



WEB COPY



W.P.Nos.6465 and 6468 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2022

CORAM

**THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA
KURUP**

**W.P.Nos.6465 and 6468 of 2022 and
W.M.P.Nos.6557 and 6561 of 2022**

K.Jagannathan @ Jagan ... Petitioner in W.P.No.6465 of 2022

S.Parimalar Selvan ... Petitioner in W.P.No.6468 of 2022

-VS-

1.The District Collector,
Kancheepuram District,
Having Office at the
District Collectorate,
Kancheepuram Town,
Taluk and District.

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

... Respondents

Prayer in both the petitions: 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 of 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



W.P.Nos.6465 and 6468 of 2022

same and consequently to direct the respondents to reclassify the piece of land in the petitioners' possession from the present revenue classification of Kulam Poramboke to Natham land (or) any other suitable revenue classification.

For Petitioners in both petitions : Mr.K.Selvamani

For Respondents in both petitions : Mr.A.Selvendran,
Special Government Pleader

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 counsel appearing for the petitioners would submit that one Mr.K.Jagannathan @ Jagan, the writ petitioner in W.P.No.6465 of 2022 has been doing a business of selling milk and



W.P.Nos.6465 and 6468 of 2022

vegetables on the opposite side of the Chennai Bangalore Main Road, whereas one Mr.S.Parimalar Selvan, the Writ Petitioner in W.P.No.6468 of 2022 has been running a hotel under the name and style of 'Hotel Munees' at No.3/756, Chennai Bangalore Main Road and the same are covered in Survey 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 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 and grant pattas for the residents and shop owners in S.No.157/1A.

3.Learned counsel for the petitioners, drawing our attention to a letter dated 08.09.1986, addressed by the Tahsildar, Sriperumbudur to the President of Thirumangalam Panchayat, Sunguvar Chathram in which the second respondent herein directed to pass a resolution and



W.P.Nos.6465 and 6468 of 2022

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, stated 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 and therefore, the same are liable to be quashed.

4.In support of his contention, the learned counsel for the petitioners relied on 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.

5. 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,



WEB COPY



W.P.Nos.6465 and 6468 of 2022

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."

6.In the light of the above, the learned 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.



WEB COPY

7. In reply, Mr. A. Selvendran, learned Special Government Pleader appearing 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 and the same has been sent to the Tahsildar. However, the subsequent elected President of the said Village Panchayat has also passed a resolution that shows 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.

8. It is, at this stage, learned 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.

9. 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



W.P.Nos.6465 and 6468 of 2022

Tamil Nadu Land Encroachment Act to condone the delay, this Court grants four 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 within the said time limit, the District Collector shall 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**.

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

(T.R.J.,) (S.S.K.J.,)
22.03.2022

vga



W.P.Nos.6465 and 6468 of 2022

To

WEB COPY

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.



WEB COPY



W.P.Nos.6465 and 6468 of 2022

**T.RAJA, J.
AND
SATHI KUMAR SUKUMARA KURUP, J.**

vga

**W.P.Nos.6465 and 6468 of 2022 and
W.M.P.Nos.6557 and 6561 of 2022**

22.03.2022