



W.P. Nos.24283 to 24286 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

and

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P. Nos.24283 to 24286 of 2017 & connected W.M.Ps.

A. Murugesan Achari

Petitioner in WP No.24283/2017

R. Nirmala

Petitioner in WP No.24284/2017

S. Kasthuri Ammal

Petitioner in WP No.24285/2017

B. Murugan

Petitioner in WP No.24286/2017

v

1 The Collector
Thiruvallur District
Thiruvallur

2 The Assistant Engineer
Public Works Department
Irrigation Section II
Water Resource Organisation
Thiruvallur District
Thiruvallur

3 The Tahsildar
Thiruvallur Taluk
Thiruvallur

4 The Block Development Officer
Kadambathur Panchayat Union
Kadambathur
Thiruvallur District

5 TANGEDCO
represented by its Executive Engineer
Perumbakkam Village
Kadambathur
Thiruvallur District



W.P. Nos.24283 to 24286 of 2017

(R5 *suo motu* impleaded *vide* order dated 21.04.2021 made in W.P.Nos.24283 to 24286 of 2017)

Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records pertaining to Na.Ka.No.2103/2016/A6 dated 09.05.2017 of the fourth respondent and quash the same.

For petitioner in all WPs	Mr. D.S. Ramesh
For RR 1-3 in all WPs	Mr. A. Selvendran Special Govt. Pleader
For R4 in all WPs	Mr. M. Elumalai Addl. Govt. Pleader
For R5 in all WPs	Mr. L. Jai Venkatesh

COMMON ORDER

(made by S. VAIDYANATHAN, J.)

These writ petitions have been preferred challenging the eviction notice dated 09.05.2017 issued by the fourth respondent, under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007, whereby and whereunder, the petitioners have been required to remove the encroachments made by them in the water body, and to surrender the land, within a fortnight, failing which, they were cautioned that the encroachments will be removed following due process of law and that they will be proceeded against, as per Government rules.



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2 The petitioners, who are not the owners of the land in S.No.274 in Perambakkam Village, Perambakkam Panchayat, Kadambathur Panchayat Union, Thiruvallur District, have constructed shops in the said survey number and admittedly, there are no sale deeds showing that the petitioners have purchased the land. But, according to the petitioners, they are in possession and enjoyment of the property for more than three decades by paying kist, property tax, *etc.*

3 While so, a notice dated 18.09.2015 was issued by the third respondent under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, stating that the petitioners have encroached water body and cart track (வண்டிப் பாதை). The petitioners produced a number of documents to show that they have paid money to the Revenue Department under various heads. All these documents, more so, B-Memos would clearly show that the petitioners are not the owners of the property.

4 During the pendency of these writ petitions, electricity connection was directed to be disconnected by this Court by an interim order dated 11.09.2017. According to the petitioners, the survey number occupied



as such, the fourth respondent has no powers to initiate any proceedings under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007, when already, proceedings had been initiated under the Tamil Nadu Land Encroachment Act.

5 The learned counsel for the petitioners contended that the petitioners have constructed shops with their hard earned money and they need not be disturbed, more so, when no prejudice has been caused to the respondents. He further contended that the petitioners had got patta for the land in their occupation, which was subsequently cancelled.

6 The third respondent has filed a counter affidavit dated 09.04.2018 stating *inter alia* that the prayer in the writ petitions cannot be granted, as, the land in S.No.274 of Perambakkam Village to an extent of 0.71 are has been classified as cart track in the Revenue records and that the adjacent land in S.No.308 to an extent of 7.25.0 hectares is classified as kasam (water course) poramboke.

7 At the outset, it has to be stated that though the learned counsel for the petitioners submitted that the petitioners have got patta for their lands, according to Mr. A. Selvendran, learned Special Government Pleader, the said



pattas were bogus ones and they were created for the purpose of this case and were subsequently cancelled. Even assuming for a moment that the pattas were not cancelled subsequently, be it noted, a patta will not confer title on the occupier of a property unless it is issued to a person who is a landless poor. Further, certainly, patta cannot be issued for commercial purpose.

8 It is also noteworthy that though the petitioners have got a right of appeal under Section 10 of the Land Encroachment Act, since these writ petitions have been pending from 2017 and nearly six years have gone by from the date of filing, and the petitioners have averred in their affidavits that they have no efficacious alternative remedy and hence, they have preferred these writ petitions, we are of the considered view that relegating the petitioners to exhaust the alternative remedy will only be a futile exercise, more so, when the area in question, viz. S.No.274, is a cart track and the adjacent area, viz., S.No.308 is a water body.

9 In such perspective of the matter, the relief sought by the petitioners cannot be granted and the respondents shall take immediate steps to remove the encroachment within a period of four weeks from the date of receipt of a copy of this order. Meanwhile, within a period of two weeks from



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remove their belongings from the encroached area. It is made clear that in the course of removal of encroachments, if any of the properties of the petitioners is damaged, the officials cannot be held liable.

10 Further, we expect the respondents to identify the officials who are to take up the process of removal of encroachment and if the officials fail to take action to remove encroachment, disciplinary proceedings will have to be taken against those officials for their lapse in carrying out the direction of this Court for dereliction of duty and dishonesty towards work.

With the above directions, these writ petitions stand dismissed, however, sans costs. Connected W.M.Ps. are closed.

(S.V.N., J.) (K.R.S., J.)
13.10.2023

cad

Note to Office:

Issue order copy by 17.10.2023



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To
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S. VAIDYANATHAN, J.

and

K. RAJASEKAR., J.

cad

Common order in
W.P. Nos.24283 to 24286 of 2017

13.10.2023