



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2021

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.9040 of 2015

and

M.P. (MD) No.1 of 2015

K.Kalidass

... Petitioner

-vs-

1.The District Collector,
Pudukkottai District,
Pudukkottai.

2.The Tahsildar,
Manamelkudi Taluk,
Pudukkottai District.

3.The Revenue Inspector,
Manamelkudi Taluk,
Pudukkottai District.

4.The Executive Officer,
Sri Perumbala Koothappa Ayyanar Kovil,
Manamelkudi,
Pudukkottai District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents 1 to 3 to pay compensation Rs.5 Lakhs to the petitioner for illegally demolishing the petitioner's tea cum Tiffin Centre situated in Door No.1064/A, in Survey No.314/1 at Union Road, Manamelkudi, Manamelkudi Taluk, Pudukkottai District and consequently direct the 1st respondent to take action against the respondents 2 and 3 for misusing their statutory powers.

For Petitioner : No appearance
For R1 to R3 : Mr.C.Ramesh
Special Government Pleader
For R4 : Mr.J.Gunaseelan Muthiah

ORDER

The case of the petitioner is that his father had been rented a piece of land, measuring about 0.01.0 hectares in S.No.314/1 in
<https://hcservices.ecourts.gov.in/hcservices/>



Manamelkudi, Pudukottai District, in 1974 and his father had been running a Tea cum Tiffin centre in the said place by constructing a thatched roof building.

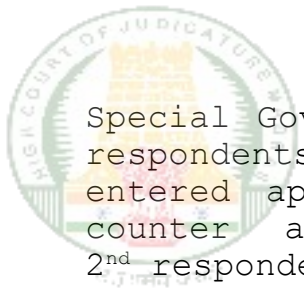
2.The petitioner's father died in 2004 and in that place, the petitioner has been running the said centre and regularly paying the monthly rent to the Managing Trustee of the temple, namely, Sri Perumbala Koothappa Ayyanar Kovil, Manamelkudi, the owner of the place. However, there was a threat as against the possession of the property and therefore, a suit in O.S.No.47 of 2008 was filed by the petitioner herein before the District Munsif Court, Aranthangi.

3.According to the petitioner, the respondents 1 and 2 were also the parties in the civil proceedings, but the prayer was sought only against the private parties/defendants. In the meanwhile, the 3rd respondent herein had issued a notice under Section 7 of the Land Encroachment Act on 12.05.2008 and when the same was put to challenge in W.P.(MD) No.6393 of 2008 by the petitioner, the writ petition was disposed of by this Court, vide order dated 23.07.2008, directing the petitioner to workout his remedy in a manner known to law before the civil Court.

4.Thereafter, the petitioner herein filed yet another writ petition in W.P.(MD) No.7995 of 2008 and the same was also disposed of by this Court on 04.09.2008, directing him to approach the civil Court in the pending suit. In the meanwhile, the suit was also decreed as *ex parte* on 18.11.2008 and thereafter, the petitioner has been running his tea business without any interference. While the matter stood thus, a notice once again was issued by the 3rd respondent under Section 7 of the Land Encroachment Act, on 12.05.2015 to the petitioner. In response to the notice, a representation was also made by the petitioner on 26.05.2015, but without considering the representation, the respondents 2 and 3 were taking steps to demolish the petitioner's stall and fearing demolition of the same, the petitioner is before this Court.

5.The 2nd respondents on 12.05.2015 informed the petitioner about the demolition and according to the petitioner, when he took steps to approach this Court, the premises, which used for running a tea cum tiffin centre, was demolished with the help of the police and this incident has also been reported in a 'Tamil Daily' on 28.05.2015. The demolition was arbitrarily carried out without any procedure as contemplated under the Land Encroachment Act. According to the petitioner, the respondents 2 and 3 have no jurisdiction to demolish the petitioner's premises, since the same belonged to the temple/4th respondent. The petitioner therefore is before this Court seeking a direction to pay compensation of Rs.5 lakhs for the illegal demolition of his premises by the respondents 2 and 3.

6.Notice was ordered in this writ petition by this Court on 05.06.2015 in response to the notice, Mr.C.Ramesh, learned



Special Government Pleader has entered appearance on behalf of the respondents 1 to 3 and Mr.J.Gunaseelan Muthiah, learned counsel has entered appearance on behalf of the 4th respondent/temple and a counter affidavit has also been filed on behalf of the 2nd respondent, strongly denying the averments of the petitioner.

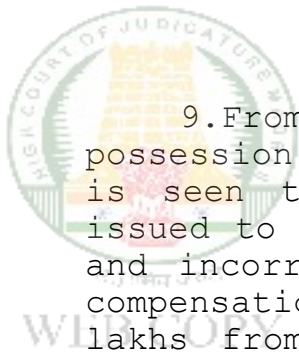
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7. According to the counter affidavit, there was a finding by the civil Court that the property, which was under occupation of the petitioner, was the Government Poramboke land and the Government had followed the provisions of the Land Encroachment Act, before evicting the petitioner. Paragraph Nos.6 and 7 of the counter affidavit, which would give answer to the petitioner's principal objection, are extracted hereunder:-

"6.I submit that the averments in para 4 of the affidavit is denied as follows: It is true that the authority has issued show cause notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. After receipt of the notice also the petitioner had not given any explanation. Hence, another notice also issued for eviction as per the said Act. Instead of giving explanation, the writ petitioner has filed W.P.(MD) No.7995 of 2008. The same was disposed on 04.09.2008 to seek remedy before the competent authority. Further it is mistakenly stated that there is a decree has been passed on 18.11.2008 as exparte against the authority. Hence another show cause notice has been issued on 12.05.2015. On receipt of the said show cause notice, the petitioner had given explanation, which was not sustainable one. Hence eviction notice was issued. The same was acknowledged by the writ petitioner. As per the said notice, eviction was carried over on 27.05.2015. The same is valid one. There is no illegality in it. Before that the authority has followed the procedure strictly. Hence there is no just cause to file this writ petition. Further the encroachment is Thatched shed which will be worth of rupees 500 to 1000 only. But the claim of the petitioner is enormous. For the alleged encroachment the authority is empowered to penal charge upon the petition. This petitioner is not entitled to file this writ petition with the disputed facts. Hence there is no cause to file this writ petition.

7.The grounds raised by the petition is not entertainable one, since there is no arbitrary or against provision. It is the statutory duty of the authority."

8.The learned counsel appearing for the parties would reiterate their respective averments and counter averments.



9.From the above averments, it could be seen in regard to the possession of the property the land belongs to the Government and it is seen that before evicting the petitioner, proper notice was issued to him. In the said circumstances, on the basis of the bald and incorrect averments, the petitioner cannot seek a relief for compensation of any kind much less than compensation amount of Rs.5 lakhs from the official respondents. In a mandamus jurisdiction, praying for direction of payment of compensation, without any supportive material, quantifying the amount, is untenable, which cannot be entertained under any circumstances. In any event, the petitioner being an encroacher and being a rightfully evicted cannot have any legitimate cause for seeking compensation.

10.In the above circumstances, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl)

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Sub Assistant Registrar(CS)

MM

To

1.The District Collector,
Pudukkottai District,
Pudukkottai.

2.The Tahsildar,
Manamelkudi Taluk,
Pudukkottai District.

3.The Revenue Inspector,
Manamelkudi Taluk,
Pudukkottai District.

Order made in
W.P. (MD) No.9040 of 2015 and
M.P. (MD) No.1 of 2015
19.02.2021

TP (CO)

SRS (10/03/2021) 4P : 4C