



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.03.2020
CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P (MD)Nos.4707 and 4709 of 2020
and
WMP (MD)Nos.4082,4083 and 4084 of 2020

S.Sethuraman : Petitioner in W.P. (MD)No.4707 of 2020
P.Ramasamy : Petitioner in W.P. (MD)No.4709 of 2020

Vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Tahsildar (Revenue),
Kariyapatti, Virudhunagar District.

3.The Block Development Officer
(Village Panchayat),
Kariyapatti,
Virudhunagar District.

: Respondents in both cases

Common Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order made in Na.Ka.B1/30/2020, dated 20.02.2020 and consequential impugned order made in Na.Ka.B1/30/2020, dated 20.02.2020 passed by the third respondent insofar as the petitioners are concerned and quash the same.

For Petitioner : Mr.D.Sadiq Raja
For R1 and R2 : Mr.VR.Shanmuganathan
Special Government Pleader
For R3 : Mr.A.Thiyagarajan
(in both cases)

COMMON ORDER

(Order of the Court was delivered by **S.S.SUNDAR, J.**)

These Writ Petitions are filed challenging the proceedings of third respondent, dated 20.02.2020 and the consequential order, dated 20.02.2020.

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2.By consent of both parties, these Writ Petitions are taken up for final disposal at the stage of admission itself.

3.By the impugned notice, the third respondent directed the petitioners and others to remove the encroachments. It is pertinent to mention that a second notice is issued by the third respondent by exercising his power under the provisions of Tamil Nadu Land Encroachment Act 1905. As a matter of fact, this Court noticed that a similar notice was issued by the third respondent under Section 6 of the Tamil Nadu Land Encroachment Act 1905. In a Writ Petition filed by the petitioner in W.P.(MD)No.8547 of 2018, this Court, after holding that such notice cannot be issued without prior notice under Section 7 of the Tamil Nadu Land Encroachment Act 1905, allowed the Writ Petition with liberty to proceed afresh. Even thereafter, the third respondent has issued the present notice under Section 6 of the Act without a notice as contemplated under Section 7 of the Act.

4.Be that as it may, the learned Special Government Pleader has conceded that the Block Development Officer has no power to initiate action under the provisions of Tamil Nadu Land Encroachment Act 1905. The property, which is the subject matter of these Writ Petitions, is classified as "Mandhai poramboke". It is not in dispute that the said land vest with the Government and that the Tahsildar or anyone authorised by Tahsildar in terms of provisions of Tamil Nadu Land Encroachment Act 1905, alone can initiate action under the provisions of the Act. The third respondent has no jurisdiction to exercise the power under the Tamil Nadu Land Encroachment Act 1905.

5.Hence, these Writ Petitions are allowed and the impugned orders passed by the third respondent, dated 20.02.2020 are set aside. However, it is open to the second respondent to initiate action for eviction invoking the provisions of Tamil Nadu Land Encroachment Act 1905. The second respondent is directed to issue show cause notice under Section 7 of the Act and then, after considering the objections if any, pass an order under Section 6 of the Act. This exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. Since, the impugned orders are set aside by this Court, there shall not be any coercive action following the impugned orders. But fresh proceedings can go on. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (crl.side)

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/ /2020

Sub Assistant Registrar(CS)



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+2 CC to Mr.D.SADIQ RAJA, Advocate SR-10297, 10298
+1 CC to SPL.GP (SR-10344[F] dated 06/03/2020)

W.P(MD)Nos.4707 and 4709 of 2020
05.03.2020

MK (10.03.2020) 3P 7C