



W.P.(MD) No.9887 of 2020 etc., batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.04.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) Nos.9887, 9854, 9889, 9895, 9916 and 10069 of 2020

and

W.M.P.(MD) Nos.8831, 8860, 8861, 8865, 8876 and 8970 of 2020

W.P.(MD) No.9887 of 2020:

S.Karthikeyan

.. Petitioner

Vs.

1.The District Collector,
Theni District,
Theni.

2.The Tahsildar,
Andipatti Taluk,
Theni District.

3.The President,
Kovilpatti Panchayat,
Andipatti Union,
Theni District.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India,
praying for issuance of Writ of Certiorari calling for the records



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pertaining to the impugned notice issued by the third respondent vide his proceeding in Na.Ka.No.01/2020 dated 12/06/2020 and quash the same.

In all cases:

For Petitioner	:	Mr.A.Jeyaramachandran
For RR1 & 2	:	Mr.J.John Rajadurai Government Advocate
For R3	:	Mr.P.Arun Jayatram

COMMON ORDER

These writ petitions have been filed challenging the notices issued by the second respondent to the respective petitioners asking them not to run the business citing reasons of COVID and that the buildings in which they are running their business are unapproved and an encroachment into Government land.

2. The common averment in all the writ petitions is that the property in which each of the petitioners are running their business belongs to one P.Kamakshi Thevar from whom, they had taken the same



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on rent. Some of the petitioners had entered into a lease agreement in the year 2017 itself. While so, they were shocked and surprised to receive the impugned notices dated 12.06.2020. The lands had been purchased by the said P.Kamakshi Thevar and his brother Praburaj in the year 1963 itself. They had purchased an extent of 2 acres and 26 cents and were cultivating coconut, mango etc., and they have also constructed shopping complexes in which the petitioners have taken shops for lease. Further, the Public Works Department in the year 2004, sought to construct a circuit house stating that the lands in question were Government lands. Challenging the said action, the said Kamakshi Thevar and Praburaj filed W.P.No.24145 of 2004 forbearing the Government from interfering with their peaceful possession and enjoyment of the lands. After hearing the parties, this Court was pleased to observe that the petitioners therein had to approach the appropriate forum for appropriate remedy and this Court had also recorded the statement of the learned Government Advocate that without following due process, the lands could not be taken over. The writ petition was ultimately dismissed. Thereafter, Praburaj and his brother had filed O.S.No.91 of 2019 on the file of the Principal District



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Court, Theni, for a declaration and injunction and respondents 1 and 2 herein shown as defendants 1 and 2 therein. The third respondent herein is aware about these facts.

3. It is the contention of the petitioners that all these proceedings had been initiated only on account of a recent enmity between their landlords and the third respondent. They therefore, sought for quashing the said notices on the ground that it is nothing but a colourable exercise of power and contrary to the interim orders obtained by the vendors of the petitioners.

4. It is only the third respondent who has filed a counter in which they had contended that the property in S.No.1506, measuring an extent of 3.30 acres of Kovilpatti Village, Andipatti had been assigned to one V.Perumal Mathari by the Revenue Divisional Officer, Periyakulam in proceedings dated 07.10.1929. Subsequently, an extent of 2.25 acres in Sub Division Survey No.1506/2 was sold by the said Perumal Mathari in favour of Kamakshi Thevar. Since there was a violation of the



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assignment conditions, the assignment order was cancelled by orders dated 30.10.1972. This cancellation has not been challenged by Kamakshi Thevar or his assignees. Pursuant to the order, the lands in question have been classified as “Tharisu” in the revenue records. The petitioners herein have put up shops without obtaining proper licence for running the business. That apart, the residents of Kandamanur Village 7th Ward had represented that the food waste, medical waste and other wastes were being thrown in front of the shops thereby causing a health hazard which assumed significance during the COVID period. They would further submit that the petitioners have not averred as to whether they had obtained the requisite licence and were paying professional tax to the third respondent-Panchayat. The third respondent has further stated that they have initiated proceedings for removing the encroachment by issuing notice under Section 7 of the Land Encroachment Act, which has been received by the petitioners, who have not mentioned the same in their respective affidavits. He would therefore, prayed for dismissal of the writ petitions.



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5. Learned counsel for the petitioners would produce copy of the plaint in O.S.No.91 of 2019 pending on the file of the Principal District Court, Theni, which is a suit filed by the lessors of the petitioners viz., Kamakshi Thevar and Praburaj for a declaration of their right, title and interest to an extent of 2 acres and 26 cents from and out of a total extent of 3 acres and 38 cents comprised in S.No.1506, now sub divided as S.No.1506/2 in Kovilpatti Village, Andipatti Taluk, Theni District. In the said suit, it appears that the plaintiffs had also taken out an application seeking the issue of an order of *ad interim injunction* restraining the defendants, their men or any person claiming under them from distributing the peaceful possession and enjoyment of the suit property till the disposal of the suit. The learned Principal District Judge had only ordered notice in the said matter and ultimately had dismissed I.A.No.3 of 2013. Aggrieved by the same, the plaintiffs therein had filed C.M.A.No.765 of 2021 on the file of this Court. By an order dated 17.03.2023, this Court had allowed the appeal and granted an order of *status quo*, since the respondents have themselves initiated proceedings under the Land Encroachment Act, which would only go to show that the



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petitioners are in possession of the same. Therefore, in the light of the above order and the fact that a suit for declaration was filed by the lessors of the petitioners herein who are the original owners, the impugned order appears to be an attempt to circumvent these orders. Accordingly, all these Writ Petitions are allowed and the impugned notices are quashed.

6. It is informed by the learned counsel appearing for the third respondent that the petitioners are not remitting the taxes. However, learned counsel for the petitioner would submit that till 2018, tax has been paid, thereafter, the third respondent has refused to receive the tax. It is made clear that the arrears shall be paid, which shall be received by the third respondent and the petitioners shall continue to pay the future taxes. No costs. Consequently, connected miscellaneous petitions are closed.

20.04.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

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P.T.ASHA, J.

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To

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Theni District, Theni.

2.The Tahsildar,
Andipatti Taluk,
Theni District.

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