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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.P. No.18064 of 2021 &
W.M.P.Nos.19295 & 19296 of 2021
(Heard through VC)

P.M.R.Kannan

..Petitioner

Versus

The Executive Officer,
Thirukoilur Town Panchayat,
Thirukovilur.

..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari to call for the records on the file of the respondent in proceedings Na.Ka.No.292/2018/A2, dated 03.08.2021 and consequential order in proceedings Na.Ka.292/2018/A2 dated 18.08.2021, quash the same as illegal, incompetent and without jurisdiction.

For petitioner : Mrs.R.Poornima

For respondent : Mr.Richardson Wilson
Government Counsel

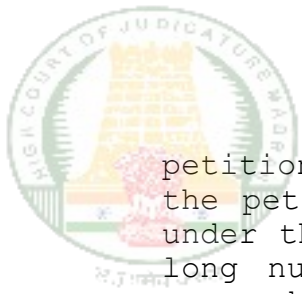
ORDER

K.KALYANASUNDARAM, J.,

This Writ Petition has been filed for issuance of Writ of Certiorari to quash the order passed by the Executive Officer, Thirukoilur Town Panchayat, Thirukovilur under Sections 7 and 6 of the Tamil Nadu land Encroachment Act.

2. When the matter came up for hearing on 13.09.2021, this Court dismissed the Writ Petition with liberty to the petitioner to file an Appeal before the Appellate Authority within a period of three weeks. Subsequently, the matter was listed on 17.09.2021 for clarification.

3. Mrs.R.Poornima, learned counsel appearing for the



petitioner would contend that the land under the occupation of the petitioner is classified as Natham land and the property is under the enjoyment of the petitioner and his forefathers for a long number of years. According to the learned counsel, the respondent has no right or authority to initiate proceedings under the Tamil Nadu Land Encroachment Act. In this regard, the learned counsel relies on the order of the Division Bench of this Court in W.P.No.33559 of 2019.

4. In the decision referred by the learned counsel appearing for the petitioner, this Court has accepted the contention that the Executive Officer of Ulundurpet Town Panchayat, who was the respondent in that Writ Petition did not have authority to issue notice under Section 7 of the Tamil Nadu Land Encroachment Act. This Court has consistently taken similar stand in other cases also.

5. Per contra Mr. Richardson Wilson, the learned Government Counsel appearing for the respondent would submit that as per the provisions under the Tamil Nadu Land Encroachment Act not only the Revenue Authorities, but also the respondent has power to initiate proceedings to remove the encroacher. The learned counsel has drawn the attention of this Court to Section 6 of the Tamil Nadu Land Encroachment Act in support of his submission.

6. Even though this ground was not raised when the matter was heard earlier, we permitted the counsel to argue this point, since it goes to the root of the matter.

7. Section 6 of the Tamil Nadu Land Encroachment Act reads as follows:-

"6. Liability of person unauthorisedly occupying land to summary eviction, forfeiture of crops, etc. -
(1) Any person unauthorisedly occupying any land for which he is liable to pay assessment under section 3 [or section 3- A] may be summarily evicted by the Collector, [or subject to his control, by the Tahsildar or Deputy Tahsildar or any other officer authorized by the State Government in this behalf (hereinafter referred to as the 'authorized officer')] and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector [or subject to his control, the Tahsildar or Deputy Tahsildar or authorized officer] may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector [or subject to his control by the Tahsildar or Deputy



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Tahsildar or authorized officer] and any property so forfeited shall be disposed of as the Collector [or subject to his control, the Tahsildar or Deputy Tahsildar or authorized officer] may direct.

(2) Mode of eviction. - An eviction under this section shall be made in the following manner, namely:
- By serving a notice in the manner provided in section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector [or the Tahsildar or Deputy Tahsildar or the authorized officer] may deem reasonable after receipt of the said notice to vacate the land, and if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstructed by any person, the Collector [or the Tahsildar or Deputy Tahsildar or authorized officer] shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector [or of any Tahsildar or Deputy Tahsildar or authorized officer] for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for imprisonment in the civil jail of the district for the like period:

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under sections 183, 186 or 188 of the Indian Penal Code, 1860 (Central Act XLV of 1860), in respect of the same facts.

[(3) Any authorized officer taking proceedings under this section shall make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction.]

A plain reading of the above Section shows that an encroacher can be evicted by the Collector, by Tahsildar or by Deputy Tahsildar or any other Officer authorized by the State Government in this behalf. The learned Government Counsel for the respondent relies on the letter issued by the Tahsildar asking the respondent to remove the encroachment to contend that this letter authorizes respondent to initiate eviction



proceedings under the Land Encroachment Act. We are unable to agree with the said submissions for the reason that when the act clearly states that the authorization has to be given by the Government, the respondent has no right to issue notice under Sections 6 and 7 of the Act, based on the letter said to have been issued by the Tahsildar.

8. In the light of the undisputed facts that the respondent, the Executive Officer of a Town Panchayat issued impugned orders without proper authorization by the Government, we are of the considered view that the orders impugned in this Writ Petition cannot be sustained.

9. Accordingly, the orders impugned in this Writ Petition are set aside and the Writ Petition is allowed and the earlier order passed by this Court, dated 13.09.2021 is recalled. It is made clear that this order will not prevent the competent authority from initiating proceedings in accordance with law. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

r n s

To

The Executive Officer,
Thirukoilur Town Panchayat,
Thirukovilur.

+1cc to Mr.R.Poornima, Advocate, S.R.No.56013

W.P. No.18064 of 2021 &
W.M.P.Nos.19295 & 19296 of 2021

KG(CO)
RGA(30/11/2021)