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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.26808 OF 2009

AND

M.P.NO.2 OF 2009

1. N.Kumaraswamy
2. N.Ganesan (Died)
3. N.Paramasivam
4. M.Rajakumar
5. M.Ramkumar
6. S.R.Kumar
7. S.R.Sekar
8. S.R.Kishore
9. G.Rajesh
(P9 is substituted as LR of the deceased P2,
N.Ganesan as per the order made in
M.P.1 of 2013 in W.P.No.26808 of 2009
dated 14.08.2019)

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. By Secretary to Government,
Revenue Department,
Fort St.George,
Chennai - 600 009.
2. The Deputy Secretary to Government,
Revenue Department,
Fort St.George,
Chennai - 600 009.
3. The District Collector,
Kanyakumari District at Nagercoil.
4. The District Revenue Officer,
Nagercoil,
Kanyakumari District.
5. The Thasildar,
Thovalai Taluk,
Boothapandi & Post,
Kanyakumari District.



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6. The Revenue Inspector,
Azhagiapandipuram Firka,
Azhagiapandipuram Post,
Kanyakumari District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the impugned order passed by the 2nd respondent in G.O.Rt.No.377 Revenue Department dated 13.05.1993 quash the same.

For Petitioners : Mr.V.Selvaraj

For Respondents : Mr.M.Murali
Government Advocate

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari calling for the records relating to the impugned order passed by the 2nd respondent in G.O.Rt.No.377 Revenue Department dated 13.05.1993 quash the same.

2. The case of the petitioner is that the petitioners are in possession and enjoyment of about 100 acres of land under the feudal land tenure system and are also rich pattadars in Arumanainallur Village, Thoivalai Taluk, Kanyakumari District as "Kuthagapattam lessees". After the merger of Kanyakumari District with Tamil Nadu, the Government passed several orders regarding Kuthagapattam lands in Kanyakumari District. Thereafter, the State Government passed G.O.Ms.No.947, Revenue Department, dated 02.03.1973 for assignment of Kuthagapattam lands. While so, the present impugned order vide G.O.Rt.No.377, Revenue Department, dated 13.05.1993 was issued by the 2nd respondent stating that the petitioners are encroachers of Government land and the said land is required for public purpose, namely Bio-Diversity and Agricultural Extension Centre for public purpose and rejected the request of the petitioners and issued instructions to evict the encroachment. Aggrieved by the same, the present Writ Petition has been filed.

3. Mr.Selvaraj, learned counsel for the petitioners submit that the petitioners are not encroachers, as they were granted land under the Kuthagapattam and Kandukrishipattam Systems in the erstwhile, Trivancore Cochin Government and the petitioners are ready to handover the land to the Government for public purpose, which is not under the category of encroachment. However, the said land can be resumed by the Government in the



manner know to law by invoking appropriate provisions and laws and the respective District Collectors are entitled to resume the land under Clauses 5 and 6 of G.O.Ms.No.947, dated 02.03.1973. Without following the said procedure, passing the impugned G.O and directing the petitioners to evict the said land stating that they are encroachers, is not sustainable. Hence, they have approached this Court with the above prayer.

4. Mr.M.Murali, learned Government Advocate appearing on behalf of the respondents submitted that this Court may permit the respondents to resume the land by invoking Clauses 5 and 6 of the G.O.Ms.No.947, dated 02.03.1973 and direct the petitioners to co-operate with the Government and handover the land for public purpose as stated in the impugned G.O.

5. Heard learned counsel appearing on either side and perused the materials available on record.

6. The facts in the present case are not in dispute. The grievance of the petitioners is that the petitioners are rich pattadars and they were granted land under the Kuthagapattam and Kandukrishipattam Systems in the erstwhile Trivancore Cochin Government. For resumption of land, procedures have to be followed as per G.O.Ms.No.947 dated 02.03.1973, more particularly as per Clauses 5 and 6 of the said G.O and hence, they cannot be termed as "encroachers" through impugned G.O.Rt.No.377 dated 13.05.1993. Further the disputed land is required for public purpose i.e, Bio-Diversity and Agricultural Extension Centre. Hence, this Court is inclined to grant liberty to the 1st respondent to resume the land in terms of G.O.Ms.No.947 dated 02.03.1973 as per clauses 5 and 6 therein and the petitioners are directed to surrender the land to the Government and enable the Government to resume the land under the above said G.O for formation of Bio-Diversity and Agricultural Extension Centre. The said exercise to be completed within a period of 12 weeks from the date of receipt of a copy of this order.

7. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
The State of Tamil Nadu,
Revenue Department,
Fort St.George,
Chennai - 600 009.
2. The Deputy Secretary to Government,
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Boothapandi & Post,
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6. The Revenue Inspector,
Azhagiapandipuram Firka,
Azhagiapandipuram Post,
Kanyakumari District.

+lcc to Mr.V.Selvaraj, Advocate, S.R.No.11272
+lcc to the Government Pleader, S.R.No.11992

W.P.No.26808 of 2009

RSI (CO)
PM/18/03/2022