



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2021

CORAM:

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

W.P.Nos.22306, 22310 and 22311 of 2021
and
W.M.P.Nos.23535, 23538 and 23539 of 2021

B.Indira	...Petitioner in W.P.No.22306 of 2021
Mathurambal	...Petitioner in W.P.No.22310 of 2021
Katharmydeen	...Petitioner in W.P.No.22311 of 2021

Vs.

1.District Collector,
Collector Office Road,
Moonvendar Nagar,
Villupuram - 605 302.

2.The Commissioner,
Tindivanam Municipality,
Hospital Road,
Tindivanam - 604 001.

3.Tahsildar,
Taluk Office,
Tindivanam East,
Tindivanam 604 001.

...Respondents in all petitions

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent made in Na.Ka.No.3473/2020/F1 dated 23.09.2021 and quash the same as illegal, arbitrary and non-est in law and consequently, forbear the respondents from interfering with the petitioner peaceful possession of the property comprised in S.No.25/8, T.S.No.3 Avaraipakkam Village, Ward C, Block No.1, Tindivanam Municipality.



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In all petitions:-

For petitioner : Mr.B.Vijay

For respondents : Mr.L.S.M.Hasan Fizal
Govt. Counsel (for R1 and R3)

Mr.P.Srinivas
Senior Standing Counsel (for R2)

COMMON ORDER

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

By consent, these writ petitions are taken up for final hearing. Since the issue involved in these writ petitions are one and the same, they are heard together and disposed of by this common order.

2.The case of the petitioners is that the land comprised in old S.No.25/8, T.S.No.3, Avaraipakkam Village, Ward C, Block No.1, Tindivanam Municipality was originally owned and possessed by one Chinnappan. He was cultivating the land for several decades. He has also paid kist to the Government.

3.The petitioners would claim that the said Chinnappan made representations to the second respondent in the year 1967 for assigning the land in his favour and the Municipal Council unanimously passed a resolution in the meeting held on 31.01.1967 relinquishing their right in the property in question. The Municipal Council has also advised the occupants of the land to approach the revenue authorities for mutation of the revenue records. Thereafter, though the said Chinnappan had made several representations to the revenue officials, his name was not mutated in the revenue records. The said Chinnappan had transferred his right and interest in the favour of the petitioners in the year 1996.

4.The further case of the petitioners is that in the year 2005, an attempt was made to take possession forcibly which necessitated them to institute a suit before the District Munsif Court, Tindivanam for permanent injunction in O.S.No.294 of 2005. The said suit is still pending. After that, the second respondent issued eviction notice under Section 182 of the Tamil Nadu District Municipalities Act. The same was challenged by the petitioners and this Court, vide order dated 23.02.2021, set aside the orders and directed the petitioners to submit individual representations to the second respondent with all relevant documents and the second respondent was directed to consider the same and pass appropriate orders accordingly.



5.Mr.B.Vijay, learned counsel for the petitioners would urge that the land in question has been classified as 'Government Poramboke land' and hence, the second respondent has no authority to initiate the proceedings under the Tamil Nadu District Municipalities Act. It is next submitted that the second respondent had already relinquished their right in the land in the year 1967 by passing a resolution in its 35th Council Meeting held on 30.01.1967. Since there is no encroachment in the street or street margin, a proceeding under Section 182 of the Act cannot be initiated and they have to resort the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975. In this regard, the learned counsel has placed reliance on the decision of the Hon'ble Full Bench of this Court in the case of Ramaraju vs. The State of Tamil Nadu reported in 2005(2) CTC 741.

6.Per contra, Mr.P.Srinivas, learned Standing Counsel appearing for the second respondent would submit that the Municipality has not relinquished its right in the subject property as per the resolution dated 30.01.1967 and the contention of the petitioners that the second respondent has no right to initiate proceedings was rightly rejected by this Court in the order passed in W.P.No.2620 of 2021 etc batch dated 23.02.2021. According to the learned Standing Counsel, in view of the encroachment made by the petitioners, the Government could not construct a building to accommodate Sub-Registrar Office and the decision cited by the petitioners would not apply to the case on hand.

7.We have heard the submission of the learned Additional Government Pleader appearing for the respondents 1 and 3 Mr.L.S.M.Hasan Fizal.

8.In the instant case, the petitioners have categorically stated that the land in question was originally under the occupation and enjoyment of one Chinnappan and the second respondent Municipality has passed a resolution to relinquish their right in the property in question in its 35th Council Meeting held on 30.01.1967.

9.A perusal of the resolution would show that when the said subject was taken up for discussion, a resolution was passed to the effect that if there is no inconvenience or disturbance to the Highways Department as well as the Public Works Department, permission can be given. As rightly pointed out by the learned Standing Counsel appearing for the 2nd respondent, this resolution cannot be construed that the Municipality relinquish their right in the land. It is pertinent to note that the notices issued by the second respondent under Section 182 of the



Act were challenged by the petitioners in W.P.No.2620 of 2021 etc., batch and this Court, as stated above, has remanded the case for fresh consideration.

10.While considering the case of the petitioners, the second respondent found that as per the resolution passed by the Municipal Council in the year 1967, no final order was passed by the Government for transfer of the land in favour of the said Chinnappan and he was also not issued with patta. Further, no documentary evidence was produced by the petitioners to show that the said Chinnappan had transferred his right in favour of the petitioners in the earlier writ petition. The contention of the petitioners that the second respondent has no right to initiate proceedings under Section 182 of the Act, since the land was described as 'Government Poramboke Track' (பாத்தை), was rejected by the Division Bench in the earlier round in W.P.No.2620 of 2021 batch.

11.The relevant paragraph is extracted hereunder:-

"9.In the light of the said observation, streets and roads vest with the Municipality and the learned counsel for the petitioners sought to distinguish the same by submitting that streets and road vest with Municipality and not the track. However, this Court is of the considered view that such a kind of interpretation cannot be given for the reason that even the tracks (பாத்தை) are also maintained by the Municipality and if the analogy proposed by the petitioners is accepted, then the Local Body may shirk out their responsibility to maintain the tract (பாத்தை) ."

12.The Full Bench of this Court in the decision relied on by the petitioners has held that in respect of the land which are not part of the road or street, but which vested in the Municipality, the Municipality is required to follow the provisions contained in the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 or other appropriate law to recover the possession from the person who is in possession in accordance with law. In the matter on hand, the extract produced by the petitioners from the Town Survey Land Register shows that the land in question has been classified as 'பாத்தை'. Therefore, we are of the considered opinion that the decision will not apply to the facts of this case and the petitioners have not made out any grounds to quash the orders impugned in these writ petitions.

13.Considering the submission of the learned counsel for the petitioners Mr.B.Vijay that the petitioners are occupants of the



land for considerable period and they are residing in the premises, three months time is given to remove the encroachments, provided the petitioners shall file an affidavit of undertaking to that effect within a period of two weeks from the date of receipt of a copy of this order. Failing which, the respondents are at liberty to remove the encroachment forthwith.

14. With the above observation, this Writ Petition Stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

skn

To

1. District Collector,
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Tindivanam Municipality,
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+1cc to Mr. B. Vijay, Advocate, S.R.No.57774

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and

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PCH(CO)
SB(06/12/2021)