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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Writ Petition (MD).No.1940 of 2016

and

W.M.P.(MD).Nos.1686 to 1688 of 2016

1.Natesa Thevar
2.Varathappa Thevar
3.Appavu Thevar
4.Selvaraj
5.Meerasu
6.Thirupathi
7.Veeramuthu
8.Marimuthu
9.Amirthavalli
10.Ramachandran
11.Banumathi
12.Udayar
13.Vivekanandan
14.Pottammal
15.Rajendran
16.Pothumani
17.Panneerselvam
18.Kannadasan
19.Thirupathy
20.Ramamoorthy
21.Mangavellalar
22.Muthusamy ... Petitioners

Vs.

1.The District Collector,
Thanjavur.

2.The Revenue Divisional Officer,
Pattukottai,
Thanjavur District.

3.The Tahsildar,
Pattukottai,
Thanjavur District.

4.The Revenue Inspector,
Nambivayal Saragam,
Pattukottai Taluk,
Thanjavur District.

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5.M.Murthy
(The fifth respondent is impleaded as per
the order of this Court, dated 02.07.2021,
in W.M.P.(MD).No.14074 of 2017) ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the fourth respondent, dated 07.01.2016 issued to the petitioners and quash the same as illegal, arbitrary and unenforceable.

For Petitioner : Mr.M.R.S.Prabhu
For R1 to R4 : Mr.R.Baskaran
Standing counsel for Government
For R5 : Mr.G.Thalaimutharasu

O R D E R

(Order of the Court was made by **T.S.SIVAGNANAM,J.**)

Heard Mr.M.R.S.Prabhu, learned counsel appearing for the petitioners, Mr.R.Baskaran, learned Standing counsel appearing for the respondents 1 to 4 and Mr.G.Thalaimutharasu learned counsel appearing for the fifth respondent.

2. This writ petition has been filed by 22 petitioners, challenging the Notification issued under Section 7 of the Land Encroachment Act.

3. The action for eviction of the encroachment was taken at the behest of the fifth respondent, who is newly impleaded and has approached this Court earlier on two occasions to remove the encroachment. There was an allegation that the encroachment was removed and thereafter, once again the encroachers started to grow crops in that area. The petitioners would state that the impugned notices did not refer to any of the documents, which are in possession of the petitioners and the petitioners claim that by order dated 20.12.1972, an order of grant was given in favour of Sami Velu, S/o. Natesh Velu and all these documents have not been taken note of. The fifth respondent has filed a typed set of papers, wherein he has placed on record the orders passed in the writ petition filed by the fifth respondent in W.P.No.20498 of 2008, dated 22.08.008 and W.P.No.5361 of 2009, dated 02.04.2009. In the same typed set of papers, the order passed in W.P.(MD).Nos.2038 and 12400 of 2009 has been enclosed. In the said writ petitions, the petitioners before us are the petitioners in W.P.(MD).No.2038 of 2009 and the fifth respondent is the petitioner in W.P.(MD).No.12400 of 2009. The petitioners sought for quashing the notice of eviction issued by the District Collector, Thanjavur, dated 21.02.2009. The fifth respondent filed the writ petition to implement the order of eviction, dated 21.02.2009. Both the writ petitions are disposed of by a common order dated 02.09.2015, which reads as follows:

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" *Order*

(Order of the Court was made by R.SUDHAKAR,J.)

Challenging the proceedings of the District Collector, dated 21.02.2009, whereby directing the Panchayat President to remove the encroachment, W.P.(MD).No.2038 of 2009 has been filed primarily on the ground that there is violation of principles of natural justice.

2. On the contrary, Mr.G.Thalaimutharasu, learned counsel for the second respondent in W.P.(MD).No.2038 of 2009, who is also the petitioner in W.P.(MD).No.12400 of 2009 seeks a direction to implement the order of the District Collector, directing the Panchayat President to remove the encroachment.

3. Perusal of records shows that despite notice to the District Collector, no counter affidavit has been filed so far to show that the petitioner in W.P.(MD).No.2038 of 2009 were heard and an opportunity was given to them to sustain their plea that there is no case of encroachment.

4. Keeping in mind the earlier direction given by this Court in W.P.No.5361 of 2009, dated 02.04.2009, the impugned order dated 21.02.2009 is set aside and the District Collector is directed to give an opportunity of hearing to the parties in both writ petitions and thereafter proceed further in the matter and pass appropriate orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. ”

4. In terms of the above direction, the order dated 21.02.2009 passed by the District Collector, Thanjavur was set aside and the District Collector was directed to look into the matter. Thereafter, no action was initiated for more than a year. In 2016, the impugned notices have been issued. When the writ petition was entertained, an order of interim stay was granted on 28.01.2016, which is in force till date. The official respondents have not filed a counter affidavit.

5. Be that as it may, in terms of the directions issued in the earlier writ petitions filed by the writ petitioners and the fifth respondent which were disposed of by the common order, dated 02.09.2015, it is the District Collector, who has to look into the matter and after taking note of all the records, then appropriate directions can be given for removal of encroachment, if it is found that the petitioners are encroachers.

6. In the light of the above, the Writ Petition is allowed and the impugned notices are quashed and the matter is remanded to the

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District Collector, Thanjavur District, to take note of all the earlier proceedings, the directions issued by the Court, the documents which the petitioners rely upon and after considering all the documents and the files, appropriate action shall be directed to be taken by the competent authority under his control. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The District Collector,
Thanjavur.

2.The Revenue Divisional Officer,
Pattukottai,
Thanjavur District.

3.The Tahsildar,
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4.The Revenue Inspector,
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+1 CC to M/s.SPL GP (SR-21215[F] dated 05/07/2021)

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