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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.10.2021

CORAM

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

W.P.NO.20675 OF 2021
AND W.M.P.NO.21945 OF 2021

1.Mrs.Sheela

2.Ms.Sumathi

...Petitioners

-VS-

1.The District Collector,
Tiruppathur District,
Tiruppathur.

2.The Tahsildhar,
Tiruppathur Taluk,
Tiruppathur District.

3.The Municipal Commissioner,
Jolarpettai Municipality,
Tiruppathur District.

4.The Town Planning Inspector,
Jolarpettai Municipality,
Tiruppathur District.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the third respondent herein in Na.Ka.No.100/2021/F1 dated 06.09.2021 and quash the same.

For petitioners : Mr.S.V.Karthikeyan

For respondents : Mrs.Akila Rajendran,
Government Advocate.

ORDER

(Order of the Court was made by K.KALYANASUNDARAM, J.,)

This Writ Petition has been filed for issuance of a Writ of Certiorari, to quash the order of the third respondent dated 06.09.2021 made in Na.Ka.No.100/2021/F1.



2.The case of the petitioners is that the land in Survey No.63/14 is in possession and occupation of their family for about 40 years. The land in question was classified as "natham" and hundreds of houses were constructed over therein. It is also stated that patta was issued to most of the occupants in the area. The petitioners are in possession of about 2.47 cents and they have constructed RCC roof house, to an extent of 420 square feet on the said land. The house was assessed for property tax and they have also been provided with electricity service connection. The petitioners' mother Vanitha had availed loan from Tirupppthur Taluk Rural Co-op Housing Society Ltd., by pledging this property. The further case of the petitioners is that, on 16.06.2021, the third respondent came to their house with a machinery to demolish their house. Then only they are aware that in pursuance of the order passed in W.P.No.6474 of 2021 dated 12.03.2021, the 3rd respondent tried to demolish their house.

3.Mr.S.V.Karthikeyan, the learned counsel for the petitioners would state that originally, the land in dispute was classified as "natham", subsequently, it has been shown as the property belongs to the municipality.

4.It is the submission of the learned Government Advocate appearing for the respondents that the 3rd respondent issued show cause notice dated 20.04.2021, directing the petitioners to remove the encroachment in the area. Questioning the same, the petitioners have instituted a suit in O.S.No.175 of 2021 before the learned Subordinate Judge, Tiruppathur for declaration of their title and when the suit was pending, the 3rd respondent has issued the impugned order dated 06.09.2021, directing the Revenue Inspector to remove the encroachment. According to the learned Government Advocate, the respondent Municipality can remove the encroachment by following the due process of law.

5.The learned counsel for the petitioners by placing reliance on the decision of the Hon'ble Full Bench in the case of Ramaraju Vs. The State of Tamil Nadu reported in 2005 (2) CTC 741 urged that the municipality has power to remove the encroachment in the street and road which are maintained by the municipality and in respect of other area, even if the land belongs to the municipality, it has no power to remove the encroachment. It is therefore obvious that recourse can be had to the provisions contained in the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (hereinafter referred to "The Public Premises Act"). But in the case on hand, the respondents without even mentioning the provisions of the above act, had directed the petitioners to remove the encroachment.



6.The learned Government Advocate appearing for the respondents submitted that before passing the impugned order, the 3rd respondent has issued show cause notices on 20.04.2021 and 11.08.2021 and after providing opportunity to the petitioners, passed the impugned order. The land in question belongs to Jolarpettai Municipality and the petitioners are encroachers. That apart, these proceedings were initiated pursuant to the order passed in W.P.No.6474 of 2021 dated 12.03.2021. It is further argued by the learned Government Advocate that the jurisdiction of the Civil Court has been barred under Section 15 of the Code of Civil Procedure and hence the suit filed by the petitioners before the learned Subordinate Judge, Tiruppathur, is not maintainable.

7.Heard the rival submissions of the learned counsels and perused the materials on record.

8.In the case on hand, the petitioners would claim that they are in possession of the land measuring an extent of 2.47 cents in Survey No.63/14 for about 40 years and also constructed a house. Though it is stated that the land was classified as "natham", no document has been produced to substantiate the same. It is the specific case of the 3rd respondent that the land belongs to the respondent Municipality and the petitioners are the encroachers.

9.Perusal of the impugned order shows that the 3rd Respondent has not mentioned any provision under which the impugned order is passed. The Full Bench of this Court in the judgment referred above, has categorically held as follows:-

"27.Next comes the question relating to removal of encroachments on lands which do not form part of the road or roadside land or street margins. So far as the Municipalities are concerned, apart from the streets and roads which vest in the municipality, there may be certain other lands which are not part of the road or street, but which vest in the municipality. In respect of such land encroached upon by an encroacher, it is obvious that the municipality is required to follow the provisions contained in Public Premises Eviction Act or other appropriate law to recover possession from the person in possession in accordance with law. However, the municipality is not expected to take the law into its own hand and forcibly evict the trespasser by misconstruing the observation made in the order of the Division Bench. Rule of law is required to be followed. The definition clause under Section 2(e)(ii) of the Tamil Nadu Public Premises



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(Eviction of Unauthorised Occupants) Act, 1975 takes within its sweep any land or building belonging to the Municipality. It is therefore obvious that recourse can be had to the provisions contained in the aforesaid Act. Where, however, there is bona fide and serious dispute to the entitlement, of the municipality, the summary procedure contemplated under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 may not be applicable and the municipality would be required to recover possession through a Civil Courts.

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38. It is of course true that in the two counter affidavits, the municipalities have taken the stand, quite expectedly and understandably, that they have no intention to take any step for removal of any encroachment from the road or road margins without following the due procedure of law and they do not have the intention to take steps for eviction of any person from any land not belonging to the municipalities. However, since the news item appearing in the News Papers gives the impression as if Rajapalayam Municipality intended to remove all encroachments pursuant to the order passed by the High Courts in W.P.No. 689 of 2005 and since certain misconceptions have arisen as if the Division Bench has given a blanket direction for removal of encroachment even without following due process of law, the matter is required to be clarified in the following manner :

(1) If the encroachment is on road or road margins, vested in Municipalities, the removal if any is to be effected only after following the procedure contemplated in Chapter IX of the Tamil Nadu District Municipalities Act and more particularly the provisions contained in Section 182 and Section 183(6) Before taking action under Section 182 of the District Municipalities Act, notice in writing giving atleast two weeks time should be served and, if the person avoids to receive the notice, such notice can be effected by affixure. However, notice by any other means, such as through public announcement or beating of drums or by general notice in newspapers, may not be sufficient.

(2) The decision in W.P.No. 689 of 2005 cannot be construed as having abrogated the statutory power of the Council under Sections 182 and 183. The



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Council may grant licence to put up verandas, balconies, sunshades, weather-frames and the like. Similarly, the Council has power to lease road sides and street margins for occupation on such terms and conditions and for such period as the Council may fix. However, such power under Section 183(1) and 183(3) should be exercised keeping in view the provisions contained in Section 183(4) and no such licence under Section 183(1) or lease under Section 183(3) should be granted if the projection, construction or occupation is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road as such. Any projection or construction put up under Section 183(1) or (2) can be removed on expiry of the licence or the lease, as the case may be. Compensation is required to be paid in matters coming within the scope of 182(2).

(3) Payment of property tax, provisions of water connection or electricity by themselves cannot be construed as conferring any independent right, if the encroachment is otherwise unauthorised.

(4) The above directions and observations are also applicable to encroachment in respect of road or road margins coming within the jurisdiction of Municipal Corporations or Town and Village Panchayats, in which event, necessary action can be taken by the concerned authorities by following the relevant provisions of law applicable to such Corporations or Panchayats.

(5) To the extent the National Highways Act, 1956 and the Control of National Highways (Land and Traffic) Act, 2002 are applicable, action can be taken only by following the procedure prescribed under such statutes. Similarly the provisions of the Tamil Nadu Highways Act, 2001, are applicable to the Roads coming under the State Act.

(6) If the encroachment is on the land belonging to the Local Authorities, but such land is not part of the road or road margin or roadside land, eviction can be effected by following the procedure contemplated in law, namely, either by taking recourse to the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 or any other law applicable or otherwise by taking recourse to Civil Courts and not by use of unilateral force.

(7) So far as the encroachment on the land belonging to the Government is concerned, action for eviction if any can be taken only by the



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appropriate authority and by following the procedure contemplated under the Tamil Nadu Land Encroachment Act, 1905.

(8) The directions issued in W.P.No. 689 of 2005 are applicable to removal of encroachments on roads and road margins and not other lands belonging to the Local Authorities or the State. The said decision should not be construed as giving a licence to the Local Authorities to cancel the existing license or lease or to remove the encroachments without following the procedure contemplated under the law.

(9) If any Civil Courts decree or interim order is holding the field, obviously, no action can be taken, unless and until such a decree or interim order is set aside or vacated in a manner known to law."

10.While considering the powers of the respondent Municipality to remove the encroachments on the land belongs to the local authority, the Hon'ble Full Bench has held that they have to take recourse to the Public Premises Act. Indisputably, in the instant case, the respondents have not followed the procedure contemplated under the Public Premises Act. Therefore, the order dated 06.09.2021 in Na.Ka.No.100/2021/F1 passed by the 3rd respondent is set aside. The respondents are at liberty to remove the encroachments by following the due process of law.

11.In the result, this writ petition stands allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

Jer/ham

To

1.The District Collector,
Tiruppathur District,
Tiruppathur.

2.The Tahsildhar,
Tiruppathur Taluk,
Tiruppathur District.



3.The Municipal Commissioner,
Jolarpettai Municipality,
Tiruppathur District.

4.The Town Planning Inspector,
Jolarpettai Municipality,
Tiruppathur District.

+1cc to M/s.S.V.Karthikeyan, Advocate SR.No.51324

+1cc to the Government Pleader SR.No.52011

W.P.No.20675 of 2021
and W.M.P.No.21945 of 2021

KSM(CO)
RVM(02/11/2021)