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W.P.Nos.23281 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.Nos.23281, 22656, 23282, 23285, 23286, 23289, 23294, 23315, 23337
23338, 22900, 22907, 22909, 22891, 22659, 22662, 21583
23319, 23298, 23299, 23300, 23304, 23307, 23309, 23312 and
23339 of 2019 (26 W.P.'s)

and

WMP.Nos.23032, 23046, 23051, 23062, 23081, 23083, 23084, 22133
22137, 22138, 22540, 23029, 22542, 23013
23024, 22531, 22525, 23034, 23038, 23054, 23059, 23027,
23005, 23009, 23010, 20789 and 23339 of 2019

W.P.No.23281 of 2019

J.Saraswathi

..

Petitioner

..VS..

1. The District Collector,
Erode District.

2. The Commissioner,
Erode Corporation,
Erode.

3. The Assistant Commissioner
Zone-IV, Erode Corporation
Erode.

..

Respondents



Prayer in W.P.No.23281 of 2019

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Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the second respondent in relation to eviction order dated 13.07.2019 passed under Section 6 of the Tamil Nadu Land Encroachment Act 1905, in respect of the petitioner's housing property situate in Site No.46, bearing Door No.64, Poyyerkkarai Street, Gandhiji Road, Erode 638 001, located in Ward-E, Block-21, comprising in T.S.No.27/3 of Erode Town, quash the same.

For Petitioner : Mr.C.Jagadish
(in all W.P.'s)

For Respondents : Mr.A.Selvendran (R1)
(in all W.P.'s) Special Government Pleader
Mr.M.Rajamathivanan (R2 and R3)

COMMON ORDER

(made by ***S.VAIDYANATHAN, J***)

Since the issue involved in all these Writ Petitions is one and the same, they are considered and decided by this common order.



2. These Writ petitions have been filed challenging the eviction orders dated 13.07.2019 passed by the 2nd Respondent under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 (in short 'the Act').

3. For the sake of convenience, Sections 7 and 10 of the Land Encroachment Act, 1905 is extracted hereunder:

"7. Prior notice to person in occupation.- Before taking proceedings [under section 6], the Collector [or Tahsildar, [or Deputy Tahsildar or Revenue Inspector or any authorized officer or] [any other officer specified by the State Government in this behalf (not being an authorised officer) (hereinafter referred to as the 'specified officer')], as the case may be,] shall cause to be served on the person reputed to be in unauthorised occupation of land being [the property of Government] a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against [under section 6.]

Such notice shall be served in the manner prescribed in section 25 of the [Tamil Nadu] Revenue Recovery Act, 1864 ([Tamil Nadu] Act II of 1864), of or in such other manner as the [State Government] by rules or orders under section 8 may direct:

[Provided that no such notice shall be necessary in the case of any person unauthorisedly occupying any land, if he has been previously evicted from such land under Section 6 or if he has previously vacated such land voluntarily after the receipt of a notice under section 5-B or under this section:]

Provided further that where the notice under this section is caused to be served by any Revenue Inspector or [any specified officer], he shall require the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Collector, Tahsildar or [Deputy Tahsildar or authorised officer having jurisdiction, as the case may be,] and shall also make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar



or [Deputy Tahsildar or authorised officer having jurisdiction, as the case may be.]

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10. Appeal.-[xxx] An appeal shall lie-

(a) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar[xxx] under this Act, and

[(aa) to such officer as may be specified by the State Government in this behalf (hereinafter referred to as the appellate authority) from any decision or order passed by an authorised officer under this Act and different appellate authorities may be specified for different classes of cases; and]

(b) to the District Collector from any decision or order of a Collector passed otherwise than on appeal, and

(c) to the [Commissioner of Land Administration] from any decision or order of a District Collector passed otherwise than on appeal.

10A. Revision- (1) Any decision or order passed under this Act may be revised either suo motu or on application-

(a) by the District Collector, if such decision or order was passed by[xxx]a Deputy Tahsildar, Tahsildar or Collector;

(b) by the [Commissioner of Land Administration] if such decision or order was passed by any officer[other than the appellate authority];

(c) by the State Government if such decision or order was passed by the [appellate authority or the [Commissioner of Land Administration]].

(2) The power conferred by sub-section (1) shall not be exercised except on the ground that the officer or authority whose decision or order is sought to be revised appears to have exercised a jurisdiction not vested in him or it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of his or its jurisdiction illegally or with material irregularity.



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(3) No decision or order shall be passed under sub-section (1) prejudicial to any person without giving such person a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration, before such decision or order is passed.]

10B. Stay pending decision in appeal or revision.- Pending the disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, [the appellate authority],[Commissioner of Land Administration]or the State Government, as the case may be, may by order, and subject to such conditions as may be specified therein, stay the execution of the decision or order appealed against or sought to be revised."

4. The case of the petitioners is that the District Collector, Tahsildar, Deputy Tahsildar or Revenue Inspector or any other officer authorised by the State Government, is empowered to issue eviction order and show cause notice, but in the case on hand, both the impugned order and the show cause notice have been issued by the 2nd and 3rd Respondents, viz., The Commissioner and the Assistant Commissioner, Erode Corporation, respectively, without any jurisdiction.

5. The learned counsel for the petitioners submitted that in terms of Section 10 of the Act, even though the Collector is the Appellate authority, there is no notification with regard to the appointment of Commissioner of Corporation to decide the issue. He further submitted that patta was issued to the land in question and initially, the land in question was an Odai/water body and thereafter, it was classified as 'Nattam' and thus



denotified and mentioned as waterbody. It is his further submission that the Government granted permission for construction of house and at this distant point of time, disturbing the petitioners may not be correct. According to him, except one writ petitioner viz., Sadaiammal, others are not encroachers and this submission is without prejudice to the submission that she is not a encroacher.

6. The learned counsel for the Respondents 2 and 3 submitted that it is incorrect to state that Commissioner and Assistant Commissioner, Erode Corporation, have no jurisdiction to issue the impugned order and the show cause notice and in fact, the Commissioner/Erode Corporation has been designated as the authority in terms of G.O.186 (Revenue (L.D. 1(2) Department dated 29.04.2003. He further submitted that a Division Bench of this Court, in which, one of us (SVNJ) was a member, in similar circumstance, has considered the aforesaid Government Order in W.P.No.4803 of 2018 vide order dated 05.03.2018. The relevant paragraph of the aforesaid order reads as under:

"8. In regard to the plea taken by the Petitioners that the 2nd Respondent has no power to issue the impugned notice, it is the contention of the Learned counsel for the 2nd Respondent that G.O.No.186, Revenue Department, dated 29.04.2003 confers power on the part of the Corporation also and they are very much empowered to take action on the aforestated G.O., dated 29.04.2003, the notice was issued. Therefore, it is the submission of the Learned Counsel for the 2nd Respondent that the plea of the Petitioners that the 2nd Respondent has no power to issue the



impugned notice, is incorrect in the eye of Law."

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7. Heard both sides and perused the records.

8. It is no doubt true that the Collector is the Appellate authority, apart from others, who are designated by the Government. Since the land in question is a water body and the authority empowered has to decide the issue in question, circumventing the appeal remedy, the present writ petitions have been filed. That apart, the present lands have been classified as water bodies and no person, much less, the petitioners are entitled to live in the water body. A reading of the earlier order refers to the G.O. mentioned *supra*, which empowers the authority, including the Commissioner authorised to pass/issue notice under Section 7 of the Act. If the petitioner has got grievance, he has to file an Appeal before the District Collector. Since the parties are entitled to approach the Appellate authority, they are permitted to knock at his doors.

9. In such perspective of the matter, the Petitioners shall approach the Appellate authority, within a period of 30 days from the date of receipt of a copy of this order and the Appellate authority is expected to pass orders in accordance with law, within a period of 60 days from the date of filing of the Appeal by the petitioners after affording an opportunity of personal hearing to the petitioners. In case, any of the petitioners is



unable to file an appeal, he may file a written submission so that the Appellate authority can pass orders based on the said submission. In case, any one of the petitioners fails to appear before the Appellate authority or to file written submission, to put forth their argument, it is for the authority to record the same and take decision in accordance with law. The Appellate authority, while dealing with the matter, shall take into account, the decision of the Apex Court in the case of ***Sarvepalli Ramaiah Versus District Collector, Chittoor District and others*** reported in ***(2019) 4 SCC 500***, wherein the Hon'ble Apex Court has held as follows:

"49. This Court has time and again emphasised the need to retain and restore water bodies and held that water bodies are inalienable land. Land comprised in water bodies cannot be alienated to any person even if it is dry. " (emphasis supplied)

10. We make it clear that till a decision is taken, no coercive shall be taken against the petitioners. Since there is no specific G.O., empowering the Commissioner, Municipality, to exercise powers under Sections 7 of the Act, the Appellate authority will have to take into account as to whether the Commissioner, Corporation, has got powers to issue show cause notice. Otherwise, it is open to the District Collector or the appropriate authority to issue fresh notice under Section 7 of the Act. Even though fresh notice is to be issued, the issue has to be decided within a period of 90 days.



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These Writ Petitions stand disposed of with the above direction and observations.

No costs. Consequently, connected Miscellaneous Petitions are closed.

[S.V.N., J.,]

[K.R.S., J]

06.11.2023

Index: Yes / No

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