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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2022

DELIVERED ON : 07.04.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.NOS.33684 OF 2018, 31250 OF 2019 AND 24252 OF 2021

W.P.No.33684 of 2018:

M.G.Annadurai,
President,
Betheal Nagar Residents Welfare Association,
Registration No.340/1997,
Having registered office functioning at
No.1/879, First Thiruvalluvar Salai,
Betheal Nagar, Injambakkam,
Chennai - 600 115.

.. Petitioner

Vs

1. The Government of Tamil Nadu,
rep. by its Principal Secretary to Government,
Revenue Department,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The Principal Secretary/
Commissioner of Land Administration,
Ezhilagam Buildings, Chepauk,
Chennai-600 005.
3. The District Collector,
Chennai District,
No.62, Rajaji Salai, Singaravelar Maaligai,
Chennai - 600 001.
4. The Commissioner,
Greater Chennai City Corporation,
Ripon Buildings, Park Town,
Chennai - 600 003.



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5. The District Revenue Officer,
Kanchipuram District,
Office of the District Collector Office,
Collectorate, Kanchipuram - Vandavasi Road,
Kanchipuram - 631 501.
6. The Revenue Divisional Officer,
Guindy Division, Anna Salai,
Near Dr.M.G.R.Medical University,
Guindy, Chennai - 600 032.
7. The Tahsildar,
Sholinganallur Taluk,
No.1, 1st Cross Street, New Kumaran Nagar,
Sholinganallur, Chennai - 600 119.
8. The Assistant Commissioner,
Greater Chennai City Corporation zonal-XV,
No.120, Rajiv Gandhi Salai,
Old Mahabalipuram Road,
Sholinganallur, Chennai-600 119.

.. Respondents

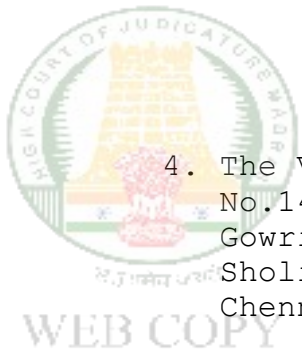
W.P.No.31250 of 2019:

B.Manimegalai

.. Petitioner

Vs

1. The District Collector,
Chennai District, Singaravelar Maaligai,
No.62, Rajaji Salai,
Chennai - 600 001.
2. The Tahsildar,
Sholinganallur Taluk,
No.1, 1st Cross Street,
New Kumaran Nagar,
Sholinganallur, Chennai-600 119.
3. The Revenue Inspector,
Sholinganallur Firka,
Sholinganallur Taluk Office,
No.1, 1st Cross Street,
New Kumaran Nagar,
Sholinganallur, Chennai-600 119.



4. The Village Administrative Officer,
No.14, Injambakkam Village,
Gowriamman Koil Street,
Sholinganallur Taluk,
Chennai - 600 115.

.. Respondents

W.P.No.24252 of 2021:

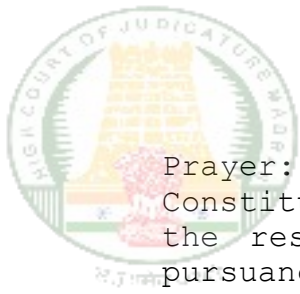
Injampakkam Vadakku, Therkkku Nagar
Bethel Vazhurimai Sangam,
Registration No.135/2015
rep. by its President,
116-A 6th Street,
Bethel Nagar, South Injambakkam,
Chennai - 600 115.

.. Petitioner

Vs

1. The Principal Secretary to Government
of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Land Administration,
Ezhilagam, Chepauk,
Chennai - 600 009.
3. The District Collector,
Chennai District.
4. The District Collector,
Kancheepuram District.
5. The Tahsildhar,
Sholinganallur,
Chennai District.
6. The Revenue Inspector,
Sholinganallur Division,
Sholinganallur,
Chennai District.

.. Respondents



Prayer: W.P.No.33684 of 2018 filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents to consider the petitioner representations in pursuance of the order dated 10.05.2010 in Na.Ka.No.43992/2008/No.1 passed by the District Collector, Kanchipuram and as per the order dated 28.07.2008 in Na.Ka.No.43992/2008/No.1 passed by the 5th respondent.

Prayer: W.P.No.31250 of 2019 filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records relating to the impugned illegal notice dated 28.08.2019 issued by the respondents 3 and 4 under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and quash the same, consequently, direct the respondents to consider the petitioner's detailed written explanation reply letter dated 06.09.2019 within a stipulated time.

Prayer: W.P.No.24252 of 2021 filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents to issue patta to the Members of the Petitioner's society and thereby drop all further proceedings under the provisions of the Land Encroachment Act, 1905.

For the Petitioner : Mr.R.Anandha Babu
in W.P.Nos.33684 of 2018
and 31250 of 2019

Mrs.Dakshyini Reddy
in W.P.No.24252 of 2021

For the Respondents : Mr.J.Ravindran
Addl. Advocate General
assisted by
(i) Mr.P.Muthukumar
State Government Pleader
(ii) Mrs.R.Anitha
Special Government Pleader
(iii) Mr.C.Harsha Raj
Additional Government Pleader

COMMON ORDER

THE CHIEF JUSTICE

A batch of three writ petitions was heard together as it involves a common controversy in regard to the same area of land for which relief has been prayed.



2. W.P.No.33684 of 2018 has been filed to seek a direction on the respondents to consider the representation pursuant to the order dated 10.5.2010 passed by the District Collector, Kancheepuram and also the order dated 28.7.2008 passed by the District Revenue Officer, Kancheepuram, and, accordingly, grant patta or such other reliefs.

3. W.P.No.31250 of 2019 has been filed to challenge the notice dated 28.8.2019 issued by respondents 3 to 4 therein under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 [for brevity, "the Act of 1905"] and quash the same. It is further with the direction to consider the petitioner's detailed explanation/reply dated 6.9.2019 within a time frame. The writ petition pertains to the same area in reference to which W.P.No.33684 of 2018 has been filed.

4. W.P.No.24252 of 2021 has been filed by an association to seek a direction on the respondents to issue patta to the members of the association and drop all the proceedings under the Act of 1905 and pass orders as is deemed fit in the facts and circumstances of the case.

5. For the sake of convenience, we are referring to the facts averred in W.P.No.31250 of 2019. The writ petition pertains to an area in Injambakkam Village, Sholinganallur Taluk, Chennai District, formerly Kancheepuram District. The concerned locality is known as Bethealnagar. The petitioner in the said writ petition and the members of the different associations are residing in the area in question for the last many years. They made several representations to the government for issuance of house site pattas. It is the case of the petitioner that the District Administration has taken a decision to issue patta to 435 beneficiaries in Survey No.282/2. As a first step, the Tahsildar, Sholinganallur Taluk, vide letter dated 13.4.2010 addressed to the District Collector, Kancheepuram, finalised and enlisted 88 eligible persons for granting house site pattas out of the 435 beneficiaries. Thereafter, the District Collector, vide proceedings dated 10.5.2010, changed the classification of the land in respect of 9344 Sq.Mtrs. in Survey No.282/2 out of the total extent of 20.78.0 hectares from "Meikkal Poramboke" to "Grama Natham" for grant of house site pattas. Pursuant to the said reclassification, the District Revenue Officer, Kancheepuram, vide proceedings dated 28.7.2010, addressed to the Principal Secretary/Commissioner of Land Administration, informed about the reclassification of the aforesaid land by the District Collector and his recommendation for issuance of patta to 88 persons. The Principal Secretary/Commissioner of Land Administration, vide letter dated 22.10.2018, informed the



Secretary, Revenue Department, about the reclassification of the aforesaid land and recommendation for issuance of patta to 88 persons. The respondent authorities, however, invoked the provisions of the Act of 1905 and issued notices under Section 7 of the said Act. In such circumstances, the petitioners have approached this court seeking the aforesaid reliefs mainly on the ground of their long possession.

6. At this juncture, it is to be noted that W.P.No.31250 of 2019 has been filed by the petitioner, in her individual capacity, despite being a member of Bethel Nagar Residents Welfare Association, which has filed W.P.No.33684 of 2018. W.P.No.24252 of 2021 has been filed by another association, i.e., Injampakkam Vadakku, Therkkku Nagar Bethel Vazhurimai Sangam.

7. Learned counsel for the petitioners submit that the respondent Tahsildar and other government authorities are attempting to evict the petitioners and others from their residential houses ignoring the order of the District Collector as well as the decision of the government to issue pattas to the beneficiaries. Apprehending eviction, the petitioners were left with no option but to file these writ petitions challenging the invocation of the provisions of the Act of 1905 and to direct the respondent authorities to issue pattas as per the earlier recommendation made by the District Collector and the District Revenue Officer.

8. The further submission of the petitioners is in reference to a judgment dated 9.4.2015 passed by this court in W.P.No.12125 of 2013 [I.H.Sekar v. The District Collector and others], wherein without hearing the petitioners, manifold directions were given in regard to the land in question. The writ petition aforesaid was filed to seek a direction on the respondent authorities to remove the encroachment on the government land and even from the waterbodies. The court disposed of the writ petition by its order dated 9.4.2015 with certain directions to be complied in time frame. The writ petition was again heard in the year 2017 and fresh directions were given on 28.2.2017 for compliance within a period of one year. The compliance therein was to be made after survey of the land by the Indian Institute of Technology, Madras. The survey pursuant to the direction therein was not conducted and thereby without complying the first part of the order, the respondents are proceeding to evict the petitioners and, accordingly, notices under Section 7 of the Act of 1905 were given. The judgment in W.P.No.12125 of 2013 could not have been applied on the petitioners, who were not parties to the said proceedings. However, ignoring the aforesaid, the respondents are hellbent on



evicting the petitioners and, therefore, writ petitions have been filed not only to enjoin the respondents from evicting the petitioners, but also seeking a direction for issuance of pattas. The prayer is accordingly to allow the writ petitions.

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9. The writ petitions have been seriously contested by learned Additional Advocate General. He submits that the petitioners are none else than rank encroachers on the land belonging to the government. In view of the encroachment of the government land, the petitioners have no right to seek issuance of pattas in their favour and, in fact, the government is not inclined to issue pattas for the land in question.

10. Learned Additional Advocate General further submitted that even as per the notice issued under Section 7 of the Act of 1905 the land in question is classified to be "Meikkal Poramboke" and the reclassification of the land, as sought by the District Collector is permissible in the absence of the orders from the Government. To buttress the said argument, he referred to RSO 21(6) of the Standing Orders of the Board of Revenue.

11. Learned Additional Advocate General also submitted that the respondents are taking action strictly cleaving to the provisions of the Act of 1905 and as per the directions of this court in I.H.Sekar v. The District Collector and others, supra. He added that the notice under Section 7 of the Act of 1905 is in the form of a show cause notice. The persons aggrieved have to reply to the said notice and, therefore, the writ petitions are not maintainable, as otherwise remedy of appeal exists.

12. Learned Additional Advocate General also submitted that majority of the occupants of the land are subsequent purchasers from the original encroachers, leaving very few who are residing thereon from the beginning. The land was sold to the majority members of the association by the original encroachers, who did not have any title or authority to transfer. If the prayer made by the petitioners is accepted by this court, it would amount to perpetuating illegality and extending the benefit to the encroachers, who do not have any vested right to maintain their possession over the encroached government land. The prayer is, therefore, not only to dismiss these writ petitions, but to impose costs.

13. We have considered the rival submissions of the parties and perused the records.

14. The batch of writ petitions before us is to seek a direction for issuance of patta of the land occupied by the



petitioners or the members of the association. It is even to challenge the notice issued under Section 7 of the Act of 1905 to show cause as to why removal of the encroachment should not be effected.

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15. Before we address the issues raised in these writ petitions, it would be relevant to note that the land in question was the subject-matter of I.H.Sekar v. The District Collector and others, supra, which was decided by order dated 9.4.2015. The directions contained in paragraph (4) of the said judgment are reproduced hereunder:

"4.We are of the view that the following directions are liable to be issued:

- 1.An enquiry be held in respect of the 'A' Register alteration to confirm the validity and authenticity of the alteration and in case the alteration is unauthorised, the same be restored to its original and action be taken against the defaulting officers.
- 2.Since the eviction of unauthorised occupants is stated to be a periodic exercise, a fresh exercise be undertaken in accordance with law, after notice to all concerned, to clear the land.
- 3.A status report be filed within two months qua the aforesaid with a proper site plan and photographs of the area.
- 4.The exercise be conducted by the first respondent/District Collector."

16. The respondent administration was required to follow the procedure contemplated by law for eviction and a time frame was stipulated, but they failed to complete the exercise. The matter was again heard on 28.2.2017, when not only the period for compliance was enlarged by one year, but certain directions regarding the issues not raised in the earlier judgment dated 9.4.2015 were also taken up. The official respondents were under an obligation to comply the direction given by this court. On their failure, a contempt petition, being Contempt Petition No.1874 of 2018, was filed. When due compliance of the directions given in the judgment was not found, this court took cognizance of the contempt to call for the compliance. The aforesaid contempt petition is still pending and during the pendency of it the present writ petitions were filed.

17. The petitioners have made the prayer for issuance of patta for the land occupied by them without showing their right



to get patta in respect of the land. They made reference of the order passed by the District Collector on 10.5.2010 to show reclassification of the land making it available for issuance of patta for residential purpose. However, as per RSO 21(6) of the Standing Orders of the Board of Revenue, the issuance of pattas to eligible persons pursuant to the reclassification can only be upon issuance of specific orders by the Government. At this juncture, it is apt to reproduce RSO 21(6) of the Standing Orders of the Board of Revenue, which reads as under:

"RSO 21(6). Extension of village site: - When the existing village sites is not sufficient for the needs of the resident villagers the Revenue Divisional Officer is competent to transfer the assessed waste to village site poramboke. The proposals for conversion of water courses/sources, grazing ground cattle stand and burial ground should be sent to the Government through the Commissioner of Land Administration after personal inspection by the Collector/District Revenue Officer. Only on receipt of specific orders from the Government, eligible persons could be given pattas. In other cases, where the lands are vested in the Municipality/Panchayat the opinion of the concerned local body should be obtained. Subject to this, the Collector is competent to transfer the classification of all un-objectionable Government lands to village site. They may effect such transfers and additions on their own authority, subject to provisions in 15(1)(3) except in the case of assessed land which is not at the disposal of Government and which must be acquired under the Land Acquisition Act."

[emphasis supplied]

18. It is amply clear from the aforesaid Standing Order that it is only the government which has the authority to take the decision for conversion of land. There is nothing on record which gives an inkling that orders have been passed by the government for conversion of land and issuance of pattas to eligible persons. In the absence of such an order passed by the Government, the proceedings of the District Collector reclassifying the land cannot be taken to be legal. Rather it is beyond his competence, thus to be treated as illegal. The said finding is further substantiated by the classification of the land recorded in the notice issued under Section 7 of the Act of 1905 as "Meikkal", which means grazing. Therefore, as per the revenue records, as on date, the land is recorded as grazing ground and change in classification of such land may not be permissible. The said view is fortified by a recent judgment



of the Apex Court in the case of Rameshbhai Virabhai Chaudhari v. State of Gujarat, [Civil Appeal No.5135/2021, dated 6.9.2021], which dealt with encroachment on gauchar land, i.e., grazing land. The Apex Court emphatically held that the grazing land should be used only for the purpose for which it is permitted and no encroachment on such land is permissible. The relevant paragraphs of the said judgment are quoted hereunder:

"It is trite to say that gouchar land can be used only for purposes for which it is permitted to be used. If there is a user contrary to the permissible user, whether by the State or by any third party, the same cannot go on. Rehabilitation of persons is really not required in the present case as only three persons are entitled to an alternative site as per rules. There is of course some dispute whether the encroachers have made permanent structures or kuchha construction for keeping cattle but be that as it may, the user cannot be contrary to what is being permitted for gouchar land, which is a grazing land.

In view of the aforesaid, a direction is issued to bring the land in conformity with its use by the State Government taking appropriate action within a maximum period of three months from today."

[emphasis supplied]

19. Inasmuch as the classification of the land remains to be grazing ground in the revenue records, even as per the notice dated 23.9.2021 issued under Section 7 of the Act of 1905, and in the light of the law enunciated in the decision in Rameshbhai Virabhai Chaudhari v. The State of Gujarat, supra, the usage of the land cannot be contrary to what is permitted, i.e., as grazing ground. The petitioners or the members of the association are rank encroachers. We do not wish to traverse into the contention of learned Additional Advocate General that many members of the association are subsequent purchasers of the land and not the occupiers of the land from the beginning, as whether the members of the petitioner association are original encroachers or subsequent purchasers would not make any difference, inasmuch the land is classified as grazing ground and there is no change in user till date.

20. Apropos the claim of the petitioners to regularise their illegal occupation by issuance of pattas, it is appropriate to refer to a decision of the Apex Court in the case of Joginder v. State of Haryana, (2021) 3 SCC 300, wherein it has been emphatically held as under:



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"13. It is required to be noted that the persons in illegal occupation of the Government Land/Panchayat Land cannot, as a matter of right, claim regularization. Regularization of the illegal occupation of the Government Land/Panchayat Land can only be as per the policy of the State Government and the conditions stipulated in the Rules. If it is found that the conditions stipulated for regularisation have not been fulfilled, such persons in illegal occupation of the Government Land/Panchayat Land are not entitled to regularization.

14. At this stage, the decision of this Court in the case of Jagpal Singh v. State of Punjab, (2011) 11 SCC 396, is required to be referred to. In the said decision, this Court had come down heavily upon such trespassers who have illegally encroached upon on the Gram Sabha/Gram Panchayat Land by using muscle powers/money powers and in collusion with the officials and even with the Gram Panchayat. In the said decision, this Court has observed that "such kind of blatant illegalities must not be condoned". It is further observed that "even if there is a construction the same is required to be removed and the possession of the land must be handed back to the Gram Panchayat". It is further observed that "regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of the villagers of the village". Thereafter, this Court has issued the following directions:

'23. Before parting with this case, we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/ Poramboke/ Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/ Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon



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or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.'

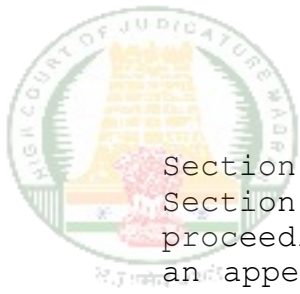
In view of the above also, the prayer of the Petitioners for regularization of their illegal occupation of the panchayat land cannot be accepted."

[emphasis supplied]

21. The decision in *Joginder v. State of Haryana*, supra, reiterated the view enunciated in *Jagpal Singh v. State of Punjab*, (2011) 11 SCC 396. In terms of the directions contained in the case of *Jagpal Singh v. State of Punjab*, supra, it is the bounden duty of the State Government concerned to ensure restoration of such lands for the common use of villagers of the village concerned. The State Government is obligated to make earnest efforts to restore every piece of illegally occupied land which would fall within the orders and directions issued in the case of *Jagpal Singh v. State of Punjab*, supra.

22. Unchecked encroachment of government land has vastly reduced the area which was reserved in the interest of public and ecological balance. It is the bounden-duty of the officials of the Revenue Department to preserve and protect government lands which have been reserved for specific purposes. Indisputably, such encroachments could not have taken place without the knowledge of the respondent authorities. It is a case where till the initiation of the contempt proceedings the respondent authorities acted in cahoots with the encroachers, rather than taking earnest efforts to protect the government land. It is trite that when a person is a rank encroacher without any valid right or title over the land belonging to the government, the court should not permit or protect the continued illegal occupation of the land. That apart, the court will never lend its aid to a person whose case is based on an illegal act, like encroachment in the case on hand.

23. In view of the above, we find that the prayer made by the petitioners for issuance of patta cannot be countenanced. Admittedly, some of the petitioners have filed revisions under



Section 10A of the Act of 1905 challenging the notice under Section 7 of the Act of 1905, without waiting for the proceedings under Section 6 of the Act of 1905, as against which an appeal or revision is maintainable. On this score also, the challenge to the notice issued under Section 7 of the Act of 1905 is not maintainable.

For the foregoing reasons, the writ petitions are dismissed finding no merits. No costs. Consequently, W.M.P.Nos.26374, 26373, 31386 of 2019 and 25566 of 2021 are closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To:

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Revenue Department,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The Principal Secretary/Commissioner of Land Administration,
Ezhilagam Buildings, Chepauk,
Chennai-600 005.
3. The District Collector,
Chennai District,
No.62, Rajaji Salai, Singaravelar Maaligai,
Chennai - 600 001.
4. The Commissioner,
Greater Chennai City Corporation,
Ripon Buildings, Park Town,
Chennai - 600 003.
5. The District Revenue Officer,
Kanchipuram District,
Office of the District Collector Office,
Collectorate, Kanchipuram - Vandavasi Road,
Kanchipuram - 631 501.



6. The Revenue Divisional Officer,
Guindy Division, Anna Salai,
Near Dr.M.G.R.Medical University,
Guindy, Chennai - 600 032.
7. The Tahsildar,
Sholinganallur Taluk,
No.1, 1st Cross Street, New Kumaran Nagar,
Sholinganallur, Chennai - 600 119.
8. The Assistant Commissioner,
Greater Chennai City Corporation zonal-XV,
No.120, Rajiv Gandhi Salai,
Old Mahabalipuram Road,
Sholinganallur, Chennai-600 119.
9. The District Collector,
Kancheepuram District.
10. The Revenue Inspector,
Sholinganallur Firka,
Sholinganallur Division,
Sholinganallur,
Chennai District.
11. The Village Administrative Officer,
No.14, Injambakkam Village,
Gowriamman Koil Street,
Sholinganallur Taluk,
Chennai - 600 115.

+1cc to M/s.Dakshyini Reddy, Advocate, S.R.No.24031

+4ccs to M/s.R.Anandha Babu, Advocate, S.R.No.24436

W.P.Nos.33684 of 2018, 31250 of 2019 and 24252 of 2021

RSI(CO)
RLP(19/04/2022)