

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.1764/2021 & WMP.No.1975/2021

[Video Conferencing]

1.Abdul Sathar
2.S.Junas
3.A.Nazeer
4.N.Srinivasan

... Petitioners

Versus

1.The Government of Tamil Nadu
rep.by its Secretary to the Government
Revenue Department, Fort St George
Chennai 600 005.

2.The Special Commissioner and
Commissioner of Land Administration
Chepauk, Chennai 600 005.

3.The District Collector,
Udhagamandalam, Nilgiris.

4.The Tahsildar
Udhagamandalam, Nilgiris.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus forbearing the respondents, their men, servants, agents or any one claiming under them from in any manner evicting the petitioners from the lands measuring an extent of 4.93 acres in S.No.4819/2, Kakathope Village, Fingerpost, other than by way of due process of law.

For Petitioners: Mrs.Al.Gandhimathi

For Respondents: Mr.R.Vijayakumar
Additional Government Pleader

ORDER

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

(1) By consent, the writ petition is taken up for final disposal and is disposed of by this order.

- (2) Mr. R. Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the respondents.
- (3) The sons of Tvl. E. M. Razack, E. M. Saliah, E. M. Aziz and V. Nanjundaiah, had filed the present writ petition.
- (4) Tvl. E. M. Razack, E. M. Saliah and E. M. Aziz are brothers and they were granted lease along with others in respect of the lands in RS.No.4819/2 etc., upto Ootacamund Taluk and Town for the purpose of 'Grow More Food Campaign' in terms of G.O.Ms.NO.494, Revenue Department dated 01.03.1949 and it was extended for a period of another ten years vide proceedings of the 3rd respondent dated 03.08.1949 in R.Dis.No.6898/49, subject to certain conditions.
- (5) The 3rd respondent, vide proceedings dated 31.07.1965 in D.Dis.No.14973, refused to extend the lease for an extent of 4.93 acres in S.No.4819/2 of Ooty Town and challenging the same, Tvl. E. M. Razack, E. M. Saliah and E. M. Aziz preferred an appeal before the then Board of Revenue, Government of Madras, Chepauk, Chennai-600 005. The Commissioner of Land Revenue, Prohibition and Excise representing the Board of Revenue, vide proceedings dated 22.02.1968 in B.P.Rt.No.905 [B], has rejected the appeal and consequently, vacated the interim order dated 05.09.1965. The said persons preferred a revision before the Revenue Department of the Government of Tamil Nadu, who vide G.O.Ms.No.2175, Revenue Department dated 03.10.1981, has rejected the said revision as devoid of merit and consequently, vacated the interim orders with a further direction, directing the 3rd respondent to take necessary steps to alienate the lands in S.No.4819/81 admeasuring to an extent of 6.12 acres of Ooty Town in favour of Tamil Nadu Milk Producers' Federation Limited.
- (6) Accordingly, they were issued with Eviction Notice and challenging the same, they filed a petition dated 16.11.1982. The Office of the Assistant Collector, Coonoor, after taking into consideration, the said appeal petition, vide proceedings dated 03.09.1983 in K.Dis.No.27781/82, has rejected the appeal of the said persons as well as one Nanjundaiyar with a further direction that they should vacate the lands immediately.
- (7) The 3rd respondent, vide proceedings dated 12.02.1985, in Na.Ka.Yu.3.No.100580/83, has rejected the appeal petitions filed by Tvl. E. M. Razack, E. M. Saliah, E. M. Aziz and Nanjundaiyar dated 12.10.1983 with a further direction to take appropriate action in terms of the provisions under the Tamil Nadu Land Encroachment Act, 1905. Tvl. E. M. Razack, E. M. Saliah, E. M. Aziz and Nanjundaiyar, aggrieved by the proceedings/orders of the 3rd respondent dated 12.02.1985, filed a revision before the Special Commissioner/Commissioner of Land Administration, viz., the 2nd respondent herein, who vide proceedings / order dated 28.12.1986 in Pa.Mu.F/20956/85, has vacated the interim order and dismissed the said revision. In the interregnum, the above said persons, including Thiru. V. Nanjundaiyar, has filed OS.No.156 of 156 of 1997 on the file of the Court of District Munsif, Uthagamandalam, for permanent injunction

restraining the respondents herein, who were arrayed as the defendants in the said suit, from interfering with their possession and the suit came to be dismissed vide judgment and decree dated 29.10.2001 by the Court of District Munsif at Udhagamandalam.

- (8) The plaintiffs in OS.No.156 of 1997, viz., the respective fathers of the petitioners herein, aggrieved by the same, preferred an appeal in AS.No.4 of 2002 on the file of the Court of the District Judge and Appellate Authority of the Nilgiris, at Udhagamandalam. The Appellate Court, vide judgment and decree dated 13.03.2002, dismissed the said appeal suirt, granting three months time for eviction. The appellants therein, aggrieved by the said dismissal of the Appeal Suit, filed Second Appeal in SA.No.965 of 2002 on the file of this Court and it was entertained and an order of injunction was granted on 21.06.2002 in CMP.No.7719 of 2002 in SA.No.965 of 2002, initially for a period of four weeks and later on, vide order dated 31.12.2002, it was made absolute. The said Second Appeal itself came to be dismissed as not pressed vide judgment dated 28.10.2010.
- (9) In the interregnum, all the original petitioners/fathers of the petitioners herein died and their sons had filed the present writ petition, stating among other things that they have cultivated vegetables and are ripe for cultivation and at this juncture, steps are being taken to dispossess them from the lands admeasuring an extent of 4.93 Acres in S.No.4819/2 of Kakathope Village, Fingerpost, Udhagamandalam Taluk, the Nilgiris District.
- (10) Mrs.Al.Gandhimathi, learned counsel for the petitioners would submit that this Court may take into consideration sympathetic view of the matter, especially, in the light of the fact that the vegetables grown in the lands in question, are ripe for cultivation and if some breathing time is given, the petitioners may cultivate the crops/vegetables.
- (11) Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents would submit that all the endeavours made by the fathers of the petitioners herein before all Forums, had ended in failure and would further add that mere long possession would not confer upon any right upon the petitioners for the reason that admittedly, it was only a lease and it cannot be treated as a perpetual one and prays for dismissal of this writ petition as devoid of any merit.
- (12) This Court has carefully considered the rival submissions and also perused the materials placed before it.
- (13) This Court, in the earlier paragraphs, had narrated the results of the proceedings initiated by the fathers of the petitioners herein and they have failed to succeed in their endeavour. The only point urged by the learned counsel for the petitioners is that since the vegetables are ripe for cultivation, some breathing time may be granted. However, the petitioners had failed to come out with any affidavit as to the time they require to cultivate the vegetables and vacate the lands peacefully and in the absence of the same,

- this Court is not in a position to consider the said plea.
- (14) No doubt, this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, also exercises equitable jurisdiction. But a writ of mandamus cannot be ordered based on sympathy alone.
- (15) The petitioners appear to have developed an impression that since their fathers were in possession of the lands from the year 1949, they developed a perpetual right to remain in possession and in the considered opinion of the Court, in the light of the above facts and circumstances, especially dismissal of various proceedings initiated by the fathers of the petitioners herein and that all the proceedings had ended in dismissal, the prayer sought for by the petitioners cannot be granted. This Court finds no merit in this writ petition.
- (16) In the result, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary to the Government
Government of Tamil Nadu
Revenue Department, Fort St George
Chennai 600 005.

2. The Special Commissioner and
Commissioner of Land Administration
Chepauk, Chennai 600 005.

3. The District Collector,
Udhagamandalam, Nilgiris.

4. The Tahsildar
Udhagamandalam, Nilgiris.

+1cc to Mr.AL.Gandhimathi, Advocate, S.R.No. 5147

WP.No.1764/2021

SV(CO)
GN(26/02/2021)