

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|               |            |
|---------------|------------|
| Reserved on   | 21.04.2021 |
| Pronounced on | 30.04.2021 |

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH  
AND  
THE HON'BLE Ms. JUSTICE R.N.MANJULA

W.A.No.493 of 2020  
and  
C.M.P.No.7318 of 2021

1.N.Urban Jeevaraj  
2.N.Gabriel Vijayanathan  
3.N.Nthyananthan  
4.N.Mary Rejeswari  
5.N.Bridget Peter Manoharan  
6.N.Erasmus Rajesekaran  
7.Fatima  
8.Ferdin Sunitha

..Appellants/Petitioners

Vs.

1.The Director of Fisheries,  
Department of Fisheries,  
Teynampet,  
Chennai - 600006.

2.The Assistant Director of Fisheries,  
Department of Fisheries,  
Royapuram,  
Chennai - 600013.

..Respondents/Respondents

Prayer :- Writ Appeal filed under Clause 15 of the Letters Patent, praying to allow and set aside the order dated 27.02.2020 passed in W.P.No.26392 of 2019.

Prayer in W.P.No.26392 of 2019 :- Writ Petition filed 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 Appellants : Mr.N.G.R.Prasad  
for Mr.Michael Amalraj

For Respondents: Mr.J.Pothiraj  
Special Government Pleader

#### JUDGEMENT

R.N.MANJULA, J.

This intra Court Appeal has been preferred, calling in question, the legality and validity of the order dated 27.02.2020 passed by a learned Single Judge in W.P.No.26392 of 2019 by dismissing the writ by giving the following conclusion:-

"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."

2. Heard Mr.N.G.R.Prasad for Mr.Michael Amalraj, learned counsel for the appellants and Mr.J.Pothiraj, learned Special Government Pleader appearing for the respondents.

3. The Writ Appellants 1 to 6 are the children and the Appellants 7 & 8 are the wife and daughter of the deceased son of one late Jayapushpammal, in whose favour a conditional allotment of the impugned site was made by the respondents for the purpose of carrying out her firewood business.

4. Originally, the lands bearing Survey No.3053/2, 3476/6, 3477/5 were acquired by the Government vide G.O.Ms.No.1382 Food and Agriculture dated 30.04.1957 for rehabilitation of the

fishermen community who were evicted from the defense land and rendered homeless due to sea erosion. Among the said lands, the land in R.S.No.3053/2 has been sub-divided into two divisions into R.S.Nos.3053/11 and 3053/12. In R.S.No.3053/12, the office of the Assistant Director of Fisheries is situated. The other one ground in S.No.3053/11 was allotted to the deceased Jayapushpammal through the proceedings of the Government vide No.6220-1/60-6 dated 21.01.1961. The above allotment was made purely out of grace and for the purpose of enabling her to keep her firewood depot there and earn her livelihood. As per the conditions enjoined in the allotment, the site should be handed over to the Respondents at the time when they take up the same for implementing its development plans. The entries in the permanent land register of the Government Lands would confirm that the sites in both R.S.Nos.3053/11 and 3053/12 continue to be standing in the name of the Fisheries Department.

5. During the year 2006, the said Jayapushpammal had filed a writ petition in W.P.No.35366 of 2006 on the ground that there was a threat to evict her from the premises and she prayed to issue a Writ for restraining the respondents from interfering with her possession and enjoyment over the property. In the counter filed by the respondents to the said Writ Petition, it was made clear that the said Jayapushpammal did not conduct the firewood business in the said premises for which purpose the allotment was made. It was further submitted that she had raised a pucca building in the said site and it is used by her son for running his dispensary.

6. As per the terms of the allotment given to the said Jayapushpammal, she was not supposed to build any permanent super structure over the site and she can only put up temporary structures like sheds for the purpose of storing the firewood for sales. The learned Single Judge before whom the Writ Petition in W.P.No.35366 of 2006 was filed, had dismissed the same on 14.12.2011. However considering the possession of Jayapushpammal, the learned Single Judge had directed the authorities that they should give an opportunity of hearing to her before evicting her and the operating part of the order is extracted as below:-

"5. .... Thus, prima facie, it appears that the petitioner does not have any title over the property. Therefore, the petitioner cannot claim any vested right to continue to remain in possession in the Government land.

6. However, taking note of the fact that the petitioner has been in possession of the land for several years, the respondents shall not evict the petitioner without issuing notice to her and affording

an opportunity of personal hearing to the petitioner. The writ petition is disposed of with the above direction."

7. The Writ Appeal filed by her in W.A.No.1485 of 2013 was also dismissed on 04.08.2018 by confirming the above order of the learned Single Judge.

8. It is seen from the impugned order of the learned Single Judge that in pursuant to the earlier direction given by the Court, the second respondent had issued a notice dated 04.08.2017 to Jayapushpammal for vacating the property and she also gave her reply on 18.08.2017. Thereafter, the eviction notice dated 27.05.2019 was issued calling upon her to vacate the premises within 2 weeks. The Appellants as petitioners had challenged the same by way of filing a Writ Petition in W.P.No.19378 of 2019 and claimed that as per the direction of the Court given in the earlier W.P.No.35366 of 2006, an enquiry has to be conducted by the respondents before vacating them from the property. It is to be noted that the said Writ Petition has been filed by the legal heirs of Jayapushpammal, who were not parties to the allotment and the Writ is filed at the time when the allotment itself had come to an end due to the death of Jayapushpammal.

9. The respondents had issued another order for eviction on 30.07.2019. On receiving it, the Appellants who are the legal heirs of the deceased Jayapushpammal again filed another writ petition in W.P.No.23502 of 2019 and prayed to quash the eviction order dated 30.07.2019. In the counter filed by the respondents-Department, it is mentioned that if the petitioners did not vacate from the property despite of repeated reminders, the respondents would resort to eviction under the Tamil Nadu Land Encroachment Act, 1905. On taking note of this, the petitioners sought the permission of the Court for withdrawing the same. While disposing the said Writ Petition, the learned Single Judge made the following order:-

"3. Learned Additional Government Pleader appearing on behalf of the Respondents referring to the Additional Counter Affidavit 19.08.2019 filed by the Second Respondent submits that if the Petitioners do not vacate from the properties despite the reminders made, the Respondents would resort to eviction proceedings under the Tamil Nadu Land Encroachment Act, 1905, by issuing necessary notices to the parties to vacate from the properties.

4. In view of the aforesaid submissions made, the Learned Counsel for the Petitioners seeks permission of this Court to withdraw the Writ Petition with liberty to

challenge any proceedings for eviction that may be taken by the Respondents under law.

5. Accordingly, the Writ Petition is dismissed as withdrawn granting such liberty."

10. From the above conduct of the petitioners, it can be safely presumed that the Appellants have submitted themselves to the eviction proceedings taken by the respondents for getting back the possession of the property. Thereafter, there should not have been anymore hurdles in getting back the possession of the property and the respondents themselves ought to have vacated the premises and handed over the possession to the respondents. But it did not happen so.

11. So, the respondents issued an eviction notice in Na.Ka.No.883/A1/2012 dated 27.05.2019 in accordance with Rule 6 of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Rules, 1978, by giving a short time for the petitioners to handover possession. Immediately after receiving the said notice, the petitioners have filed the impugned Writ Petition in W.P.No.26392 of 2019 by challenging the said proceedings. This is the fourth Writ Petition filed for the same property. It is pertinent to note that the license given to the deceased Jayapushpammal to run firewood depot in the site has already been cancelled by the Chennai Corporation.

12. Despite, Jayapushpammal not having any title over the site, the superstructure was built therein and assessment for the same was also made in the name of her husband V.N.D.Chandran. And the Plan Approval and Electricity connections have been obtained in the name of her husband. Knowing pretty well that the husband of Jayapushpammal did not have any better right in the site, his name was inducted in to the assessment, just in order to stake a different claim over the property. The learned Single Judge has also observed in the impugned order that the creation of tax receipts in the name of her husband was with a deliberate intention of setting up an alternate right over the property and perpetuate their possession.

13. Further, it is submitted by the learned Special Government Pleader for the respondents that in the superstructure constructed in the site, certain religious activities were carried out regularly. This is also purely in violation of the conditions of allotment. Each of the condition for allotment has been violated and the petitioners dodge the due process for eviction by filing repeated Writ Petitions. In the order passed in the earliest Writ Petition in W.P.No.35366 of 2006 filed by Jayapushpammal itself, the learned Single Judge

had made it clear that Jayapushpammal cannot claim any perpetual possession or title. However, considering her occupation in the site, the respondents have been ordered to put her on notice before eviction. This is obviously to facilitate her to request for a reasonable time for the purpose of vacating the premises. But an undue long time has been gained by way of filing repeated litigations. By taking undue advantage of the pendency of the litigations, Jayapushpammal and her legal heirs had continued their enjoyment of the site for several years.

14. The learned Single Judge has fittingly narrated the trajectory of events through which the petitioners managed to evade the eviction proceedings for years together. Anyone who manages to squat on the Government property after the expiry of the period for which he was permitted to occupy, should be deemed to be in Unauthorised Occupation. Since the original allottee of the property did not continue to use the property for the purpose for which it was allotted to her and it was used for some other purposes including religious activities, she has violated the conditions for allotment. And she also died subsequently. Even if Jayapushpammal was alive now, she could not have had any lawful right or claim on the property. When such is the matter, the Appellants who are her legal heirs cannot stake any claim or possession in the property. As per Sec.15(A) of the Tamil Nadu Land Encroachment Act, 1905, if anyone occupies any Government property after his right to occupy the same ceased to exist, he is deemed to be in unauthorised occupation. And hence, he is liable to be evicted. As per Sec.13 of the Act, anyone who is liable to be evicted under any other law in force, can get any exemption due to any of the provisions of the Act.

15. So, it is right for the learned Single Judge to observe by placing reliance on the Full Bench judgement of this Court reported in 2014 (5) CTC 241 {A,Muniappan and Others Vs. The Tahsildar, Tambaram Taluk} and hold that the Government has the right to issue the impugned notice for eviction under Rule 6 of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Rules, 1978.

16. A small gesture of goodwill shown on mercy grounds to a poor woman in order to enable her to make out her livelihood, has caused several decades of delay in getting back the site for implementing the developmental plans. So, the petitioners have not only a legal obligation but also a moral obligation to vacate the premises peacefully without making any fuss or delay.

17. The second respondent has duly served notices on the petitioners also, before passing an order for demolition and eviction. The benefit of hearing was also given to

Jayapushpammal in compliance with the orders passed in W.P.No.35366 of 2006. In fact, the respondents were gracious enough to give a hearing to the petitioners as well. Even after the impugned notice was issued, the petitioners were not willing to vacate the premises and hand over the possession to the respondents.

18. The motive for filing repeated Writ Petitions by the deceased Jayapushpammal and her legal heirs is patently clear that they just wanted to continue their occupation even after the purpose has ceased to exist and the allottee herself died. The petitioners being the illegal occupants of the demised premises, cannot question the authenticity of the notice issued by the second respondent, which called on them to vacate the premises and hand over the possession. Hence, we find that the order passed by the learned Single Judge does not suffer from any factual or legal infirmity and it does not warrant any interference.

19. It is worth to mention that an announcement has been made in the Legislative Assembly for the purpose of constructing a Paraprofessional Institute of Fisheries Technology in the site. This Institute is proposed to be opened for the purpose of creating skilled paraprofessional manpower for the Industry and for Fish Processing Industry and thereby, empower the underprivileged youth.

20. During the pendency of the Writ proceedings, a direction was given to maintain status-quo by passing an order dated 09.09.2019 as under:-

"It is humbly submitted that the Petitioner's premise has been demolished on 04.09.2019 before the admission of this Writ Petition on 05.09.2019.

It is humbly submitted that subsequent to the directions issued by the Hon'ble Court, no demolition has been carried out as the Petitioner's premises had already been demolished. Further in compliance with the directions issued by the Hon'ble Court, the status quo will be maintained and no development will be carried pending disposal of the Writ Petition".

21. Since this Writ Appeal is dismissed and the superstructure has already been started to be demolished, the respondents are at liberty to complete the same and take up the site for implementing the development plans for the fisherman committee.

In the result, the Writ Appeal is dismissed. Since all the writ proceedings have come to an end, nothing would stop the respondents from carrying out the development plans in the site

in accordance with the announcement made already and hence the respondents are at liberty to carry out the same. No costs. Connected civil miscellaneous petition in C.M.P.No.7318 of 2021 is closed.

-s/d-

Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

Sni  
To

1.The Director of Fisheries,  
Department of Fisheries,  
Teynampet,  
Chennai - 600006.

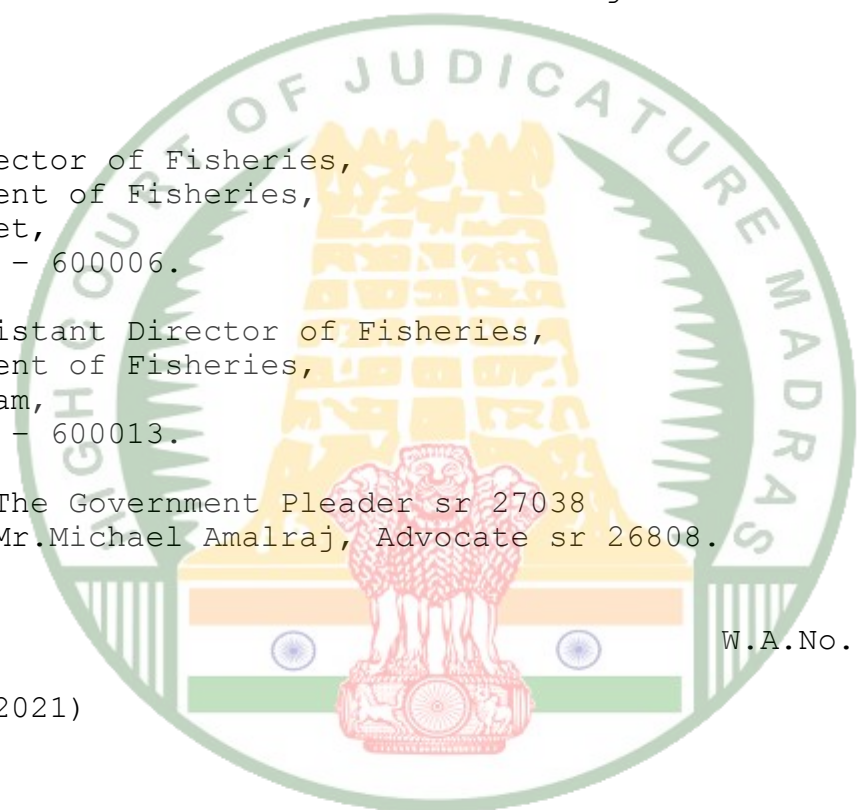
2.The Assistant Director of Fisheries,  
Department of Fisheries,  
Royapuram,  
Chennai - 600013.

+1 CC to The Government Pleader sr 27038

+1 CC to Mr.Michael Amalraj, Advocate sr 26808.

SSD(CO)  
SP(09/07/2021)

W.A.No.493 of 2020

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The gopuram is flanked by two green palm trees. The entire emblem is set against a white background with a green border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

WEB COPY