

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 06.01.2021
CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN
WP.No.20432/2020 & WMP.No.25211/2020

[Video Conferencing]

1.Sundari
2.Geetha
3.Jothi
4.Selvakumar
5.Sulochana

.. Petitioners

Versus

1.The District Collector
Erode District, Erode.

2.The Commissioner
Erode Corporation
Erode.

3.The Asst. Commissioner of Corporation,
Corporation of Erode, Zone-4,
Erode.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the impugned order in Na.Ka.No.1536/2018/Vool dated 11.09.2020 passed by the 1st respondent to petitioners and quash the same.

For Petitioner : Mr.K.Gandhi Kumar
For R1 : Mr.R.Vijayakumar
Additional Government Pleader

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

- (1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.
- (2)Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the 1st respondent.
- (3)The petitioners, challenging the impugned order of the 1st respondent dated 11.09.2020 passed in the appeal filed under section 10 of the Tamil Nadu Land Encroachment Act, 1905, had come up with the present writ petition. In the impugned

order, the 1st respondent concluded that the petitioners had put up the superstructures in Soorampatti Village TS.Nos.66/2 and 66/1 Natham as well as Odai poramboke and further found that since it lie closure to the water way, it is not feasible to grant patta and also rejected the request for issuance of patta and further granted opportunity to make a recommendation for accommodation of the encroachers in the Tamil Nadu Slum Clearance Board tenaments.

(4) The learned counsel for the petitioners would submit that since the lands in S.Nos.66/2, 132/5, 63/2 and 46/2 of Soorampatti Village has been classified as ''site'' [Natham] in terms of G.O.Ms.No.342, Revenue [A] Department, dated 12.04.1996, the impugned order passed by the 1st respondent warrants interference.

(5) Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the 1st respondent would submit that since the petitioners are having an effective alternative remedy in the form of revision under the Tamil Nadu Land Encroachment Act, 1905, the writ petition is per se not maintainable and prays for dismissal of this writ petition.

(6) This Court has considered the rival submissions and also perused the materials placed before it.

(7) It is relevant to extrect Section 10, Section 10A and Section 10B of the Tamil Nadu Land Encroachment Act, 1905:-

Section 10-Appeal:- An appeal shall lie (a) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar [or an authorized officer] under this Act, and (b) to the District Collector from any decision or order of a Collector passed otherwise than on appeal, and (c) to the Board of Revenue from any decision or order of the District Collector passed otherwise than on appeal.

10-A. (1) Any decision or order passed under Revision. this Act may be revised either suo motu or on application- (a) by the District Collector, if such decision or order was passed by an authorized officer or a Deputy Tahsildar, Tahsildar or Collector ; (b) by the Board of Revenue, if such decision or order was passed by any officer ; (c) by the State Government, if such decision or order was passed by the Board of Revenue.

(2) The power conferred by sub-section (1) shall not be exercised except on the ground that the officer or authority whose decision or order is sought to be revised appears to have exercised a jurisdiction not vested in him or it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of his or its jurisdiction illegally or with material irregularity.

(3) No decision or order shall be passed under sub-section (1) prejudicial to any person without giving such person a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration, before such decision or order is passed.

10-B. Pending the disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, the Board of Revenue, or the State Government, as the case may be, may by order, and subject to such conditions as may be specified therein, stay the execution of the decision or order appealed against or sought to be revised."

(8) In the light of the effective alternative remedy available in terms of the above said provision/s, the writ petition is not maintainable and accordingly, it is dismissed. However, if the petitioners are so advised, they are at liberty to avail such alternative remedy before the appropriate Forum. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

AP

To

1.The District Collector
Erode District, Erode.

2.The Commissioner
Erode Corporation
Erode.

3.The Asst. Commissioner of Corporation,
Corporation of Erode, Zone-4,
Erode.

+1 cc to Government Pleader Sr.No. 1104
+1cc to Mr.K.Gandhi Kumar , Advocate SR.No. 956

WP.No.20432/2020

A.SK(03.02.2021) .