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W.P.No.24906 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM

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

W.P.No.24906 of 2017
and
W.M.P.No.26293 of 2017

Dr.N.Viswanathan
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 Secretary (Puducherry).

(R3-suo motu impleaded as per order dated 02.11.2023 in
WP.24906/2017 by SVNJ and KRSJ).
Respondents

...

Prayer :- Writ petition filed under Article 226 of the Constitution of India



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praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned orders of the first respondent dated 04.01.2016 bearing Ref.3689/ PW/EEI/ JE(P)- EO/ CC-62/ 2015-16/ 33 and of the second respondent dated 14.06.2017 in M.A. No.3 of 2016 and quash the same.

For Petitioner : Mr.R.Saravanan

For Respondent : Mr.V.Vasantha Kumar,
Additional Government Pleader
(Puducherry)(for R1 to R3)

ORDER

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

The Writ Petition has 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



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conducted properly and admittedly, the petitioner is holding patta land and by obtaining building plan permission, constructed residential house 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.

3. The contentions of the writ petitioner is 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)”. Seven encroachers were already removed and the respondents have taken possession of the canal. As far as the writ petitioner is concerned, the Writ Petition is pending and therefore, no further actions are taken.

4. The objections filed by the respondents 1 and 2 reveals that



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portions of the subject property have been encroached upon by the writ petitioner. 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”.

5. The writ petitioner has encroached upon the channel and levelled the channel, which does not belong to him and with an intention to grab portion of the land. The channel was purposefully made to disappear by the writ petitioner. In view of the said position, the Advocate Commissioner could not able to visibly see the channel at the time of inspection.

6. Due to encroachment of 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 petitioner has encroached upon the properties beyond his limit and levelled the channel and made them to disappear with a malafide intention to grab the



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channel portion of land.

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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 petitioner has levelled the canal and constructed building unauthorizedly. No doubt, the remaining buildings are authorized. 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. Therefore, the notice issued is in consonance with the provisions of the Act.

9. No doubt, the learned counsel for the writ petitioner 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



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records. On such verification, the respondents are directed to remove the encroachments made in the canal by the writ petitioner 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 rainy seasons.

10. After verification by the Executive Engineer, 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, under the criminal law.

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 encroacher / writ petitioner. On receipt of such notice, the writ petitioner is at liberty to submit his objections, if any.

12. It is brought to the notice of this Court that the writ petitioner



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died and his wife is in occupation of the premises unauthorizedly.

Therefore, the respondents are directed to issue a fresh notice to the occupier of the subject property and thereafter, initiate all appropriate actions in the manner known to law.

13. With these directions, the writ petition stands disposed of.

Consequently, the connected Miscellaneous Petition is closed. No costs.

(S.M.S.J.,)

(K.R.S.J.,)

06.03.2024

Index : Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)

To

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