



W.P.(MD)No.17758 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.17758 of 2020

and

W.M.P.(MD).No.14831 of 2020

1.P.Kamatchi Thevar (Died)

2.P.Praburaj

3.K.Rajaithi

4.M.Annakamayi

... Petitioners

(Petitioner Nos.3 and 4 are substituted vide Court Order dated 17.07.2023 in W.M.P.(MD).No.11356 of 2022 in W.P.(MD).No.17758 of 2020)

Vs

1.The District Collector,
Theni District.

2.The Revenue Divisional Officer,
Periyakulam Division,
Theni District.

3.The Tahsildar
Andipatti Taluk,
Theni District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records relating with the impugned order passed by the 2nd Respondent in ROC.No.A3



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41614/72 dated 30-10-1972 pertaining to the resumption of the petitioner's land measuring 2.25 Acres in S.No.1506/2 in Kovilpatti Village, Andipatti Taluk, Theni District and quash the same as it is arbitrary and illegal.

For Petitioners : Mr.R.Suriyanarayanan

For R-1 to R-3 : Mr.B.Saravanan,
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the proceedings of the second respondent in ROC.No.A3 41614/72, dated 30.10.1972.

2. The case of the petitioners is that the land measuring an extent of 3.38 acres in Survey No.1506 belonged to one Kandhan and others and the petitioners purchased a portion of land to an extent of 2.26 Acres through a registered sale deed dated 27.02.1963. Thereafter, the petitioners were in possession and enjoyment of the property. In the year 2003, the third respondent issued an eviction notice against the petitioners and the same was put to challenge before this Court in W.P.(MD).No. 24145 of 2004. This Writ Petition was finally disposed of by this Court by an order dated 15.09.2017 and the relevant portions are extracted hereunder:



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“7. I have gone through the materials and heard the petitioner as well as the respondents. Initially, the petitioner was issued notice under Section 5 of the Land Encroachment Act after receipt of the notice, the petitioners also submitted their explanation. Thereafter, the publication was issued for construction of circuit house under Survey No.1506/2 which is classified as Government Poramboke Land. Hence, prayer in the Writ Petition cannot be granted.

8. In view of the above factual position, the prayer sought for by the petitioner cannot be granted and it is for the petitioner to move appropriate forum for appropriate remedy. The learned Government Advocate also agreed that without due process of law, no land can be acquired. The same is recorded.”

3. Pursuant to the above order, the petitioners filed a suit before the learned Principal District and Sessions Judge, Theni in O.S.No. 91 of 2019 seeking for the relief of declaration and permanent injunction. During the course of trial, the proceedings of the second respondent dated 30.10.1972 was marked and the petitioner claims that only at that point of



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time, they came to know that such a proceeding was issued and thereby, the lands that were assigned were resumed. In view of the same, the present Writ Petition has been filed before this Court challenging the proceedings of the second respondent dated 30.10.1972.

4. The second respondent has filed a counter affidavit. The second respondent has taken a stand that this Writ Petition is hit by latches. The second respondent has also taken a stand that the petitioners have also filed a suit and the same is pending before a competent Civil Court and while so, the petitioners cannot be allowed to parallelly contest the case before this Court also. Accordingly, the second respondent has sought for dismissal of this Writ Petition.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. The petitioners have already filed a substantial suit before the competent Civil Court and the same is pending. The petitioners are claiming for title over the subject property. The petitioners have raised a



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ground that the resumption order was passed by the authority, who had no jurisdiction and that such an order was passed even without putting the petitioners on notice. Therefore, according to the petitioners, this order is illegal and does not bind the petitioners.

7. The ground that has been raised by the petitioners in this Writ Petition can very well be raised before the trial Court. Ultimately, the trial Court while deciding the title, will decide upon the effect of the order passed by the second respondent through proceedings dated 30.10.1972. While doing so, the grounds that are raised by the petitioners can be taken into consideration by the trial Court. It is not necessary for this Court to undertake that exercise in this Writ Petition. This clarity will sufficiently take care of the right of the petitioners. .

8. This Writ Petition is disposed of in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

17.11.2023

NCC:yes/no
Index:yes/no
Internet:yes/no
tsg



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N.ANAND VENKATESH, J.

tsg

To

- 1.The District Collector,
Theni District.
- 2.The Revenue Divisional Officer,
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Theni District.
- 3.The Tahsildar
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