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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and**

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.24904, 24905 and 24907 of 2017

and

W.M.P.Nos.26292, 26294 and 26291 of 2017

W.P.No.24904 of 2017

1. A.A.M.Murasoli (died)
2. Karpagam
3. Kathiravan
4. Madhiolli Murasoli ... Petitioners

[P2 to P4 substituted as LRS of the deceased sole petitioner
vide order dated 31.07.2023 made in W.M.P.No.4187 of 2023]

Vs.

1. The Estate Officer,
The Executive Engineer,
Irrigation Division,
Public Works Department,
Puducherry.
2. The Appellate Authority -cum- Principal District Judge,
Puducherry.
3. The Revenue Department,
Rep. by the Secretary (Puducherry) ... Respondents
[R3 suo motu impleaded vide order dated 02.11.2023]



Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned orders of the first respondent dated 04.01.2016 bearing Ref.3688/ PW/EEI/ JE(P)- EO/ CC-62/ 2015-16/32 and of the second respondent dated 14.06.2017 in M.A. No.4 of 2016 and quash the same.

W.P.No.24905 of 2017

1. L.Mohana (died)

2. P.T.Loganathan

3. Ranjini

4. Geetha

5. Latha Babu

6. M.Datchayani

7.Nalini Muralikanth

... Petitioners

[P2 to P7 substituted as LRS of the deceased sole petitioner
vide order dated 13.10.2023 made in W.M.P.No.25872 of 2023]

Vs.

1. The Estate Officer,
The Executive Engineer,
Irrigation Division,
Public Works Department,
Puducherry.

2. The Appellate Authority -cum- Principal District Judge,
Puducherry.

3. The Revenue Department,
Rep. by the Secretary (Puducherry) ... Respondents
[R3 suo motu impleaded vide order dated 02.11.2023]

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned



orders of the first respondent dated 04.01.2016 bearing Ref.3661/ PW/EEI/ JE(P)- EO/ CC-62/ 2015-16/25 and of the second respondent dated 14.06.2017 in M.A. No.6 of 2016 and quash the same.

W.P.No.24907 of 2017

R.Mallika

... Petitioner

Vs.

1. The Estate Officer,
The Executive Engineer,
Irrigation Division,
Public Works Department,
Puducherry.

2. The Appellate Authority -cum- Principal District Judge,
Puducherry.

3. The Revenue Department,
Rep. by the Secretary (Puducherry) ... Respondents
[R3 suo motu impleaded vide order dated 02.11.2023]

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned orders of the first respondent dated 04.01.2016 bearing Ref.3679/ PW/EEI/ JE(P)- EO/ CC-62/ 2015-16/23 and of the second respondent dated 14.06.2017 in M.A. No.5 of 2016 and quash the same.

For Petitioner : Mr.T.Sai Krishnan
for Mr.Kamala Kumar (all W.Ps)

For Respondents : Mr.V.Vasanth Kumar (all W.Ps)



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COMMON ORDER

(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)

The Writ Petitions have been instituted challenging the order passed by the Principal District Judge, Puducherry, confirming the order passed by the Estate Officer under the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

2. The petitioners have claimed that they are the absolute owners of the entire portion of the subject land in the Writ Petitions. The respondent Estate Officer / Executive Engineer would contend that a portion of the land is a Government land, classified as “வாய்க்கால் (Canal)”. The learned counsel for the petitioner would submit that survey has not been conducted properly and admittedly, the petitioners are holding patta land and by obtaining building plan permission, constructed residential houses and therefore, the orders passed by the Estate Officer under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the appellate order passed by the learned Principal District Judge are infirm.



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3. The contentions of the writ petitioners are that the revenue records are not verified properly. The learned counsel for the respondents would oppose by stating that survey has been conducted and the Executive Engineer, Irrigation Division, Public Works Department, Puducherry filed an objection stating that the portion of the land is classified as “வாய்க்கால் (Canal)” and on receipt of complaints from the people of that locality, actions were initiated to remove the encroachers from the Government land i.e., “வாய்க்கால் (Canal)” and seven encroachers were already removed and the respondents have taken possession of the canal, which were under encroachments. As far as the writ petitioners are concerned, the Writ Petitions are pending and therefore, no further actions are taken.

4. The objections filed by the respondents 1 and 2 reveals that portions of the subject property have been encroached upon by the writ petitioners. Though the records were not referred in the objections, the learned counsel for the respondents furnished the copy of the “A Register” before us, which would indicate that the property has been classified as “Bhoosthuthi Canal”.



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5. Regarding the observations of the Advocate Commissioner in his report that no channel is visible at the time of inspection, it is stated that the writ petitioners have encroached upon the channel and levelled the channel, which does not belong to them with an intention to usurp the land portion which actually does not belong to them. The channel was purposefully made to disappear by the writ petitioners, which does not belong to them. In view of the said statement, the Advocate Commissioner could not able to visibly see the channel at the time of inspection.

6. Due to encroachment of land, which was channel for more than five decades, there is severe inundation of water in this densely populated residential area and during every monsoon, the residents are made to suffer untold miseries every year.

7. The Executive Engineer has further stated that the writ petitioners have encroached upon the properties beyond their limit to an extent of 51 centiares or 548 sq.ft in R.S.No.304/2 pt., by the Writ Petitioner in W.P.No.24904 of 2017 and 28 centiares or 301 sq.ft in R.S.No.304/2 pt., by the writ petitioner in W.P.No.24906 of 2017 and encroached upon the



Government poromboke water channel, to an extent of 35 centiares or 376 sq.ft in R.S.No.284/1 pt., and 290/9 pt., by the writ petitioner in W.P.No.24905 of 2017 and 40 centiares or 430 sq.ft. in R.S.No.284/1 pt., by the writ petitioner in W.P.No.24907 of 2017 which existed for almost five decades and levelled the channel and made them disappear with a malafide intention to usurp the channel portion of land.

8. In view of the objections filed by the Executive Engineer on the Advocate Commissioner's report, we are of the opinion that the portion of the subject land has been classified as “Canal” and the authorities have to verify the revenue records once again and proceed further to evict the encroachers. We do not find any infirmity in respect of the order passed by the learned Principal Judge, confirming the original order passed by the Estate Officer. It is further stated that the canal was in existence for more than five decades and the writ petitioners have levelled the canal and constructed building unauthorizedly. No doubt, the remaining buildings were authorized, but the objection raised by the Executive Engineer would reveal that the portion of the construction, constructed in Government lands are objectionable and a water body and therefore, the notice issued is in



consonance with the provisions of the Act.

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9. No doubt, the learned counsel for the writ petitioners could able to raise certain ambiguities in respect of the revenue documents, which has to be verified again by the Executive Engineer with reference to the original records. On such verification, the respondents are directed to remove the encroachments made in the canal by the writ petitioners and all other persons, so as to ensure free flow of water through the canal for the benefit of the people of that locality and to avoid further flooding during the rainy seasons.

10. After verification by the Executive Engineer, the findings arrived by him shall be communicated to the writ petitioners and thereafter, all further actions are to be taken to remove the encroachments. While verifying the original revenue documents and relevant records, the authorities are bound to verify its genuinity, reclassifications made, patta issued etc., if any fraudulent or bogus reclassification or issuance of patta are identified, the persons responsible are to be prosecuted including the officials.



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11. The learned counsel for the respondents undertakes that before conducting inspection and verification of records, notice under Section 23 of the Act will be issued to the encroachers / writ petitioners. On receipt of such notice, the writ petitioners are at liberty to submit their objections, if any.

12. Accordingly, these Writ Petitions are disposed of. Consequently, the connected Miscellaneous Petitions are closed. No costs.

(S.M.S.,J.) (K.R.S.,J.)
13.02.2024

skr

Index : Yes

Speaking order

Neutral Citation : Yes

To

1. The Estate Officer,
The Executive Engineer,
Irrigation Division,
Public Works Department,
Puducherry.

2. The Appellate Authority -cum- Principal District Judge,
Puducherry.



3. The Secretary,
Revenue Department,
Puducherry.

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W.P.No.24904, 24905 and 24907 of 2

S.M.SUBRAMANIAM, J.
and
K.RAJASEKAR, J.

skr

W.P.No.24904, 24905 and 24907 of 2017

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