to the powers that be, pattas are also been issued by converting those lands into house sites. It is this indiscriminate encroachment of water bodies that leads to flooding during monsoon and the Government is forced to shell out compensation for the flood affected victims.

21. The Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 was enacted with the sole object of removing the encroachments in water bodies and to protect the water spread areas. We cannot loose sight of the fact that the ground water lever is also fast depleting because of these encroachments. Of course, the State, as a welfare State, is bound to protect the homeless people, but, at the same time, these people cannot obstruct a welfare measure which is carried out with an object of benefiting the entire population claiming that their right to livelihood is affected. In fact, the State has made it abundantly clear that it has provided alternative accommodation to almost all the encroachers. If the encroachers choose not to accept the alternative accommodation they cannot claim a legal right to continue their illegal act of trespass.

22. In fact, the learned Special Government Pleader has

produced a list of 41 encroachers out of whom atleast 35 persons have been allotted an alternative sites and tokens have been distributed to them. Of course, the learned counsel for the petitioners would dispute the said statement and claim that they have not accepted the alternative accommodation. It is up to them to accept or refuse the alternative accommodation but the removal of encroachment cannot be made dependent on such acceptance or refusal.

23. We therefore find that the contention of the learned Senior Counsel appearing on behalf of the petitioners regarding so called violation of the Constitutional right has no merit in it. The learned Senior Counsel would draw our attention to the pronouncements of the Hon'ble Supreme Court in *Olga Tellis & Ors vs Bombay Municipal Corporation & others* reported in 1985 (3) SCC 545 to contend that the encroachers have a right to be heard before they are evicted.

24. Even in the said decision relied upon by the learned Senior Counsel, Section 314 of the Mumbai Municipal Corporation Act, 1888 was upheld and the Hon'ble Supreme Court concluded that the said provision is neither unreasonable nor violative of Article 21 of the Constitution of India, solely on the ground that no person has a right to encroach upon footpaths, pavements or any other place reserved or ear-marked for a public purpose by erecting structures on it. As was done by Maharashtra Government in the said case, the Government of Tamil Nadu has also made it clear that all these encroacher have been offered alternative sites and records relating to provision of alternative accommodation have also been placed before us. We therefore find no merits in the submissions of the learned Senior Counsel appearing for the petitioners.

25. Insofar as the WP.No.24855 of 2018 is concerned, the encroachment is by a community of people who have put up a community hall near the temple. The claim of the petitioners in the said writ petition cannot be countenanced at all, since it is not disputed that the said community hall has been put up in the area which is classified as stream/ odai.

26. We therefore find that the petitioners are not entitled to any indulgence from this Court and all the writ petitions are therefore dismissed. It is however made clear that the dismissal of the writ petitions will not be a ground to deny alternative accommodations to the petitioners if they choose to accept the same. However, in the circumstances there will be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

After pronouncing the judgment, the learned counsel for the petitioners seek time to vacate. In view of the fact that the petitioners are residing there, we grant them time till 30.11.2018. The Authorities shall not take any action till 30.11.2018. The Tahsildar shall inform all the occupants that they must vacate by 30.11.2018.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The District Collector,
Office of the Collector,
Kancheepuram.
2. The Tahsildar,
Pallavaram, Kancheepuram District-74.
3. The Junior Engineer,
PWD Adyar Water Division,
St. Thomas Mount, Chennai - 600 014.
4. The Tamil Nadu Slum Clearance Board,
Chennai.

+1cc to Mr.P.Gunaraj, Advocate, S.R.No.75568

+1cc to Mr.M.Rajasekar, Advocate, S.R.No.75587

+6cc to M/s.R.Vasudevan, Advocate, S.R.No.75572 to 75576

+1cc to the Government Pleader, S.R.No.76482

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25370,24855 of 2018 & 25370 of 2018

RJI (CO)
CS/15/11/2018