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W.P.No.24693 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.24693 of 2023

VANNIAR SANGAM
REP. BY ITS SECRETARY,
NO.45/1, MAIN ROAD,
ST. THOMAS MOUNT,
CHENNAI-26.

.. Petitioner

Vs

1. THE STATE OF TAMIL NADU
REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT,
FORT ST. GEORGE, CHENNAI-09.
2. THE COMMISSIOENR OF LAND ADMINISTRATION,
LAND ADMINISTRATION, EZHILAGAM,
CHEPAUK, CHENNAI-05.
3. THE DISTRICT COLLECTOR
CHENGALPATTU,
CHENGALPATTU DISTRICT.
4. THE TAHSILDHAR,
PALLAVARAM TALUK,
PALLAVARAM,
CHENGALPATTU DISTRICT.



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5. ARULMIGU KASI VISWANATHAR TEMPLE,
REP. BY ITS EXECUTIVE OFFICER,
ARULMIGU VADAPALANI ANDAVAR TEMPLE,
VADAPALANI, CHENNAI-26.

6. THE INSPECTOR OF POLICE
ST. THOMAS MOUNT POLICE STATION,
CHENGALPATTU DISTRICT.

7. THE EXECUTIVE OFFICER,
CANTONMENT BOARD,
ST. THOMAS MOUNT, CHENNAI.
(R7 IMPEADED VIDE ORDER DT 24.08.2023)

.. RESPONDENTS

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records of the impugned notice dated 06.03.2023 issued by the 4th respondent under Section 6 of Land Encroachment Act 1905 and quash the same consequently forbear the respondents from interfering the peaceful possession and enjoyment of the property of the petitioner's sangam in S.No.480, Old No.418 to an extent of 41952 sq.ft., situated at St. Thomas Mount Village, Pallavaram Taluk, Chengalpattu District.

For the Petitioner : Mr.N.L.Rajah, Senior Counsel
for Mr.K.Balu

For the Respondents : Mr.Ramanlal
Additional Advocate General
assisted by Mr.P.Muthukumar
State Government Pleader
for respondents 1 to 4 and 6

: Mr.N.R.R.Arun Natarajan
Special Government Pleader
for 5th respondent



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: Mr.Mohan
for M/s.King and Patridge
for 7th respondent

ORDER

(Order of the court was made by the Hon'ble Chief Justice)

The petitioner is challenging the notice/order issued under the provisions of the Tamil Nadu Land Encroachment Act, 1905 [for brevity, "*the Act of 1905*"]

2. The petitioner claims to be the purchaser and assignee of the leasehold right of its predecessor-in-title over the subject writ land under an instrument of sale dated 2.11.1992. The predecessor-in-title of the petitioner has secured the said subject writ land under the instrument of lease from the temple (fifth respondent) on 1.3.1979.

3. The prima donna contention of the petitioner, it appears, is that the State Government could not have resorted to the provisions of the Act of 1905 and at most they could have invoked



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the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (for short, "*the Act of 1975*").

It is the further contention that the State is not the owner of the subject writ land and in view of that, the Act of 1905 would not be applicable.

4. It is the contention of learned Special Government Pleader (HR & CE) that the HR & CE Department has filed a civil suit for possession against the present petitioner and its predecessor. The said suit is decreed.

5. According to the petitioner, an application is filed to set aside the *ex parte* decree and the same is allowed.

6. From the material on record, it appears that the application for condonation of delay in filing the application for setting aside the *ex parte* decree was allowed. The HR & CE Department has filed execution proceedings and the same is pending.



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7. It is the stand of the Cantonment Board that the Cantonment Board is the owner of the subject writ land, however, the said land is classified as B2 land meaning thereby the management and control vests with the State Government.

8. According to the State, the land in question is the State's property. The revenue records depict the said land as State's property and, therefore, it has proceeded under the Act of 1905.

9. The further contention of the HR & CE Department is that a fair rent has been fixed under the order dated 6.10.2003 by the competent authority and the same has become final. The rent amount payable by the lessee is Rs.1,13,666/- per month. The same is payable from 1.11.2001. The said amount is not paid.

10. We have heard Mr.N.L.Rajah, learned Senior Counsel for the petitioner; Mr.Ramanlal, learned Additional Advocate General, assisted by Mr.P.Muthukumar, learned State Government Pleader, for respondents 1 to 4 and 6; Mr.N.R.R.Arun Natarajan, learned



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Special Government Pleader for the fifth respondent; and
Mr.Mohan, learned counsel for the seventh respondent.

11. The challenge is to the order passed under Section 6 of the Act of 1905.

12. The provisions of the Act of 1905 can be invoked if the property in question is a government property and the person is an encroacher and/or unauthorised occupant of the land.

13. It appears that there are many claimants of the property. Various authorities are claiming their right and title over the property.

14. The temple (fifth respondent) claims to be the owner of the premises in question. It claims to have executed a lease in favour of the predecessor of the petitioner under the instrument of lease dated 1.3.1979 and the petitioner is an assignee of the same from the lessee of the temple under the instrument of sale dated



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2.11.1992. The fifth respondent has filed a suit, bearing O.S.No.142 of 1991, seeking possession from the present petitioner and T.Sumanthakamani. T.Sumanthakamani is the original lessee of the fifth respondent and the petitioner claims its right from T.Sumanthakamani. The said suit, it appears, is decreed ex parte. Thereafter, the matter went up to the Supreme Court. The application for condonation of delay in filing the application for setting aside the ex parte decree was allowed and further proceedings, it appears, is pending between the petitioner and the fifth respondent.

15. According to the Cantonment Board (seventh respondent), St.Thomas Mount cum Pallavaram Cantonment is one of the oldest cantonments in the country. The total extent of the cantonment notified area was 2914 acres and the lands are classified into different categories. The subject writ land is B2 land, i.e., it is the land of the cantonment, but under the management of the State Government. It is the further stand of the seventh respondent that though B2 land is under the management of the State Government,



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the Cantonment Board is the statutory authority to administer/ regulate the entire cantonment area as per the provisions of the Cantonment Act, 2006 and the Rules framed thereunder. Whereas, the State Government claims that it has dominion over the property and that the property is recorded as the State Government's property in the revenue records.

16. On the one hand, civil proceedings are filed by the fifth respondent claiming that it has right and title over the subject writ property and, on the other hand, the seventh respondent, in its affidavit, claims dominion over the property, inasmuch as it states that though the subject land is B2 land under the management of the State Government, the Cantonment Board is the statutory authority to administer/regulate the entire cantonment area. All three claim to have right over the property.

17. The proceedings under Section 6 of the Act of 1905 are decided on the basis of the say obtained pursuant to the show cause notice issued under Section 7 of the Act of 1905. The



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proceedings under Section 6 of the Act of 1905 are permissible if the property is of the State. It would not be appropriate, in view of the chequered facts, for the authority to proceed under Section 6 of the Act of 1905. Various aspects are required to be considered and, according to learned Senior Counsel for the petitioner, at the most the provisions of the Act of 1975 could have been undertaken.

18. When three parties, i.e., the Cantonment Board (seventh respondent); the temple (fifth respondent); and the State Government (first respondent), are claiming their right and interest over the property, it would be improper to permit the State Government to proceed under Section 6 of the Act of 1905, more particularly, when already a decree has been passed in favour of the fifth respondent/temple.

19. In the light of the above, we set aside the impugned order passed under Section 6 of the Act of 1905 with a further observation that it would be open to the State Government or any of the authorities/respondents having right, title and interest over



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the subject writ property to take appropriate proceedings, as may be permissible under law.

The writ petition is allowed with the aforesaid observations.

There will be no order as to costs. Consequently, W.M.P.No.24134 of 2023 is closed.

(S.V.G., CJ.)

(D.B.C., J.)

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