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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
02.11.2021	17.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.Nos.23768, 23772 to 23774 and 23777 of 2021
and
W.M.P.Nos.25021, 25028, 25029, 25030 and 25025 of 2021

G.Vasanthi	... Petitioner in W.P.No.23768/2021
R.Palaniyammal	... Petitioner in W.P.No.23772/2021
R.Pechiammal	... Petitioner in W.P.No.23773/2021
D.Rajkumar	... Petitioner in W.P.No.23774/2021
M.Indrani	... Petitioner in W.P.No.23777/2021

-vs-

- 1.The Secretary,
Revenue and Disaster Management Department,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The District Collector,
Tiruppur District,
Tiruppur.
- 3.The District Revenue Officer,
Tiruppur District,
Tiruppur.
- 4.The Revenue Divisional Officer,
Tiruppur Division,
Tiruppur District,
Tiruppur.



5. The Tahsildar,
Palladam Taluk,
Tiruppur Division,
Tiruppur District,
Tiruppur.

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... Common Respondents in all WP's

W.P.No.23768 of 2021: Writ Petition filed under Article 226 of the Constitution of India to call for the records pertaining to the impugned order dated 01.10.2021 of the 5th Respondent and quash the same and consequently forbear the respondents from evicting the petitioner from the property situated at S.No.499, Senguttai, Naranapuram Village, Palladam Taluk, Tiruppur District admeasuring 14 sq. meter, which is under her possession since 1990 in the light of the G.O.(Ms) No.318 dated 30.08.2019 and G.O.(Ms) No.267 dated 17.09.2021 of the 1st Respondent.

W.P.No.23772 of 2021: Writ Petition filed under Article 226 of the Constitution of India to call for the records pertaining to the impugned order dated 01.10.2021 of the 5th Respondent and quash the same and consequently forbear the respondents from evicting the petitioner from the property situated at S.No.499, Senguttai, Naranapuram Village, Palladam Taluk, Tiruppur District admeasuring 71 sq. meter, which is under her possession since 1990 in the light of the G.O.(Ms) No.318 dated 30.08.2019 and G.O.(Ms) No.267 dated 17.09.2021 of the 1st Respondent.

W.P.No.23773 of 2021: Writ Petition filed under Article 226 of the Constitution of India to call for the records pertaining to the impugned order dated 01.10.2021 of the 5th Respondent and quash the same and consequently forbear the respondents from evicting the petitioner from the property situated at S.No.499, Senguttai, Naranapuram Village, Palladam Taluk, Tiruppur District admeasuring 33 sq. meter, which is under her possession since 1990 in the light of the G.O.(Ms) No.318 dated 30.08.2019 and G.O.(Ms) No.267 dated 17.09.2021 of the 1st Respondent.

W.P.No.23774 of 2021: Writ Petition filed under Article 226 of the Constitution of India to call for the records pertaining to the impugned order dated 01.10.2021 of the 5th Respondent and quash the same and consequently forbear the respondents from evicting the petitioner from the property situated at S.No.499, Senguttai, Naranapuram Village, Palladam Taluk, Tiruppur District admeasuring 31 sq. meter, which is under her possession since 1990 in the light of the G.O.(Ms) No.318 dated 30.08.2019 and G.O.(Ms) No.267 dated 17.09.2021 of the 1st Respondent.

W.P.No.23777 of 2021: Writ Petition filed under Article 226 of the Constitution of India to call for the records pertaining to



the impugned order dated 01.10.2021 of the 5th Respondent and quash the same and consequently forbear the respondents from evicting the petitioner from the property situated at S.No.499, Senguttai, Naranapuram Village, Palladam Taluk, Tiruppur District admeasuring 53 sq. meter, which is under her possession since 1990 in the light of the G.O.(Ms) No.318 dated 30.08.2019 and G.O.(Ms) No.267 dated 17.09.2021 of the 1st Respondent.

For Petitioners : Mr.T.Balachandran
For Respondents : Mr.K.V.Sajeevkumar
Govt. Counsel

C O M M O N O R D E R

S.VAIDYANATHAN, J.,
and
R.VIJAYAKUMAR, J.,

These Writ Petitions have been filed, seeking to quash the impugned order dated 01.10.2021 of the 5th Respondent in respect of the petitioners, in and by which, the petitioners were directed to vacate the land in question along with other items piled up thereon, within seven days, failing which, the the same would be evicted therefrom and brought under the custody of Firka Revenue Inspector. The petitioners also sought a direction to the respondents from evicting them from the property.

2. Mr.K.V.Sajeevkumar, learned Government Counsel takes notice for the respondents. Since the issue involved in all these matters is one and the same, they are taken up together for final hearing at the admission stage itself, by consent of the parties.

3. For the sake of brevity, the facts are being obtained from W.P.No.23768 of 2021.

4. It was the case of the Petitioner that the property in question, viz., S.No.499, Senguttai, Naranapuram Village, Palladam Taluk, Tiruppur District admeasuring 14 sq. meter, has been under her possession since 1990, in which, she had put up a thatched house and subsequently, converted into a tiled roof house. She has also been paying Annual Property Tax as and when demanded and she has been provided with the electricity service connection in Service No.288-005-1382;

4.1. It was also the case of the Petitioner that she has already added her name in the Electoral List, in addition to the



receipt of Family Card and other Tax receipts in respect of the said property. It is stated that while she has been residing in the property for the past three decades, one K.N.Kumarasamy preferred a Public Interest Litigation before this Court in W.P.No.24674 of 2019 for removal of encroachments made in the Village pond and consequent to the order for consideration of the representation of the aid Kumarasamy, the Revenue Inspector, on 05.08.2021, issued a show cause notice under Section 7 of the Tamil Nadu Encroachment Act, 1905 for a suitable explanation;

4.2. According to the Petitioner, though the land has been classified as 'Kuttai' and it had lost its character and nature long back, the 5 respondent, without considering the above factum, has been attempting to evict the petitioner from the property, which is the only source of shelter to the petitioner. The petitioner referred to two Government Orders passed by the 1st Respondent in G.O.(Ms) No.318 dated 30.08.2019 and G.O.(Ms) No.267 dated 17.09.2021 to invite the attention of this Court with regard to implementation of the special scheme for regularization of residential encroachments in unobjectionable poramboke lands or to provide alternative land to relocate the encroachers. The scheme has been extended from time to time by subsequent Government Orders.

4.3. The grievance of the petitioner was that the 5th Respondent has not taken into account the aforesaid Government Orders and hastily, issued the show cause notice with the ulterior motive of evicting the petitioner and other similarly placed persons from the property, which is possessed by them for more than three decades. The act of the 5th Respondent in depriving the petitioner from availing the benefits of the Government Orders will cause much prejudice to the petitioner and therefore, having left with no other efficacious remedy, the petitioner is before this Court against the process of eviction made by the 5th Respondent.

5. Learned Government Counsel has contended that the long possession of a property without any rights will not inure to the benefit of the petitioners to demand title over the Government land. It is not the case of the Petitioners that the property was acquired either from their ancestors, settlement or by way of sale deed and once the land has been classified as Kuttai in the revenue records, ultimately, it is incumbent on the petitioners to vacate themselves from the place immediately after issuance of the show cause notice.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. The main plea raised by the Petitioners is that they have



been residing in the locality for quite a long time and all of a sudden, they were asked to vacate the property in question, which is highly prejudicial to their interest. A cursory look at the Paragraph No.9 of the affidavit discloses the fact that the property is situated on a Pond, as it has been classified as 'Kuttai'. However, surprisingly, it was brought to the notice of this Court vide Paragraph No.11 of the affidavit as to the Government Order dated 30.08.2019, wherein it has been stated as under:

"11. I submit that the Government of Tamil Nadu by G.O.Ms.No.318, Revenue & Disaster Management Department dated 30.08.2019 has issued comprehensive orders for implementation of the special scheme for Regularization of residential encroachments in unobjectionable poramboke lands by granting house site pattas and also to evict the residential encroachments in objectionable poramboke lands by identifying alternate Government land or purchasing private lands to re-locate the encroachers by issuing House-site pattas."

8. It is very unfortunate that the Government has framed a special scheme for violators by giving a license to them in the form of regularization to encroach the Government poramboke land either individually or jointly and construct a building. In case any objection is made, then there would be a huge hue and cry and thereafter, every attempt would be made to prevent the encroachment to be removed. Unless laws are very strict, these kinds of menace in the garb of encroachments cannot be curtailed and there will be unnecessary litigations. It is very saddening to point out that the violators now-a-days are hand in glove and connivance with the Government Officials and they always have dealings with such gangs and allow the violators to continue their illegal acts.

9. In the present case on hand, the area on which the property of the petitioners is situated, has been identified as 'Kuttai' in the Revenue records. The submission made by the petitioners that the said 'Kuttai' has lost its character long back and therefore, property tax has been levied, which has been duly accepted by the Officials cannot be accepted to permit the petitioners to survive on the water body. A Two Judges' Bench of the Supreme Court (Justice R.Banumathi and Justice Indira Banerjee) in the case of Sarvepalli Ramaiah (D) Tr.Lrs vs District Collector, Chittoor [Civil Appeal No.7461 of 2009] decided on 14.03.2019, has clearly elicited that if an area is found to be a Water Body (even dried up or fallen into disuse) as per Revenue records, the State should protect it and the area should not be alienated at any cost. The relevant paragraphs of the judgment are extracted below:



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"31. The Single Bench as also the Division Bench of the High Court rightly held that it was well settled that poramboke (tank) cannot be alienated. No patta can be granted in respect of tanks and water bodies including those that might have dried up or fallen into disuse. The appellants and/or their predecessor in interest had not challenged the gazette notification of 3rd September, 1984 notifying the entire Survey No.234 at Tiruchanoor as "Peddacheruvu Poramboke" that is tank.

32. This Court has time and again emphasized the need to retain and restore water bodies and held that water bodies are inalienable. Land comprised in water bodies cannot be alienated to any person even if it is dry. Reference may be made to the judgments of this Court in:

(1) *Susetha vs. State of Tamil Nadu*, reported in (2006) 6 SCC 543;

(2) *M.C. Mehta (Badkhal and Surajkund Lakes Matter) vs. Union of India* reported in (1997) 3 SCC 715 and (3) *Intellectuals Forum v. State of Andhra Pradesh*, reported in (2006) 3 SCC 549.

33. Both the Single Bench and the Division Bench having concurred in their well reasoned findings, interference of this Court is not warranted. For the reasons discussed above, I agree with my esteemed sister in dismissing the appeal."

10. Prima facie, it is seen that encroachment has been made by the petitioners on the 'Kuttai' and therefore, in the considered opinion of this Court, disconnection of Electricity supply of the premises in terms of the judgment of the Apex Court dated 05.01.2018, passed in Special Leave to Appeal (C) No. 33863 of 2017 is the more suitable initial step to remove the encroachment from the land in question. A Division Bench of this Court has passed the following order in *P.Selvarajan Vs. The Commissioner of Municipal Administration, Chennai and Others* [W.P.No. 21639 of 2017] decided on 13.02.2018, in consonance with the order of the Supreme Court dated 05.01.2018 passed in Petition for Special Leave to Appeal (C) No.33863 of 2017:

"3. Learned counsel appearing for the fourth respondent submitted that the fourth respondent has made an application for regularisation and that during the pendency of the proceedings, this Court, by order dated 11.09.2017, directed disconnection of electricity in respect of



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basement, second and third floors of the fourth respondent's premises, against which, the matter was taken up to the Supreme Court. The Supreme Court, in Petition for Special Leave to Appeal (C).No.26509 of 2017, by order dated 13.10.2017, did not interfere with the said order of this Court dated 11.09.2017, and permitted the fourth respondent herein to move the High Court. During the pendency of this Writ Petition, the fourth respondent herein has filed W.M.P.No.30495 of 2017 seeking direction to the TANGEDCO to restore the electricity connection to the building of the fourth respondent. This Court, by order dated 07.11.2017, rejected the restoration of electricity supply. Thereafter, once again the matter was taken up to the Supreme Court by the fourth respondent, and the Supreme Court, by order dated 05.01.2018 in Petition for Special Leave to Appeal (C) No.33863 of 2017, has dismissed the Special Leave Petition, by observing as follows:

"Heard learned counsel for the petitioner and perused the impugned order dated 07.11.2017 passed in WMP.No.30495/2017 passed by the Madras High Court.

We are not inclined to interfere in the impugned order and accordingly, the Special Leave Petition is dismissed.

However, we direct the authority concerned before whom the application for regularisation under the DTCP Building Regularisation Scheme 2017 is pending to decide the matter in accordance with law within two months.

Pending application stands disposed of."

11. In case the Respondents seek for any assistance from Police for removal of encroachment, it is obligatory on the part of the Police Department to deploy force for the said purpose, so as to ensure removal of encroachment in the water body, If there is no proper assistance from the Police Officials, we would be constrained to initiate contempt proceedings against the concerned Police Officials

12. With the above observations, finding no merit in these



Writ Petitions, they are dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Secretary,
Revenue and Disaster Management Department,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The District Collector,
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- 3.The District Revenue Officer,
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Tiruppur District,
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- 5.The Tahsildar,
Palladam Taluk,
Tiruppur Division,
Tiruppur District,
Tiruppur.

+1cc to M/s.T.Balachandran, Advocate, S.R.No.68043

+1cc to the Government Pleader, S.R.No.68692

Pre-delivery judgment in
W.P.Nos.23768, 23772 to 23774 and 23777 of 2021

SRA(CO)
SU(06/01/2022)