



WP Nos.4245 of 2019 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2023

CORAM

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP Nos.4245 of 2019, 27490, 27491, 27493, 27494, 30986 of 2018

WP No.4245 of 2019

M.S.Jamal Mohideen (deceased)

2.Pousia Jama.

3.Khan Imthiaz Mohammed

4.Jamal Hameed Khan

... Petitioners

(petitioners 2 to 4 substituted as legal
representatives of the deceased 1st petitioner
vide order dated 30.1.2023 in WMP No.22194/2022)

Vs

1.The Assistant Executive Engineer (PWD)
Water Resources Department
Coovum Basin Sub Division
Chepauk, Chennai 5

2.The Assistant Engineer (PWD)
Water Resources Department,
Coovum Basin Sub Division,
Chepauk Chennai 5

... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for a
Writ of Mandamus directing the respondents to reconstruct the compound wall of



WP Nos.4245 of 2019 etc.

the petitioner situated at Old Vacant Plot No.14, New No.24 of the layout plant LPH/DTP No.117/60 commonly known as Officer's Colony, Aminjikarai, Chennai 29, comprised in Survey No.173, Vada Agaram Village, Saidapet Taluk measuring North to South on the eastern side (11+40+47)/98 Feet East to West on the Northern side 50 Feet, North to South on the Western side 71 Feet, East to West on the Southern side 31 Feet measuring a total area of 3795 sq.ft. with all easementary right that run with the said property which was illegally demolished without any prior notice or any right over the strip land on the eastern side which is abutting the coovum river, belonged to the Madras State NGO' Cooperative Building Society Ltd and the same was allotted to the members of the society including the petitioner by proceedings dated 11.06.1991 by misusing their power beyond limit and handover the same to the petitioner.

For the Petitioner : Mr.M.Arunkumar
for M/s.Sampathkumar Associates

For the Respondents : Mr.J.Ravindran,
Additional Advocate-General
assisted by Mr.A.Selvendran,
Special Government Pleader
for respondents 1 and 2

COMMON ORDER

(Made by the Hon'ble Acting Chief Justice)

WP No.4245 of 2019 is filed for the issuance of a Writ of Mandamus directing the respondents to reconstruct the compound wall that was illegally demolished by the respondents.



WP Nos.4245 of 2019 etc.

WEB COPY

2. The learned counsel for the petitioner submitted that the Coovum River is passing through the Eastern side of the plots. The occupants of the flats were exposed to insecurity, anti-social elements and nuisance by the illegal trespassers and encroachers which had become a great threat for the peaceful occupation of the property. Therefore, father of the petitioner and seven others have given a complaint to the authorities to prevent the encroachers and the mushrooming hutments. But no action was taken to remove the illegal occupants and encroachers. The Madras State N.G.O.'s Cooperative Building Society also had lodged a complaint before the police and filed a case before the X Metropolitan Magistrate in C.C.No.5289/88 against the trespassers M/s.Mani and Doss under Section 200 IPC, and the learned Magistrate charge-sheeted under Section 447, 341, 427 and 506(ii) IPC. After a prolonged trial, the learned X Metropolitan Magistrate, Chennai, had ordered the removal of trespassers and also convicted the accused, with a direction to surrender vacant possession to the society for the common enjoyment of the eight members. Thereafter, the society passed a resolution on 10.06.1991, allotting 20' of land in breadth on the Eastern side of the colony comprised in T.S.No.62 to 8 members, including the petitioner's father, who were the allottees of the plot Nos.13, 14, 32, 45, 46, 52, 68 and 74. The petitioner's father, who is one among the eight members, was allotted a strip land belonging to the society, subject to certain conditions mentioned therein.



WP Nos.4245 of 2019 etc.

WEB COPY

3. On the eastern side of the petitioner's plots, the Coovam river is passing through. All of a sudden, without prior notice, the respondents demolished the petitioner's compound wall on 24.10.2018, violating the principles of natural justice. The respondents have also issued notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 (hereinafter referred to as, 'the Act').

4. In response thereto, the petitioner has submitted his explanation to the District Collector, Chennai, Tahsildar, Deputy Tahsildar, Revenue Inspector – Nungambakkam, Assistant Engineer, PWD (WRD), Coovam River Sub Division. But to the shock and surprise, the respondents have issued notice under Section 6 of the Act. Therefore, the present writ petition has been filed.

5. The impugned notice issued under Section 6 of the Act without considering the explanation offered by the petitioner to the notice issued under Section 7 of the Act, is liable to be set aside as the petitioner is also supported with the judgment of the Civil Court passed in O.S.No.482 of 1997 dated 16.02.2001 wherein the Civil Court has given a finding that the land belongs to the landowners.

6. WP Nos.27490, 27493, 27494, 30986 of 2018 have been filed challenging the validity of the proceedings issued under Section 6 of the Act.



WP Nos.4245 of 2019 etc.

WEB COPY

7. Learned counsel for the parties submitted that the petitioners' lands have not been classified as a waterbody, more particularly, when the Civil Court has granted permanent injunction, the order of the Civil Court is binding on all the authorities. In support of his submission, he has also produced the judgment of the Full Bench in *Ramaraju vs. State of Tamil Nadu, rep. By its Secretary to Government, Revenue Department, (2005(2) CTC 741)*.

8. The learned Government Pleader appearing for the respondents, filing a detailed counter-affidavit, submitted that the petitioners have been issued with notice under Section 7 of the Act and in response thereto, they have also submitted their explanation. Thereafter, notice under Section 6 of the Act has been issued. Therefore, the remedy for the petitioners lies only before the District Collector, Chennai, under Section 10 of the Act. Instead of approaching the District Collector, Chennai, who is the competent authority, coming to this Court invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India is explicitly barred. Therefore, the writ petitions are not maintainable and the writ petitions should be dismissed, giving liberty to the petitioners to approach the District Collector, Chennai, under Section 10 of the Act.



WP Nos.4245 of 2019 etc.

WEB COPY

9. We also find merits on the submissions made by the learned Government Pleader.

10. Notice has been issued under Section 7 of the Act, calling upon the petitioners to give a reply. We are also informed by the learned counsel for the petitioners that a detailed reply/explanation was offered by the petitioners. According to the petitioners, the explanation submitted by them has not been properly considered by the respondents. Instead, the respondents have passed a cryptic order under Section 6 of the Act.

11. The question as to whether the impugned notice issued under Section 6 of the Act has been properly issued, after considering the explanation offered by the petitioners to the notice under Section 7 of the Act, should be looked into only by the District Collector, Chennai, who is the competent person, as contemplated under the Act. Therefore, when the petitioners are having an effective, alternative, statutory remedy under Section 10 of the Act, it is a well settled legal position that invocation of Article 226 of the Constitution of India is totally barred. No doubt, it is a discretionary jurisdiction. But in the present case, since the petitioners are said to have obtained a judgment from the Civil Court, in spite of the fact that the respondents, who are the defendants before the trial court, have raised a specific plea that the land is forming part of the Coovam river, it is not known how the Civil



WP Nos.4245 of 2019 etc.

Court has not given any finding whether the lands belonging to the petitioners is part of the Coovam River or not. If the lands are part of the Coovam River, Section 14 of the Act would oust the jurisdiction of the Civil Court.

12. Be that as it may, the writ petitions are dismissed with liberty to the petitioners to approach the District Collector, Chennai, within a period of two weeks from the date of receipt of a copy of this order. There will be no order as to costs. Consequently, WMP Nos.32001, 31998, 31997, 32003,, 36132, 36129 of 2018, 4772 of 2019 are closed.

(T.R., ACJ.) (D.B.C., J.)
13.02.2023

Index : Yes/No
Neutral Citation : Yes/No
tar

To
1.The Assistant Executive Engineer (PWD)
Water Resources Department
Coovum Basin Sub Division
Chepauk, Chennai 5

2.The Assistant Engineer (PWD)
Water Resources Department,
Coovum Basin Sub Division,
Chepauk Chennai 5



WEB COPY



WP Nos.4245 of 2019 etc.

T.RAJA, ACJ,
and
D.BHARATHA CHAKRAVARTHY, J.

(tar)

WP Nos.4245 of 2019, 27490, 27491
27493, 27494, 30986 of 2018

13.02.2023