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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.05.2021

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P.Nos.11678 & 11679 of 2021 &
WMP.Nos.12420, 12431 to 12433 of 2021

P.Ponnusamy ..Petitioner in W.P.No.11678 of 2021

Karuppayi ..Petitioner in W.P.No.11679 of 2021
W/o.Rajarathinam

Vs.

1.The District Collector,
Erode.

2.The Revenue Divisional Officer,
O/o. The District Collector,
Erode.

3.The Tahsildar,
Bhavani Taluk,
Erode District

..Respondents in both W.P.s

Common Prayer : Petition under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records made in the order dated 21.04.2021 passed by the 3rd respondent under section 6 of the Tamil Nadu Land Encroachment Act, 1905 quash the same.

For Petitioner
(in both Petitions) :: Mr.P.K.Harinath Babu

For Respondents
(in both Petitions) :: Mrs.A.Srijeyanthi
Special Government Pleader

COMMON ORDER

(Order of the Court was made by R.SURESH KUMAR.,J.)

Since the issue raised in both the writ petitions is one and the same, with the consent of learned counsel appearing on both sides, these writ petitions are disposed of by this common order.



2. The petitioner in W.P.No.11678 of 2021 namely P.Ponnusamy and the petitioner in W.P.No.11679 of 2021 namely Karuppayi are husband and wife. They claimed that they have been in possession and in occupation of the land in R.S.No.82/2, Chinnapuliyur Village, Erode District, nearly about 60 years and in that capacity, they claimed to be in continuous possession of the property.

3. When that being so, it seems that one P.Senthilkumar filed a writ petition in W.P.No.18719 of 2020 where he sought for certain relief. While deciding the same, a Division Bench of this Court has passed order dated 16.12.2020 and has given direction, which reads as follows:

"5. Though the petitioner prays for a larger relief, this Court in the light of the above facts and circumstances, and without going into the merits of the claim, projected by the petitioner, either in his representation or in this Writ Petition, directs the 4th respondent, with the help of the jurisdictional Surveyor, as well as with the aid of the relevant revenue record, to cause inspection of the land in S.F.No.66B and new S.F.No.82/2, in Chinnapuliyur Village, Bhavani Taluk, Erode District, after putting the petitioner as well as the private respondents, on notice and if the result of the survey and inspection reveals any infraction on the part of either all the parties or both the parties, shall take immediate, necessary and appropriate steps, in accordance with law, by also adhering to the principles of natural justice and complete the said exercise within a period of ten weeks from the date of receipt of a copy of this order / uploading of the order in the website and communicate the decision taken, to the petitioner as well as respondents 5 to 7 and any other persons concerned / encroachers.

6. The Writ Petition stands disposed of, accordingly. No costs."

4. Pursuant to the said order, the respondent Revenue Department has issued notice under section 7 of the Land Encroachment Act, 1905 to both the petitioners. In response to the said Section 7 notice, both the petitioners have given their separate reply on 02.04.2021 where they have stated that the said land at R.S.No.82/2, according to them, is 'Natham Poramboke' and they have been in possession and enjoyment of the property for several years, which they claim as sixty years and therefore, they are entitled to continue in possession and enjoyment of the property and therefore, any action now being



initiated by the Revenue Authorities by invoking the provisions of Land Encroachment Act, 1905 may not be justifiable.

5. However, subsequently, on 21.04.2021, the order under section 6 of Act 1905 has also been issued separately by the respondent Tahsildar in respect of both the petitioners and on the same day i.e., on 21.04.2021 in Na.Ka.No.751/2019/A1, the Tahsildar concerned, has passed an order rejecting the plea of the petitioners for laying off the hands from pursuing further under the provisions of Land Encroachment Act, 1905. Aggrieved over the said order passed by the Tahsildar dated 21.04.2021, both the petitioners have approached this Court by filing these petitions with the aforesaid prayer.

6. Reiterating the aforesaid, the learned counsel for the petitioners would seek the indulgence of this Court to interfere with the impugned order on the ground that both the petitioners are in possession and enjoyment of the property in R.S.No.82/2.

7. However, the learned Special Government Pleader appearing for the respondents would submit that, the land in question admittedly is a Government Poramboke Land. While that being so, whatever longer period the petitioners had been in possession and enjoyment of the property, that would not confer any right on them to continue to be in possession and therefore, in this regard, the Revenue Authorities have initiated action for removal of encroachment in the land in question by invoking the provisions of 1905 Act which is justifiable and therefore, in this regard, the impugned order dated 21.04.2021 reiterating the said position by rejecting the plea of the petitioner is also justified. Accordingly, the said impugned order does not warrant any interference.

8. We considered the rival submissions made on both sides and have given our anxious consideration to the materials placed before this Court.

9. As rightly pointed out by the learned Special government Pleader for the respondents, the land in question is a Government Poramboke Land. However, the stand of the petitioner is that it is a Government Natham Poramboke Land. If it is a Natham Poramboke, where, whoever have been in occupation for dwelling purpose it can well be considered for grant of patta for Natham land and in this regard occupation of the petitioners in the natham land cannot be treated as an encroachment of the Government Poramboke land and therefore, the said proceedings now being initiated including the impugned order pursuant to the order passed under the provisions of 1905 Act, is not justified.

10. The said submission of the learned counsel appearing for the petitioner is appealing to this Court and this Court is of the considered view that if the petitioners are able to prove that, they are in continuous possession and enjoyment of the



property, they can approach the concerned authority of the Revenue Department for grant of patta for the land in question if it is a grama natham poramboke. In that view of the matter, in order to resolve the issue raised in these writ petitions, we are inclined to dispose of the writ petitions by this common order with the following directions:

(a) that the petitioners herein are hereby permitted to make a request /application to the Revenue Divisional Officer concerned by way of joint representation to seek patta for the Government Grama Natham Poramboke Land i.e., R.S.No.82/2, for the portion which they claim to be in possession, within a period two weeks from today.

(b) On receipt of such application, the same shall be considered and decided by the Revenue Divisional Officer, who is the second respondent, within a period of four weeks thereafter and in this regard if any spot inspection or enquiry is required, that can also be undertaken by the Revenue Divisional Officer through the Taluk Tahsildar by utilising the services of the third respondent and the Taluk Surveyor and after having the report of spot inspection and by completing the enquiry, the Revenue Divisional Officer shall pass final orders with regard to the plea to be made by the petitioner for grant of patta, if it is a Grama Natham Poramboke Land.

(c) The said final order shall be passed by the second respondent and to be communicated to the petitioner within the said time. Needless to mention that depending upon the order to be passed by the second respondent, the petitioners can workout their remedy in accordance with law.

11. With the aforesaid directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

gpa/nl

To

1.The District Collector,
Erode.

2.The Revenue Divisional Officer,
O/o. The District Collector,
Erode.



3.The Tahsildar,
Bhavani Taluk,
Erode District

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W.P.Nos.11678 & 11679 of 2021

SSI (CO)
SP (09/08/2021)