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W.P.No.22811 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.11.2024

PRONOUNCED ON : 18.12.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.No.22811 of 2024
W.M.P. Nos.24846, 24847 and 24849 of 2024

1. Rukmani
2. T.S. Kumar
3. C. Dhanapal ... Petitioners

vs.

1. The District Collector,
State Highway 96, Opp. District Court,
Tamil Nadu - 638 011.
2. The District Revenue Officer,
Collector Office, Erode
3. The Revenue Divisional Officer,
8PQF+JC6, CSI Institutions Campus,
Chidambaram Colony, Erode,

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Tamil Nadu - 638 001.

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4. The Tahsildhar,
New No.12, Old No.360,
Erode Main Road,
Panneer Silvam Park,
Erode, Tamil Nadu - 638 001.
5. The Village Administrative Officer,
Erode.
6. Arulmigu Magaliamman Temple,
Represented by its Trustees,
Thindal Village, Erode District.
7. The Corporation,
Erode.

... Respondents

*(R7 - Suo Motu impleaded as per order
dated 24.09.2024 in W.P.No.22811/2024
by ACJ and MJRJ)*

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari to call for the entire records on the file
of the respondent No.3 in Proceedings Na.Ka.No.2748/2024/A2 dated
12.07.2024 and to quash the same as illegal.

For Petitioners : Mr.V. Ragavachari,
Senior Counsel
(For Ms.V. Srimathi and K. Abhirame)

For RR 1 to 5 : Mr.T. K. Saravanan,

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(Government Advocate)

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: Mr. S. Ravichandran,
(AGP, HR&CE)

For R7

: Mr. M. Rajamathivanan,
(Standing Counsel for Erode Corporation)

ORDER

[by K.RAJASEKAR, J.,]

This writ petition has been filed to quash the proceedings passed by the respondent No.3 in Na.Ka.No.2748/2024/A2 dated 12.07.2024, wherein the representation of the petitioners seeking issuance of patta was rejected and consequently, direction was issued to remove the encroachment made by the petitioners by invoking the provisions of Tamil Nadu Land Encroachment Act, 1905.

2. Brief facts leading to filing of this writ petition are as follows:

2.1. The claim of the petitioners is that they are in possession and occupation of the portions of the land in old Survey No.67/A / New Survey



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Nos.54/1 and 54/7, 35 Thindal Village, Erode Taluk, Erode District for several decades and they are also paying house tax, electricity consumption charges and water tax, etc., for the buildings in the said land. The petitioners herein have sent representation for assignment of the said land and for issuance of patta in their favour, further, they filed writ petition in W.P.No.1286 of 2011, seeking direction to the Authorities to consider their representation. This Court has passed a common order dated 22.01.2011 in the said writ petition, directing the respondent No.2 - The District Revenue Officer, Erode (hereinafter, DRO) herein to pass orders on the representation of the petitioners within a period of twelve weeks, but, no orders were passed by the DRO. Whiles, the petitioners were served with show cause notice dated 12.06.2024 under the Land Encroachment Act, 1905 (hereinafter Encroachment Act), calling upon them to remove their occupation over the said land, on the ground that the said land is a "Government Poramboke" and the petitioners herein have encroached certain portions of the land in Survey No.54/7. The petitioners have sent their reply on 28.06.2024 and thereafter, the petitioners have also received another show cause notice dated 05.07.2024 under Section 7 of the



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Encroachment Act, calling upon them to appear for an enquiry on 09.07.2024. Whiles, the petitioners challenged the said show cause notices dated 12.06.2024 and 05.07.2024, by filing a writ petition in W.P. No.20509 of 2024.

2.2. Meanwhile, based on the enquiry, the respondent No.3 - The Revenue Divisional Officer, Erode (hereinafter, RDO) by an order dated 12.07.2024, rejected the petitioner's request for assignment of land, issuance of patta and passed an order of eviction. Subsequently, a notice was issued to the petitioners under Section 7 of the Land Encroachment Act, 1905 and the petitioners have also filed an appeal before the Appellate Authority, challenging the said notice served under Section 7 of the Encroachment Act.

2.3 In the meantime, the writ petition filed by the petitioners in W.P.No.20509 of 2024 was disposed of by this Court by an order dated 24.07.2024, with the liberty granted to the petitioners to challenge the proceedings in Na.Ka.No.2748/2024/A2 dated 12.07.2024 passed by the respondent No.3 - RDO. Accordingly, the present writ petition has been



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filed by the petitioners.

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3.1. On behalf of the Official respondent, the respondent No.2 - DRO filed a counter, wherein, it is stated that the lands in survey Nos.54/1 and 54/7 is on the pathway of Arulmigu Thindal Murugan Temple at Thindal Village, which is situated in Erode to Perundurai road and the said land is classified as "Government Poramboke". It is further stated that the petitioners herein have encroached the said land, constructed a commercial building and leased out some portions of the land for commercial activities. The said land is situated in a busy area and Moufssal bus stop as well as a Women's College are situated adjacent to the said land. Hence, for the purpose of curtailing land encroachment in such area, the respondent No.4 - The Tahsildar, Erode was instructed to conduct inspection, to survey and take action against the encroachers. Accordingly, an inspection and survey was conducted in the said area and it has been found that the said land in survey Nos.54/1 and 54/7 were occupied by the private parties, they are generating income from the Government Poramboke land, by leasing out the same for commercial purpose. Only thereafter, notices were served to the

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petitioners herein under the Encroachment Act, hence the petitioners are not entitled to claim any right over the said land on the ground that they were in long time possession of the said land.

3.2. In the counter, it is further stated that, some portions of the land in Survey Nos.54/1 and 54/7, assigned to eligible persons, since it was not used for temple purposes and the same shall not give any legal right to the petitioners herein to claim that they are entitled to assignment of the land. The caveat was filed to prevent the petitioners from getting any ex-parte orders, in the matters concerning removal of encroachment. Only after thorough enquiry, considering the representation of the petitioners, after giving fair opportunities, the respondent No.3 - RDO had passed the proceedings Na.Ka.No.2748/2024/A2 dated 12.07.2024, within his jurisdiction to handle encroachment and the same is not contravention of the High Court directives. The petitioners are not having any legal right to assignment of the said land and for patta in their favour, to conduct commercial activities in the said land. The petitioners are not landless poor or eligible to claim assignment of land under any of the schemes of the



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Government, thereby the order passed by the respondent No.3 - RDO is valid.

Submissions on behalf of the petitioners:

4. Mr. V. Ragavachari, learned Senior Counsel appearing for the writ petitioners submits that the petitioners are in possession and enjoyment of the lands in Survey Nos.54/1 and 54/7 for several decades and some of the adjacent land owners were assigned land in the year 2007, hence the petitioners herein submitted their representation for assignment of the land, which were in their possession, and same was not considered by the Official respondents 1 to 3. Therefore, the petitioners filed writ petitions in W.P.Nos.1283 to 1286 of 2011, wherein this Court by an common order dated 22.01.2011, directed the respondent No.2 - DRO to consider their representation and to pass orders on merits, in accordance with law, within a period of twelve weeks. However, no final order was passed by the DRO. Whiles, on 12.06.2024, the petitioners were served with summons, calling upon them to appear before the RDO for an enquiry, for which the petitioners sent a detailed reply on 24.06.2024. Again, the petitioners were



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served with another notice dated 05.07.2024, calling upon them to appear before the RDO for an enquiry on 09.07.2024. Accordingly, on 09.07.2024, the petitioners appeared before the RDO and filed a memo, seeking further time. They have challenged the notices dated 12.06.2024 and 05.07.2024, by filing a writ petition in W.P.No.20509 of 2024. During pendency of the above writ petition, the RDO had passed a impugned proceedings in Na.Ka.No.2748/2024/A2 dated 12.07.2024, hence, this Court vide order dated 24.07.2024, directed the petitioners to withdraw the writ petition in W.P.No.20509 of 2024 with liberty to file a fresh petition. Hence, the petitioners have filed this present writ petition, challenging the proceedings dated 12.07.2024, passed by RDO.

5. The learned Senior Counsel further submitted that some of the persons, who are in occupation of the adjacent lands of the petitioners were given assignment in the year 2007, whereas the petitioners, who were similarly placed have not been assigned the lands and were also not given valid reasons for the same. He also submitted that the petitioners are in possession of very small area of land and they are running small shops,



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these shops are livelihood of the petitioners and there is no big commercial premises, which was not taken note by the RDO, while passing the impugned order, hence the same is not sustainable. He also submitted that, as per the earlier order passed by this Court in W.P.No.1283 to 1286 of 2011 dated 22.01.2011, the respondent No.2 herein is directed to consider the representation of the petitioners, whileso, the respondent No.3 herein has passed the order, which is not legally sustainable, therefore, he prays to quash the impugned proceedings.

Submissions on behalf of the respondents:

6. Mr. T.K. Saravanan, learned counsel appearing for the respondents 1 to 5 submits that, this Court vide earlier order dated 22.01.2011 in W.P.Nos.1283 to 1286 of 2011, directed the respondent No.2 to consider the representation of the petitioners. The petitioners were not having any legal right over the said land and they have also not taken any steps, seeking implementation of the order passed in the above writ petition. He also submitted that, as per the Board Standing Order, the respondent



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No.3 - RDO is empowered to process the application seeking for assignment and patta and he is entitled to pass orders on the same. Thereby, the RDO passed the order, rejecting the request of the petitioners seeking patta and to remove the encroachment made by the petitioners in the said land. The petitioners are not eligible to get assignment of lands, as a matter of right for the land which is classified as a Government Poramboke and the petitioners are involved in commercial activities in the said land, hence their claim of seeking assignment and patta was properly considered and rejected by the respondent No.3 - RDO. He further submitted that the petitioners were served notices under Encroachment Act and orders under Section 6 of the Encroachment Act also passed, ordering eviction of the petitioners from the subject land. The petitioners have filed an appeal before the Appellate Authority and the same is also disposed of, by rejecting the contention of the petitioners, hence nothing survives in this petition and he prays to dismiss the petition.

7. We have considered the submissions made on both sides and also perused the records.

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Discussions and Conclusions:

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8. Admittedly, the subject land in Survey Nos.54/1 and 54/7 are classified as Government Poramboke, which is situated near the Arulmighu Thindal Murugan Temple and the petitioners herein are in possession and occupation of some portions of the land in Survey Nos.54/1 and 54/7 [house with commercial establishments]. In Survey No.54/1, one Dhanabakkiyam is having a house with bakery shop and a saloon and in Survey No.54/7, the petitioner No.3 - Dhanapal is having three grocery shops and also a separate house, similarly, the petitioner No.2 - T.S. Kumar is having a bakery and photoshop centre along with a house and the petitioner No.1 - Rukmani is running a Dairy farm.

9. According to the petitioners, in the year 2007 and 2009, some portions of the land were assigned to someother persons, hence they have come forward with the writ petition in W.P.Nos.1283 to 1286 of 2011, seeking direction to consider their request for assignment of land and issuance of patta and this Court was also pleased to direct the respondent No.2 - DRO to consider the representation of the petitioners and to pass

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orders. However, the petitioners have not produced any documents to show that whether they have communicated this Order to the DRO and whether they have taken any steps to implement this Order. According to the petitioners, the respondent No.2 - DRO had not passed any order, as per the direction of this Court, per contra, they have been served with show cause notice dated 12.06.2024.

10. On perusal of the notice dated 12.06.2024, the respondent No.3 - RDO directed the petitioners to remove the portion of land encroached by them in the Erode - Perundurai Highway. This notice was replied by the petitioners on 28.06.2024, wherein, they have stated that they were in possession of the land for several decades and sought for issuance of patta from the respondent No.2 - DRO. Whiles, another notice dated 05.07.2024 was issued by the RDO, calling upon the petitioners herein to appear for an enquiry, scheduled to be held on 09.07.2024, in which he had also made a reference about the proceedings of the Tahsildar dated 11.06.2024.

11. According to the respondents, the Official respondents have



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conducted survey for removal of encroachments in the Erode-Perundurai Highway and during the course of their survey, they found some portions of the lands have been encroached by the petitioners herein, therefore notice under Section 7 of the Land Encroachment Act was issued to the petitioners. Subsequently, after enquiry, the impugned proceeding herein has been passed by the respondent No.3 - RDO, by specifically referring about the representation submitted by all the petitioners and their contentions including their claim of possession of the subject land from the year 1967 onwards.

12. The impugned proceedings of the respondent No.3 also shows that, while initiating the proceedings by the RDO for removal of encroachments, the petitioners have approached him, seeking issuance of assignment/ patta. Though, the petitioners have referred about the order passed by this Court in W.P.Nos.1283 to 1286 of 2011, the petitioners have sought for patta and requested not to act upon the report of the Tahsildar dated 11.06.2024. This representation shows that the petitioners were aware about the proceedings of the Tahsildar in Na.Ka.No.3231/2024/A4,

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dated 11.06.2024.

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13. The petitioners assail impugned order on the ground that, this Court in the earlier order dated 22.01.2011 in W.P.Nos.1283 to 1286 of 2011, directed the respondent No.2 - DRO to pass orders regarding the request of issuance of patta, whereas, the respondent No.3 - RDO has passed the impugned proceedings dated 12.07.2024. This was answered by the State Council that the RDO is a competent authority under Revenue Standing Order 15 of the Board Standing Order, while dealing with the petitions filed for issuance of assignments. The Revenue Standing Orders 15 to 21 deals with the power of the Government to dispose the lands. The Order 15(3)(ii) prescribes that the RDO shall be the competent person to consider the applications filed for issuance of assignment and patta. Admittedly, the petitioners herein had sent representation, while replying to the show cause notice issued for removal of encroachment, in which they have sought for patta in their favour and the same has been considered by the respondent No.3 - RDO, who is the competent authority. Therefore, we find that there is no infirmity in the jurisdiction exercised by the respondent

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No.3 - RDO for passing the impugned order.

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14. As stated in the earlier paragraph, the Revenue Standing Order provides eligibility, scheme, conditions and other procedures for issuance of assignment of lands and pattas. Admittedly, the subject land herein is a Government Poramboke, in which a temple is also situated. According to the respondents, this portions of the land was earlier used by the Temple for performing religious activities. The constructions made by the petitioners is now affecting the free flow of the people in that locality, since there is a bus stop as well as a women's college situated nearby the subject land.

15. It is also a well settled principle that no persons is having right to claim assignment of lands on the basis of continuous possession, unless they fall within the eligibility criteria fixed in the Revenue Standing Order or any of the welfare scheme of the Government or under any other Act or rules framed for that purpose. Therefore, the Government is having absolute right to decide and how to utilise the lands, more particularly, while dealing with the Government Poramboke lands reserved for public purpose.

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16. In this case, there is a specific finding recorded by the respondent No.3, that the petitioners herein are using the Government Poramboke land for commercial purposes, thereby they are enriching themselves. The petitioners have also claimed that they are paying house tax, electricity consumption charges, water tax etc., to the property situated in the subject land. They were also issued B-memo from the year 1967 onwards. As per Section 3 of Tamil Nadu Land Encroachment Act, the levy of penal charges on the persons, who is in unauthorised occupation, is permissible and it is collected because the party is in encroachment of the Government land. Section 3 reads as follows:

"Section 3. Any person who shall unauthorisedly occupy in any area other than the transferred territory any land, which is the property of Government, shall be liable to pay by way of assessment.

(i) If the land so occupied forms an assessed survey number or part thereof, the full assessment of such number for the whole period of his occupation or a part thereof proportionate to the area occupied as the case may be, provided that, for special reasons, the Collector or subject to his control, the Tahsildar or Deputy Tahsildar may impose the full assessment of such number or any lesser sum irrespective of the area occupied;



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(ii) If the land so occupied be unassessed, an assessment on the area occupied calculated for the same period at the rate imposed on lands of a similar quality in the neighbourhood, or at the highest dry wet rate of the village, as the case may be, or when no such rates exist in such manner as may be prescribed in rules or orders under Section 8.

Provided that payment of assessment under this Section shall not confer any right of occupancy.

17. The proviso to Section 3 of the Encroachment Act, further clarifies that, collection of penal charges shall not confer any right in favour of the person, who is in unauthorized occupation. Therefore, mere payment of penal charges by the plaintiffs for the subject property does not confer any right over the same.

18. The respondent No.3 had considered the case in entirety on various claims made by the writ petitioners and found that the petitioners are not eligible for assignment of land and has ordered proceedings under Encroachment Act. He has also recorded that, the petitioners are doing commercial activities in the land, which is earlier used for conducting



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religious activities of the nearby temple. The petitioners being encroachers, they cannot seek equality with those persons, who were granted patta much earlier to them. The entire proceedings against the petitioners are based on the report submitted by the Tahsildar, hence we are of the view that the petitioners have not made out their case and there is no need for interference of this Court in the impugned proceedings.

19. Accordingly, this writ petition fails and the same is dismissed. Consequently, connected civil miscellaneous petitions stand closed. There shall be no order as to cost.

(M.S.,J.) (K.R.S.,J.)
18.12.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

1. The District Collector,

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State Highway 96, Opp. District Court,
Tamil Nadu - 638 011.

2. The District Revenue Officer,
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**M.SUNDAR, J.,
and
K.RAJASEKAR, J.,**

stn

Pre-delivery Order
in
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