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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

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THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.Nos.5652 and 6327 of 2022 and WMP.Nos.5738 and 6432 of 2022

R.Ganesan ...Petitioner in W.P.No.5652/2022

R.Vembuli ...Petitioner in W.P.No.6327/2022

-vs-

1. The District Collector,
Kancheepuram District,
District Collectorate,
Kancheepuram Town, Taluk and
District.

2. The Tahsildar,
Sriperumbudur Taluk Office,
Sriperumbudur Town and Taluk,
Kancheepuram District. ... Respondents in Both WP's

Writ Petitions filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent pertaining to the Notice under Section 6 of the Land Encroachment Act, issued vide proceedings of the 2nd respondent in Na.Ka.No.440/2022/AA2 dated 18.02.2022 in respect of the land in S.No.157/1A of Thirumangalam Village, Sriperumbudur Taluk, Kancheepuram District and to quash the same and consequently, direct the respondents to reclassify the piece of land in the petitioners' possession from the present revenue classification of Kulam Poramboke to Nathan land (or) any other suitable revenue classification.

In both W.Ps.

For Petitioners : Mr.N.R.Elango,
Senior Counsel
for Mr.K.Selvamani

For Respondents : Mr.A.Selvendran,
Spl.G.P. for R1 and R2



COMMON ORDER

(Order of the Court was made by T.RAJA, J.)

The Writ Petitioners in both these writ petitions have come to this Court questioning the correctness of the impugned order passed by the 2nd respondent, namely, The Tahsildar, Sriperumbudur Taluk Office, Sriperumbudur Town and Taluk, Kancheepuram District, in Na.Ka.No.440/2022/AA2 dated 18.02.2022, issued under Section 6 of the Land Encroachment Act, 1905, in respect of the land in S.No.157/1A of Thirumangalam Village, Sriperumbudur Taluk, Kancheepuram District.

2. Learned Senior Counsel appearing for the petitioners would submit that one Mr.Vembuli, the writ petitioner in W.P.No.6327/2022 has been running a Flour Mill under the name and style of Moongili Amman Flour Mills in Kulakkarai Street which is now known and called as Durgai Amman Temple Street in S.No.157/1A of Thirumangalam Village. Similarly, one Mr.R.Ganesan, the Writ Petitioner in W.P.No.5652/2022 has been doing the business of selling sweets and savouries at Door No.3/853, Thiruvallur Road, Thirumangalam Village in S.No.157/1A which is classified in the revenue records as 'Kulam Poramboke'. Apart from these writ petitioners, some other persons are also having residential premises and some of them are running their small time business in the said survey number. Since they have been living and carrying on the small time business for quite a long time from 1969, they cannot be all of a sudden removed from the place-in-question as they do not have any other alternative place of living or to carry on their business in view of the fact that due to the passage of time, the 'Kulam' has become a Bazaar. Besides, the claim of both these petitioners have been almost accepted, since the Village Panchayat of Thirumangalam Village had passed a Resolution dated 17.09.1986 to regularize their possessions and grant pattas for the residents and shop owners in S.No.157/1A.

3. Learned Senior Counsel for the petitioners drawing our notice to a letter dated 08.09.1986 addressed by the Tahsildar, Sriperumbudur to the President of Thirumangalam Panchayat, Sunguvar Chathram in which the the 2nd respondent herein directed the latter to pass a resolution and thereafter to send the same to the Office of the Tahsildar so as to consider the request of 79 residents/people to regularize and grant pattas for the residents and shop owners in S.No.157/1A pleaded that pursuant thereto, the Panchayat President in their Panchayat President Meeting held on 17.09.1986 passed a resolution recognizing the petitioners and others as persons having continuously residing in the place-in-question for more than a decade. Therefore, now the 2nd respondent has to issue a patta to the petitioners and others mentioned in the Resolution of the Panchayat President dated 17.09.1986. But, it is, at this



stage, notice has been issued under Section 7 of the Tamil Nadu Land Encroachment Act by the Tahsildar asking them to give their explanation as to why they should not be evicted from the place-in-question followed by a notice under Section 6 of the Act, therefore, the same are liable to be quashed. In support of his contention, the learned Senior Counsel for the petitioners requested this Court to consider a decision of a Full Bench of this Court in T.K.Shanmugam, Secretary, C.P.I. (M) North Chennai District Committee, 52 Cooks Road, Perambur, Chennai-600 011 vs. The State of Tamil Nadu rep. by its Secretary to Government, Department of Revenue, Fort St. George, Chennai-600 009 and others reported in 2015-5-L.W.397 in which in paragraph 39, it has been held that it should not be misunderstood for a moment that all encroachments should be regularized or encroached, but if the State Government has taken a conscious decision to regularize certain encroachments which have continued for a pretty long time after the appropriate authority comes to a conclusion that such land is not required for any public purpose or for the State, the same would be within the jurisdiction of the Government to take a policy decision in the matter.

4. In this regard, it is relevant to extract paragraph 39 of the said decision here under:

'39. Going back to the decision of the Division Bench in the case of Sivakasi Region Tax Payers Association (supra), the Division Bench in paragraph 27 of the judgment observed that if any particular pond or water channel, artificial or natural had fallen into dis-use for a very long period and if persons have encroached upon such lands, whether a direction can be issued for eviction and as to whether such of those persons who have encroached upon such lands have acquired any right under the law relating to limitation or any policy of the State where the Government in its wisdom decides to confer certain right on such persons. In paragraph 31 of the judgment, the Division Bench held that G.O.Ms.No.854, is legal. However, we may note the observations in paragraph 28 of the judgment, the Division Bench observed that it should not be misunderstood for a moment that they are suggesting that all encroachments should be regularized or encroached, but if the State Government takes a conscious decision to regularize certain encroachments, which have continued for a pretty long time after the appropriate authority comes to a conclusion that such land is not required for any public purpose or for the State, the same would be within the jurisdiction of the Government to take a policy decision in the matter. We have our reservations in accepting the reasoning given by the Division Bench in paragraph 28.'



5. In the light of the above, the learned Senior Counsel for the petitioners would further submit that when the 2nd respondent herein, namely, the Tahsildar, Sriperumbudur Taluk, sent a letter dated 08.09.1986 to the President of Thirumangalam Panchayat, Sunguvar Chathram to pass a Resolution so as to consider the request of 79 residents/people to regularize and grant pattas for the residents and shop owners in S.No.157/1A and a Resolution dated 17.09.1986 was also passed to that effect, the issuance of the notices under Sections 6 and 7 of the Act are uncalled for, he submitted.

6. In reply, Mr.A.Selvendran, learned Special Government Pleader for the respondents would submit that admittedly, all the petitioners are occupying the land around the temple tank. It is not known whether their occupation has been recognized by the Village Panchayat, although the Village Panchayat has passed a resolution on 17.09.1986, the same has been sent to the Tahsildar. However, the subsequent elected President of the said Village Panchayat has also passed a counter resolution taking a stand that the place-in-question has not been regularized, therefore, a notice under Section 7 of the Act has been issued and finding no satisfactory reply from the petitioners herein, action has been taken under Section 6 of the Tamil Nadu Land Encroachment Act, 1905. If at all the petitioners are aggrieved, it is not open to them to come to this court sidelining the effective alternative statutory remedy available under Section 10-A of the Act, hence, these petitions are untenable in law.

7. It is, at this stage, learned Senior Counsel for the petitioners would submit that the petitioners are prepared to approach the District Collector, Kancheepuram, but they are left with only one day to file an appeal.

8. Considering the facts and circumstances of the case and also the fact that as the power is also there under Section 11(4) of the Tamil Nadu Land Encroachment Act to condone the delay, this Court grants two weeks time to the petitioners to file an appeal under Section 10 of the Act before the District Collector, Kancheepuram and if any such appeal is filed, the District Collector may consider the same on the basis of the resolution passed by the Village Panchayat dated 17.09.1986, the proceedings issued by the 2nd respondent, namely, The Tahsildar, Sriperumbudur Taluk Office, Sriperumbudur Town and Taluk, Kancheepuram District and also the observation made by the Full Bench of this Court in paragraph 39 in T.K.Shanmugam, Secretary, C.P.I. (M) North Chennai District Committee, 52 Cooks Road, Perambur, Chennai-600 011 vs. The State of Tamil Nadu rep. by its Secretary to Government, Department of Revenue, Fort St. George, Chennai-600 009 and others reported in 2015-5-L.W.397.



9. With the above observation and direction, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Kancheepuram District,
District Collectorate,
Kancheepuram Town, Taluk and
District.
2. The Tahsildar,
Sriperumbudur Taluk Office,
Sriperumbudur Town and Taluk,
Kancheepuram District.

+2ccs to Mr.K.Selvamani, Advocate SR. Nos. 18929, 18930
+1cc to Government Pleader SR. Nos.19170, 19172

W.P.Nos.5652 and 6327/2022

GSM (CO)
PR (01/04/2022)