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WP Nos.12659 to 12662 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MS. JUSTICE P.T. ASHA

Writ Petition Nos.12659 to 12662 of 2018
and
WMP Nos. 14776, 14777, 14779, 14780, 14782, 14783,
14785 and 14786 of 2018

P.Kutti @ Elumalai	.. Petitioner in WP.No.12659 of 2018
E.Kumar	.. Petitioner in WP.No.12660 of 2018
Lalitha	.. Petitioner in WP.No.12661 of 2018
Sasikala	.. Petitioner in WP.No.12662 of 2018

Versus

1. The Tahsildar,
Sholinganallur Taluk,
Kancheepuram District.
2. The Revenue Inspector,
Pallikaranai Firka,
Sholinganallur Taluk,
Kancheepuram District.
3. The Superintending Engineer,
Highways Department,
No.299, Anna Salai, Teynampet,
Chennai - 18.



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4. The Executive Engineer,
The Public Works Department,
GST Road, Opp. to MEPZ,
Chrompet, Chennai.

.. Respondents in all WPs

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the records relating to the to impugned notice/order passed under section 6 of Tamil Nadu Land Encroachment Act, 1905, by the Respondents 1 and 2, dated (nil), and quash the same and consequently direct the respondents to recognise the possession of the petitioners as lawful one.

For Petitioners : Mr.A.Ramalingam
in all the Writ Petitions

For Respondents : Mr. A. Selvendran
Special Government Pleader
in all the Writ Petitions

COMMON ORDER

(Order of the Court was made by R. MAHADEVAN, J.)

The prayer in these Writ Petitions is to quash the eviction notices dated Nil, issued under Section 6 of Tamil Nadu Land Encroachment Act, 1905 (Act III of 1905) with respect to the properties in occupation of the petitioners herein.

2. The petitioner in WP No. 12659 of 2018 is the father of the petitioners in WP Nos. 12660 to 12662 of 2018. It is the case of the petitioners that the land in Survey No. 123/22B, measuring 653 square feet situated at Kovilambakkam Village, Medavakkam Main Road, Chennai is



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classified as "Grama Natham" in the records maintained by the Revenue Department. According to the petitioners, the father of the petitioner in WP No. 12659 of 2018 and grand father of the petitioners in WP Nos. 12660 to 12662 of 2018 by name Pattu Naicker was in possession and enjoyment of the aforesaid land for a long time. While so, recognising the possession of Pattu Naicker, Gramanatham Patta (Assignment Patta) was issued in his name under Form XIX, in Serial No. 21, Para No. Rule 7 (ii) of the Board Standing Order (BSO). During 1986, the Government had acquired a portion of the land measuring 1 1/2 cents from Pattu Naicker by invoking the provisions of The Land Acquisition Act for the purpose of forming Inner Ring Road in between G.S.T. Road and Old Mahabalipuram Road and Award No. 2 of 1986 was passed on 08.09.1986. After such acquisition, Pattu Naicker was in possession of the remaining 1 1/2 cents of land in Survey No. 123/22B. After the death of Pattu Naicker, the Petitioner in WP No. 12659 of 2018 was in possession along with the petitioners in WP Nos. 12660 to 12662 of 2018. It is also stated that subsequently, the petitioners have also occupied and enjoyed the adjacent land measuring 1523 square feet in the same Survey Number where they have constructed a building and are residing thereof by paying taxes and charges to the authorities concerned. It is further stated that the petitioner in WP No. 12659 of 2018 has also executed a Settlement Deed dated 09.05.2022,



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registered as document No. 1542 of 2002 on the file of Sub-Registrar, Pallavaram in favour of his wife Mrs. Mariyammal in respect of the land measuring 1523 square feet. While so, notices dated 21.11.2017 were served on the petitioners under Section 7 of the Tamil Nadu Land Encroachment Act to evict them from the respective lands in their occupation. Aggrieved by the same, the petitioners filed WP Nos. 32394, 32395 and 32396 of 2017 before this Court and they were disposed of with a direction to file an appeal under Section 10 of the Act. Pursuant to such direction, the petitioners submitted representation along with documentary evidence to show their long and continued possession of the lands, which are classified as Gramanatham in the revenue records. However, on 05.05.2018, the order under Section 6 of the Act has been served on the petitioners, in which, it was stated that the land and building constructed in Survey No.123/26 is classified as *Meykkal Poromboke* which is factually incorrect. Aggrieved by the same, the petitioners are before this Court with these writ petitions.

3. The learned counsel for the petitioners would vehemently contend that the impugned orders have been passed without jurisdiction. It is his further contention that when the lands in question are classified as *Gramanatham* in the revenue records, invocation of Section 6 or 7 of The



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Tamil Nadu Land Encroachment Act is without jurisdiction. In order to buttress such submission, the learned counsel for the petitioners placed reliance on the decision of the Division Bench of this Court in the case of **The Executive Officer, Kadathur Town Panchayat, Harur Taluk, Dharmapuri District vs. V. Swaminathan and others** reported in **2004 (3) CTC 270** wherein it was held that when a land is classified as *Gramanatham* it is meant for dwelling where a building can be built and such land is never vested with the Government or the Town Panchayat.

4. The learned counsel for the petitioners further submitted that in the present case, in the orders passed under Section 6 of the Act, it was erroneously recorded that the lands in question are classified as *Meikkal Poromboke*. It is also stated that the respondents failed to consider the Assignment Patta issued in favour of the father of the petitioner in WP No. 12659 of 2018 under the Board Standing Order, which is explicit that the lands in question are classified only as *Gramanatham* in the revenue records. Thus, it is contended by the learned counsel for the petitioners that the orders passed under Section 6 of the Act are unsustainable and he prayed for allowing the writ petitions.



5. On the other hand, the learned Special Government Pleader appearing for the respondents would only contend that as against the orders passed under Section 6 of The Act, the petitioners have an alternative and effective remedy of appeal under Section 10 of the Act. The petitioners, without filing such an appeal, have filed the present writ petitions and they are not maintainable. Therefore, the learned Special Government Pleader prayed for dismissal of the writ petitions.

6. The learned counsel for the petitioners fairly conceded the submission of the learned Special Government Pleader appearing for the respondents and sought four weeks time for filing Appeal.

7. In view of the above submission of the counsel for both sides, these Writ Petitions are disposed of granting four weeks time to the petitioners to file an Appeal under Section 10 of the said Act before the Appellate authority. If any such appeal is filed within a period of four weeks from the date of receipt of a copy of this order, the Appellate Authority shall entertain the same notwithstanding the delay in filing such appeal by excluding the time spent by the petitioners in adjudicating the present writ petitions before this Court and dispose of the Appeal (s) on merits and in accordance with law,



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after affording an opportunity of personal hearing to the petitioners, within a period of twelve weeks thereafter. No costs. Consequently, the connected Miscellaneous Petitions are closed.

[R.M.D., J.] [P.T.A., J.]

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Index : Yes / No

Internet : Yes / No

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