



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11/02/2020

DATED : 27.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.26392 of 2019

And

W.M.P.Nos. 2751 & 2752 of 2019

1. N.Urban Jeevaraj
2. N.Gabriel Vijayanathan
3. N.Nthyanathan
4. N.Mary Rajeswari
5. N.Bridget Peter Manoharan
6. N.Erasmus Rajasekaran
7. Fatima
8. Ferdin Sunitha .. Petitioners

Versus

1. The Director of Fisheries
Department of Fisheries
Teynampet,
Chennai - 600 006.
2. The Assistant Director of Fisheries
Department of Fisheries
Royapuram
Chennai - 600 013. ... Respondents

PRAYER:Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the second respondent pertaining to the impugned order/Notice dated 27.08.2019 made in Na.Ka.No.883/A/2012 and to quash the same and consequently, to direct the respondents not to interfere with the petitioner's property viz., land measuring one ground on the northern side of the Compound Wall of the St. Francis Xavier Elementary School in the site R.S.No. 3053/2 in the Tondiarpet Division, facing the Suryanarayana Chetty Street, Royapuram, Chennai - 600 013 with a building constructed thereon, in bearing Door No. 248, Surya Narayana Chetty Street, Royapuram, Chennai - 600 013 in petitioner's possession and enjoyment.



For Petitioners :: Mr. T.Dhanasekaran

For Respondents :: Mr. STS.Murthy
Additional Advocate General
Assisted by Mr.R.Govindasamy
Special Government Pleader

WEB COPY

ORDER

The Writ Petition had been filed in the nature of Certiorarified Mandamus to set aside the Order/Notice dated 27.08.2019 in Na.Ka.No. 883/A/2012 issued by the second respondent, namely, The Assistant Director of Fisheries, Department of Fisheries, Royapuram, Chennai - 600 013 and to direct the respondents not to interfere with the property of the petitioners, namely, land measuring one ground in R.S.No. 3053/2 along with building bearing Door No. 248, Surya Narayana Chetty Street, Royapuram, Chennai - 600 013 which is in possession and enjoyment of the petitioners.

2. The first to sixth petitioners are brothers and sisters. The seventh petitioner is the widow of another brother and the eighth petitioner is the daughter of the said brother. Originally, the mother of the first to sixth petitioners and of the husband of the seventh petitioner, by name, Jayapushpammal, who was carrying on firewood depot business since in the year 1950, was allotted one ground of land by the Secretary to Government, Food and Agriculture Department, Chennai, by Memorandum No. 101263.E.II/58/4 dated 13.11.1958. This land was allotted from the lands acquired for rehabilitation of fishermen in Tondiarpet. It was specifically stated that she may continue purely as a matter of grace till the sites are taken up for development. Subsequently, the land was handed over to the Corporation of Madras. Finally, by proceedings No. 6220-1/60-6 dated 21.01.1961, the Government allotted one ground in R.S.No. 3053/2 to N.Jayapushpammal. The purpose was for running firewood depot. The second respondent had also addressed a letter the Tahsildar, North Madras, by letter dated 06.10.1961 to demarcate one ground in R.S.No. 3053/2 for handing over the property.

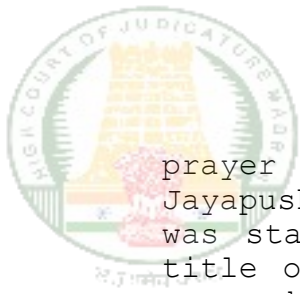
3. It is claimed by the petitioners that they constructed pucca superstructure after obtaining planning permission on 05.12.1962 from the Corporation of Chennai. They are also paying taxes including taxes for running firewood depot. It is also stated that the name of N.Jayapushpammal was entered in the Corporation Register. The second respondent thereafter



commenced to issue notices to N.Jayapushpammal. She filed W.P.No. 35366 of 2006 seeking protection of possession. By Order dated 14.12.2011, this Court had stated that the respondent should not evict her without issuing notice and affording opportunity of personal hearing. The order was confirmed in W.A.No. 1485 of 2013, by order dated 30.06.2017. It was further stated in the affidavit that the second respondent had issued a notice dated 04.08.2017 for which the counsel of N.Jayapushpammal gave a reply on 18.08.2017. A further notice had issued on 27.05.2019 whereby the respondents directed N.Jayapushpammal to vacate the premises within two weeks. The writ petitioners filed W.P.No. 19378 of 2019. It was stated that the Court directed the second respondent to conduct enquiry before passing any orders. A further order was passed by the second respondent on 30.07.2019 directing her to vacate the encroached lands of the Fisheries Department in S.No. 3053/11.

4. The petitioners herein filed another Writ Petition in W.P.No. 23502 of 2019. Counter was filed. Additional grounds were raised and an additional counter was also filed. It has been stated in the affidavit that the said writ petition was closed by this Court on 19.08.2019. It was claimed that the second respondent had stated that they will take steps according to the Tamil Nadu Land Encroachment Act 1905 but the second respondent had issued a notice on 27.08.2019 in Na.Ka.No. 883/A/2012 along with Form-C in accordance with Rule 6 of the Tamilnadu Public Premises (Eviction of Unauthorised Occupants) Rules 1978 whereby the petitioners were informed to vacate the lands within 7 days on receipt of the notice under Rule 6 of the said Rules mentioned above. The petitioners have filed the present Writ Petition questioning the said notice.

5. A counter affidavit had been filed by the second respondent denying the allegations raised in the affidavit filed in support of the Writ Petition. It had been stated that notices have been issued to Jayapushpammal from the year 2002 onwards calling upon her to vacate the premises. It was stated that the said land now under occupation of the petitioners in R.S.No. 3053/2 was to be allotted to 62 families. In the list of the said families, the name of Jayapushpammal does not find place. It was stated that the land was allotted to Jayapushpammal only for firewood depot purpose alone and not for any other purpose. However, she had constructed a superstructure. It was also stated that the land was given only on mercy basis. It was to be surrendered when the land was to be developed for construction of houses. She is not doing firewood depot business. It is stated that at present, the superstructure is used for running a medical dispensary. It has also been converted as Religious place for conducting mass



prayer programme. It is stated that after the death of Jayapushpammal, the writ petitioners are misusing the land. It was stated that Jayapushpammal was not given absolute right or title over the property. It was a conditional grant to handed over whenever required by the respondent. It is also stated that Jayapushpammal had registered the property in the name of her husband V.N.D. Chandran, which is again a violation of the terms of allotment. The license granted to Jayapushpammal was cancelled by the Corporation of Chennai in the year 2006. It is also stated that this Court in the orders in W.P.No. 35366 of 2006 and in W.A.No. 1485 of 2013 had very clearly stated that she does not have any title over the property and consequently, cannot claim a vested right to continue to be in possession of Government land. It was also stated that in response to the notice dated 27.05.2019, the petitioners came in person to the office of the second respondent on 24.07.2019. They were asked to produce documents for claiming possession. They did not produce any documents. Therefore, orders were passed on 30.07.2019 calling upon them to vacate the land. It was stated that the second respondent was authorised to take action under the Tamilnadu Land Encroachment Act 1905 (Rule 6 of Tamilnadu Public Premises (Eviction of Unauthorised Occupants) Rules 1978). In the permanent land register of the Revenue Department, Fort Tondiarpet Taluk, the land had been shown as allotted to Jayapushpammal as matter of grace for running firewood depot. It is stated that the petitioners do not have any right after the death of Jayapushpammal and are attempting to grab the Government land. It is stated that the said land was now required to establish Paraprofessional Institute for welfare of poor Fisherman Students. It is also to be used for allotment to Fisherman families. It was stated that a number of notices have been issued from the year 2013. It is also stated that as per the Revenue records, S.No.3053/11 and S.No. 3053/12 belongs to the Fisheries Department. It is stated that a fresh notice was issued on 01.08.2019 after correcting the survey number. However, the identity and the description of the property are the same. It had been stated that the petitioners herein are encroachers, who are trying to grab the Government land and therefore, it had been stated that the Writ Petition should be dismissed.

6. Heard Mr.T.Dhanasekaran, learned counsel for the petitioners and Mr.S.T.S.Murthy, learned Additional Advocate General assisted by Mr.R.Govindasamy, learned Special Government Pleader for the respondents.

7. Tmt. N.Jayapushpammal, mother of the first to sixth petitioners and mother-in-law and grandmother of the seventh and eighth petitioners was originally allotted one ground from the lands acquired for rehabilitation of fishermen in Tondiarpet on



13.11.1958 by the Secretary to Government, Food and Agriculture Department by Memorandum No. 101263.E.II/58/4. It was very specifically stated in the allotment "meanwhile she may be allowed to continue purely as a matter of grace till the sites are taken up for development." In the very same order, the request of N.Jayapushpammal to exclude the land from land acquisition was also rejected. It is thus seen that no right of either continuous or uninterpreted possession or of title was granted to N.Jayapushpammal. It was purely an allotment as a matter of grace. It was meant to run a firewood depot. Instead of running a firewood depot, after consolidating possession, N.Jayapushpammal constructed a superstructure. As on date, in the superstructure, there is a medical dispensary and is also used for religious purpose. Even at the outset, it must be mentioned that when land is allotted for a particular purpose, change of use for commercial purposes is not permitted. Change of use for religious purpose, particularly when the Constitution provides in its Preamble that the State is a Secular State cannot be permitted. Claiming such allotment as title and thereby refusing to handover when required cannot be permitted. The present petitioners have no manner of right, title over or interest of the property. They were not the original allottees. The land at the most can be in the possession of N.Jayapushpammal and on her death, allotment ceases at once. It is not a right which can be inherited. It is not a right which can be transferred. It is not a right which can be claimed by any third person including the petitioners, who incidentally may be the sons/daughters /grand daughter of N.Jayapushpammal.

8. It is also seen that the Corporation tax is being paid in the name of V.N.D Chandran, husband of N.Jayapushpammal. Obviously this is because, had, N.Jayapushpammal declared to the Corporation Authorities that the land was allotted as a matter of grace for running firewood depot, then she could not have a building permission in her name. Moreover grant of planning permission or grant of electricity connection either in the name of N.Jayapushpammal or in the name of her husband or in the name of any other family member can never claimed to be a recognition of title.

9. In the counter affidavit, it had been very specifically stated that in March 2018, it had been announced in the Legislative Assembly by the 110 Announcement by the Chief Minister that the land was required for construction of Paraprofessional Institute for Fisheries Technology which Institute is to be established to create skilled Paraprofessional manpower for industry and for fish processing industry and to empower the underprivileged fisher youth from rural and semi-urban areas to generate employment opportunities



and to empower men and women from socially and economically backward fisher folk and helping them to augment their family income by providing skills trainings and market access in the market for their goods and produce and to develop rural enterprises by creating eco-friendly and sustainable technologies. It is thus seen that public interest overwhelms the private interest of the petitioners. As a matter of fact, the petitioners cannot claim any interest over the property. They are encroachers, who are only trying to grab the property which had been originally allotted to their mother N.Jayapushpammal for running a firewood depot and they cannot claim title over the property after having built a superstructure in violation of the allotment and running a medical dispensary and also using the place for religious purpose. These activities cannot be permitted. They have to be prohibited.

10. The learned counsel for the petitioner had stated that the respondents have no right to issue notice or to invoke the Tamilnadu Public Premises (Eviction of Unauthorised Occupants) Rules 1978. It was also stated that the second respondent was not an estate officer as stipulated in the said act or rules. With due respect to the learned counsel, I disagree.

11. In accordance with the terms of W.P.No. 35366 of 2006 as confirmed in W.A.No. 1485 of 2013, notice was issued and personal hearing offered to the petitioners. The petitioners appeared before the second respondent on 24.07.2019. They however failed to produce any document regarding possession. Therefore, orders were passed asking them to vacate the land. The Director of Fisheries Madras, was requested to allot the land to late N.Jayapushpammal. The jurisdiction of the land was vested with the second respondent, Assistant Director of Fisheries. He had allotted the land to N.Jayapushpammal. The Assistant Director of Fisheries is the second respondent. Having allotted the lands, the said official has every right to seek the petitioners to vacate from the land. The land is to be used for development and for public purpose. The Tamilnadu Land Encroachment Act 1905 (Rule 6 of Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Rules 1978) is the proviso under which eviction of unauthorised persons have to be initiated. Several notices were issued since 2013. Substantial time was also granted to vacate.

12. In 2014 (5) CTC 241 {A,Muniappan and Others Vs. The Tahsildar, Tambaram Taluk}, the Full Bench of this Court had an occasion to answer the following questions:-



WEB COPY

"(i) Whether the earlier orders of the Division Bench in the given case have conclusively decided the issue of applicability of the provisions of Tamil Nadu Land Encroachment Act, 1905 to patta land ?

(ii) If not, whether the provisions of the Tamil Nadu Land Encroachment Act can be made applicable even to patta land ?"

13. In paragraph 24 of the said Judgment, it had been held as follows:-

"24. The Order, dated 17.08.2003, passed by the District Collector, Kancheepuram District, was challenged in W.P.No.29235 & 29330 of 2007. In the grounds raised in the writ petitions, it was contended that the provisions of the Tamil Nadu Land Encroachment Act, does not apply to Patta lands and the action of the District Collector is bad in law. As noticed above, nowhere in the impugned order there is any reference to the provisions of the Tamil Nadu Land Encroachment Act and the notice, dated 08.04.2013, of the Collector, Kancheepuram District, is not a notice under Section 7 of the Land Encroachment Act, but proceedings were initiated pursuant to the directions issued by the Division Bench. The justification, being the land was intended for rehabilitation of the repatriates and purchased from Central Government funds and the appellant before the Division Bench was a Society registered under the Societies Registration Act. Therefore, the plea raised by the petitioners/appellants in the writ petitions/appeals as regards the applicability or non-applicability of the Tamil Nadu Land Encroachment was devoid of merits and based on misconception..."

14. In paragraph Nos. 30, 40 & 41 of the said Judgement, it had been held as follows:-



WEB COPY

"30. In the light of the above discussions, we have no hesitation to hold that the decision in W.A.No.477 of 2003 would bind the encroachers. They have participated in the enquiry conducted by the District Collector, Kancheepuram District, pursuant to the notice, dated 08.04.2013 and so held by the Division Bench in W.P.Nos.29235 & 29330 of 2007, dated 20.12.2007, which had attained finality as the special leave petition as against the said decision was dismissed. The finding rendered by the Division Bench in the order, dated 20.12.2007, to the effect that the encroachers neither the jurisdiction of the District Collector nor the procedure adopted by the District Collector in passing the impugned order could be questioned as attained finality and therefore the decision is binding. Accordingly, the first issue in question No.1 is answered against the petitioner/appellant in favour of the respondent Burma Society.

40. In the light of the above findings, we are of the firm view that the appellants and writ petitioners cannot be allowed to reargue the matter in these cases as their rights are conclusively decided and they are not entitled to plead that the provisions of the Tamil Nadu Land Encroachment Act, 1905 cannot be applied for evicting them from the encroached area.

41. Insofar as question No.2 framed by the Division Bench is concerned, the Tamil Nadu Land Encroachment Act, 1905 was enacted in the year 1905 with the object and reasons which is stated in the preamble of the Act, which reads thus, "Whereas it has been the practice to check the unauthorised occupation of lands which are (the property of Government) by the imposition of penal or prohibitory assessment or charge, and whereas doubts have arisen as to how far such practice is authorised by law and it is expedient to make statutory provision for checking such occupation."

The property of the Government are stated in Section 2 of the Act, which reads as follows:



WEB COPY

"Sec.2. Right of property in public roads, etc. waters and lands.- (1) All public roads, streets, lanes and pathis, the bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark and of rivers, streams, nalas, lakes and tanks and all backwaters, canals and water-courses and all standing and flowing water, and all lands, wherever situated, save in so far as the same are the property-

(a) of any zamindar, poligar, mittadar, jagirdar, shrotriendar or inamdar or any person aiming through or holding under any of them or

(b) of any person paying kist, kattubadi, jodi, poruppur or quit-rent to any of the aforesaid persons or

(c) of any person holding under ryotwari tenure, including that of a janmi in the Gudalur taluk of the Nilgiri District and in the transferred territory or in any way subject to the payment of land-revenue direct to Government, or

(d) of any other registered holder of land in proprietary right, or

(e) of any other person holding land under grant from the Government otherwise than by way of licence, and, as to lands, save also in so far as they are temple site or owned as house-site or backyard, are and are hereby declared to be the property of Government except as may be otherwise provided by any law for the time being in force subject always to all rights of way and other public rights and to the natural and easement right of other land-owners, and to all customary rights legally subsisting.



WEB COPY

(2) All public roads and streets, vested in any local authority shall, for the purposes of this Act, be deemed to be the property of Government.

Explanation.- In this section "high water mark" means the highest point reached by ordinary spring-tides at any season of the year."

The procedures contemplated viz., issuing notice, calling for objections and passing an order under section 7, are mandatory before ordering eviction of an encroacher. The said Act can be applied only if there is no title dispute with regard to the land in question. Title dispute will arise only if the land in question is a patta land. It is well settled proposition of law that patta is a piece of evidence to prove title to the property. Section 6 of the Act gives liberty to summarily evict a person, who is unauthorisedly occupying the land, by the Revenue Officials or any other officer authorised by the State Government and before passing an order under section 6, prior notice to the person in occupation is bound to be issued, which is a mandatory requirement. The core section 6 being the enabling provision to evict the unauthorised occupant under the Act, which is applicable only to persons unauthorisedly occupying the land, goes without saying that the patta lands are excluded from the purview of the provisions of the Act. As per Section 13, a person in unauthorised occupation empowers the authorities to proceed against under any other law in force, notwithstanding the enactment of the Tamil Nadu Land Encroachment Act, 1905. Section 15A deals with certain persons deemed to be in unauthorised occupation of the land, which reads thus, "Sec.15-A. Certain persons deemed to be in unauthorised occupation of land.- Where a lease of land which is the property of the Government expires or is terminated by the Government or any other authority competent in that behalf, the lessee or any other person remaining in possession of the land after such expiry or termination or, Where land granted to any person is liable to



WEB COPY

be resumed by the Government for the breach or non-observance of any of the conditions subject to which the grant is made and the Government or any other authority competent in that behalf have passed orders resuming the land for such breach or non-observance, the grantee or any other person remaining in possession of the land after the passing of those orders."

On perusal of the said section it is clear that even if a lease was granted to a person in respect of the property of the Government, after expiry or on termination, the person remaining in possession can be treated as an unauthorised occupant and action as per the provisions of the Act can be initiated."

15. Finally, paragraph No. 43 of the said Judgment, it had been held as follows:-

"43. On perusal of the above enactment, it is clear that the said Act was enacted for the purpose of evicting the encroachers from the Government land. The purport of the Act was already considered by the Full Bench of this Court in the decision reported in 2005 (2) CTC 741 (T.Ramaraju v. The State of Tamil nadu). In paragraph 38(7) it is held that, "So far as the encroachment on the land belonging to the Government is concerned, action for eviction if any can be taken only by the appropriate authority and by following the procedure contemplated under the Tamil Nadu Land Encroachment Act, 1905."

Thus, it is evident, eviction under the provisions of the Tamil Nadu Land Encroachment Act, 1905 can be initiated and completed with regard to the land belonging to the Government and not in respect of the patta lands. Question No.2 is answered accordingly."



WEB COPY

16. Finally the questions were answered as follows:-

"(i) The earlier orders of the Division Bench in the given case between the Society and encroachers have conclusively decided the rights of the parties and they are not entitled to plead that the provisions of the Tamil Nadu Land Encroachment Act, 1905, cannot be applied for evicting them from the encroached area.

(ii) Eviction under the provisions of the Tamil Nadu Land Encroachment Act, 1905 can be initiated and completed with regard to the land belonging to the Government and not in respect of patta lands."

17. As per the revenue records, S.No. 3053/11 and S.No. 3053/12 both belong to the Fisheries Department. The contention of the learned counsel for the petitioner that only the estate office can issue notice under Rule 6 also cannot stand scrutiny since, the second respondent, namely, the Assistant Director of Fisheries, was the authority, who initially allotted the land and now seeks repossession of the land.

18. Pursuant to the 110th Announcement for establishment of Paraprofessional Institute of Fisheries Technologies at Royapuram, by the Chief Minister in the Legislative Assembly, a sum of Rs.500 crores has also been sanctioned in G.O.Ms.No. 48 dated 13.03.2018. The purpose of the said Paraprofessional Institute of Fisheries Technology is as follows:-

"The establishment of paraprofessional Institute of Fisheries Technology Royapuram, Chennai will be provided skilled man power for technician position in Fishing, Marine engineering, processing and aquaculture sectors for one year duration. This training course will be benefited to the Fisher folk youth, unemployed youth, entrepreneurs, school drop outs, and others with 10th standard pass certificate. There is good scope for



WEB COPY

emergence of micro enterprises on fish processing, value added fish products. It is envisaged that the proposed Institutes would create self employment opportunities for large number of people."

19. It is also seen that as stated above, a sum of Rs.500 crores had been sanctioned. The details are as follows:-

"

Sl.No.	Particulars	Amount (Rs. In lakh)
1.	Civil Works: Construction of Institute of Fisheries Paraprofessional Fisheries Technology with facilities including furniture	150.00
2.	Details of Equipments: 1. Fishing and Marine Engineering Equipments; Navigation, seamanship and bridge equipments; II. Value added Fish production equipments and accessories; III. Fish Quality Lab Testing Equipments and accessories	150.00 20.00 30.00
3.	Model Training Fishing Vessel with communication and fishing gadgets	150.00
	Total	500.00

20. Thus there is imminent necessity to uplift the fishermen community and to give them further training and development in skills. These objective over ride the private interest of the petitioners.

21. In view of all these facts, the petitioners themselves must realise that they have enjoyed the land allotted out of grace for nearly 5 decades and it is time that they voluntarily vacate and handover the land back to the Government. They



should take pride that they voluntarily vacated the land so that it could be of much benefit to uplift socially and economically backward men, women, boys and girls. It is not becoming of the petitioners to produce and hold on to the land continuously even though, to their knowledge and to their conscious, they know they are not utilising it for firewood depot purpose. It was also not allotted to the present petitioners. It was meant for a firewood depot. It has never been used for firewood depot. A superstructure has been built. The petitioners must realise that they have violated the law. They must realise that they have taken undue advantage of an allotment and they have far exceeded the acts of deception by preventing the respondent authorities from taking possession.

22. It is expected that the petitioners themselves would vacate and handover the land. An order is not required for this purpose. However since they have approached the Court, I am also not prepared to grant any concession. The Writ Petition is dismissed. Costs are not awarded since this Court truly hopes that the petitioners would vacate and handover the land. However, if the petitioners do not vacate the land and handover possession to the respondents on or before 31.03.2020, then they would have to pay costs of Rs.50,000/- to the Chief Justice Relief Fund. A direction is issued to the Collector of Chennai to recover the said amount under the provisions of the Revenue Recovery Act, if the petitioners do not vacate on or before 31.03.2020. The choice is with the petitioners. They can vacate or they will have to face the process of law and pay the costs.

23. With the above observation, the Writ Petition is dismissed. Order on costs as stated above. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Director of Fisheries
Department of Fisheries
Teynampet,
Chennai - 600 006.



2. The Assistant Director of Fisheries
Department of Fisheries
Royapuram
Chennai - 600 013.

WEB COPY

+1cc to Mr. T.Dhanasekaran, Advocate sr.17577
+1cc to Government Pleader SR.NO. 1774

W.P.No.26392 of 2019

And

W.M.P.Nos. 2751 & 2752 of 2019

sj(co)
nr 28/02/2020