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W.P.No.18877 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.18877 of 2020

1. S.Sunitha

2. Kokila

... Petitioners

Vs.

1. The Competent Authority/
Land Administration Officer,
Chepauk, Chennai.

2. The District Revenue Officer,
Collector Office, Chennai.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, directing the respondents to remove the encroachments in bearing Survey No.154, T.S.No. 108, Ernavoor Village, Ramanathapuram, Ambattur Taluk, Thiruvallur District with an extent of 33,057 sq.ft in respect of attachment order passed in G.O.Ms. No. 292, Home Department dated 31.03.2003, G.O.Ms. No. 390, Home Department dated 01.03.2004.



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For Petitioners : Mr.D.Rajagopal
For Respondents : Mr.A.Selvendran,
Special Government Pleader,

ORDER

(Order of the Court was delivered by S.M.Subramaniam J.)

The writ of mandamus has been instituted to direct the respondents to remove the encroachments in Survey No.154, T.S.No. 108, Ernavoor Village, Ramanathapuram, Ambattur Taluk, Thiruvallur District with an extent of 33,057 sq.ft in respect of attachment order passed in G.O.Ms. No. 292, Home Department dated 31.03.2003, G.O.Ms. No. 390, Home Department dated 01.03.2004.

2. The learned counsel for the petitioner, Mr.D.Rajagopal, would contend that the petitioner is the absolute owner of the subject property described in the writ affidavit. Admittedly the property has been attached by the competent authority under the TNPID Act. The Criminal case registered was disposed off. The petitioner states that after attachment by the authorities under the TNPID Act, few persons have encroached upon the land belonging to the petitioner. Thus, the present petition came to be instituted.



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3. The learned Special Government Pleader, Mr.A.Selvendran, would oppose the said contention by stating that the authorities conducted an inquiry and identified that the subject properties are water bodies. The petitioner himself would have purchased the property without properly verifying the nature of the land. However, this requires an adjudication with reference to the original document and evidences, which cannot be done by the High Court in a writ proceedings. As per the Revenue record, the subject property is classified as “Moonadi Eri”.

4. It is relevant to extract paragraphs 21 and 22 of the counter affidavit, which reads as under:

“21) It is respectfully submitted that the contention of the petitioner that the said property was encroached by the third parties is not correct. One by name T. Rajendran who claimed to be a power of attorney holder to Tvl. R. Kokila and S. Sunitha had filed W.P.No.25542 of 2007 stating that the said Tvl. R. Kokila and S. Sunitha have executed a power of attorney relating to the properties in Ernavoor and registered the same as Document No. 543 dated 14.12.2000. Besides this they had also executed a sale letter to him and also delivered possession of the properties. Much prior to the attachment, the said property was



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mortgaged to one Thiru M. Sivalingam and the said deed of Mortgage was registered as document No. 4332 of 2002 dated 29.11.2002 at the S.R.O., Thiruvotriyur. To settle the issue, the Power of Attorney holder of the petitioners had sold an extent of 1200 sq.feet in the aforesaid land to the said Mortgagee Sivalingam by way of deed of sale registered as document 16 of 2007. But, on the timely intervention of the CA/DRO, the said deed of sale was cancelled by way of deed of cancellation registered as document No. 3926 of 2007 dated 04.04.2007. Besides that, a prima facie perusal of the Encumbrance certificate shows that the TNSCB had entered upon the land and sold certain portions to the encroachers. It is also submitted that three sub-divisions were made to this field during Town Settlement and that a perusal of the Land Records (TSLR) shows all these sub-divisions confirms that the said land is meant for Moonadi Eri. The Land Records details are as furnished below:

Ward No.	Block No.	Sub.Div .No.	Classific ation	Exent Hec.Ares.Sq.Mts.			Adangal
C	2	108/1	Circle Poramboke	01	07	17.0	Moonadi Eri
C	2	108/2	Circle Poramboke	01	74	00.0	Moonadi Eri
C	2	108/3	Circle Poramboke	01	96	00.0	Moonadi Eri

As such no transfer of Registry made in this land on any



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one's name. The petitioners herein cannot claim any right over the said land as it is meant for Eri Poromboke. Even if admitted that there are encroachments they will be dealt by government as per the Acts and Rules in force.

22) As regards the averments of the petitioner set out in para 6 of the affidavit, it is respectfully submitted that the petitioners herein who are well aware of the fact that the said land belongs to Government have deliberately, willfully and wantonly failed to disclose that the property belongs to Government. The said property had already been attached to Government as early as in the year 2007 itself. Now the petitioner audaciously trying to use to Government to take possession of the Government land. The petitioners have not approached the Hon'ble High Court with clean hands and they are guilty of suppressio veri and suggestio falsi.”

5. In view of the above statement made by the second respondent, the encroachers, in the water body, are to be evicted and such water bodies are to be protected to preserve water resources for public use.

6. The petitioner if claims title over the property, is at liberty to approach the competent Civil Court to establish his title in the manner known to law. However, pendency of the Civil Suit is not a bar for the



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authorities to evict the encroachers from the water bodies.

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7. Thus, the 2nd respondent is directed to evict the encroachers from the water body by following the procedures, more specifically, by issuing show cause notice to the encroachers and affording opportunity to them to submit their objections or explanations, if any. The said exercise is directed to be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

8. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs.

(S.M.S.J.,)

(K.R.S.J.,)

14.02.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)



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To

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1. The Competent Authority/
Land Administration Officer,
Chepauk, Chennai.
2. The District Revenue Officer,
Collector Office, Chennai.



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S.M.SUBRAMANIAM, J.

and

K.RAJASEKAR, J.

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