



W.P. (MD) No.2439 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 06.02.2024

PRONOUNCED ON : 14.02.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P(MD).No.2439 of 2024
and WMP(MD).Nos.2448 and 2451 of 2024

1.S.K.Subadhra

2.R.Manjula Devi

3.V.Suganya

...Petitioners

Vs

1.The District Collector
Tirunelveli District
Tirunelveli

2.The District Revenue Officer
Tirunelveli

3.The Thasildhar
Ambasamudram Taluk
Tirunelveli District

4.The Commissioner
Ambasamudram Municipality
Tirunelveli District

....Respondents

1/10



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Prayer : Writ Petition has been filed under Article 226 of Constitution of India to issue a writ of Mandamus, to forbear the respondents from in any way evicting the petitioners from their own property and removing the buildings in S.No.370A/1pt, present S.No.370/10, measuring 1 Acre 52 Cents, Mela Ambasamudram, Ambasamudram Taluk in Tirunelveli District on the guise of an encroachment on the basis of the wrong/incorrect entry as poramboke in the revenue records contrary to the proceedings of the Board of Revenue and also without following the due procedures as under the Tamil Nadu Land Encroachment Act, 1905.

For Petitioners : Mr.R.Suriya Narayanan

For R1 to R3 : Mr.P.Thilak Kumar
Government Pleader

For R4 : Mr.S.Packiya Muthu

ORDER

(Made by **R.VIJAYAKUMAR,J.**)

The present writ petition has been filed seeking a mandamus forbearing the official respondents from evicting the petitioners from S.No.370A/1 part and S.No.370/10, measuring 1 Acre 52 Cents situated in Mela Ambasmudram, Ambasamudram Taluk in Tirunelveli District on the basis of incorrect entry in the revenue records.



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Contentions of the Counsels:

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2. According to the learned counsel appearing for the writ petitioners, the said property originally belonged to Urkadujamin and after introduction of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari Act), 1948, the said property got vested with Rani Subbulakshmi Natchiar by proceedings of the Board of Revenue dated 29.01.1951. She had gifted the same in favour of her daughter L.K.Rani by a registered document dated 12.12.1957. She then had sold out the same to one Veerabathran and Lakshmana Moopanar on 02.11.1966 and from them, the petitioner's father-in-law namely S.S.Rajalinga Raja had purchased the same under a registered sale deed dated 10.01.1969. After the death of the first petitioner's father-in-law, it devolved upon her husband, Kalyana Venkatarama Raja. The said Kalyana Venkatarama Raja had executed a gift deed in favour of the petitioners who are his wife and daughters.

3. According to the learned counsel appearing for the writ petitioners, in the year 2016, the Commissioner of Ambasamudram Municipality relying upon a wrong entry in the revenue records, unilaterally cancelled the market license, property tax to the building and revoked the building permission. The petitioners had filed W.P(MD).No.10897 of 2017, 10898 of 2017 and 15185 of



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2017. A common order came to be passed on 21.03.2018 wherein this Court was pleased to set aside the order passed by the Municipal Commissioner.

4.Under the said order, the Municipal Commissioner was directed to issue a comprehensive notice to establish right and title to the said property in the light of Act 26 of 1948. The subject matter of the property is not an agricultural property but land with building and therefore, it never vested with Government. Hence, the entries made in the revenue records that it is a poramboke land is erroneous.

5.The petitioners had send a representation on 11.08.2020 to rectify the said error and substitute the same as a private land. Only based upon the said wrong entry, the Municipality is making a claim. On 01.02.2024, a paper publication has been made to the effect that the first respondent had directed the third respondent to evict the petitioners under the guise of removal encroachment even without issuing any notice under the relevant statutory provision. Hence, he prayed for allowing the writ petition.



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6.Per contra, the learned Government Pleader appearing for the official respondents, on instructions, submitted that the survey numbers in dispute are poramboke lands and therefore, the authorities are entitled to initiate appropriate action under the relevant Act for removal of encroachment. He had further contended that the petitioners had approached the second respondent herein on 13.08.2020 for reclassification of the above said survey numbers as private Patta lands. However, the said application filed by the petitioners was dismissed on 19.01.2024. The said order of the second respondent has not been challenged. Without challenging the said order, the present writ petition is not maintainable. Hence, he prayed for dismissal of the writ petition.

7.We have considered the submissions made on either side and perused the material records.

Discussion:

8.The Commissioner, Ambasamudram Municipality had issued a notice to the writ petitioners' father stating that he is conducting a weekly market in a Government poramboke and calling upon him to produce the document in support of his claim. Since the said instruction of the Municipal Commissioner was not complied with, the Municipality had cancelled the property tax



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registration. Another notice was issued by the Municipality to the first writ petitioner herein stating that she had unauthorizedly put up a building on Government land. A resolution was passed by the Municipality cancelling the building plan permission and directed the first respondent herein to produce necessary documents. Challenging these two notices, the first petitioner herein and her husband had filed W.P(MD).Nos.10892 of 2017, 10893 of 2017 and 15185 of 2017.

9.The Division Bench by an order dated 21.03.2018 had disposed of the writ petitions setting aside the impugned notices and directed the Municipality to issue a comprehensive notice to the first writ petitioner's husband indicating how it is a Government poramboke land. The writ petitioners were directed to submit their reply to the said comprehensive notice along with relevant documents. The Municipal Commissioner was directed to pass a reasoned order after affording personal hearing. In Paragraph No.28 of the said order, the Division Bench has observed that if the petitioners claim right and title over the property, it is for them to approach the civil Court for appropriate declaratory relief.



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10. Pursuant to the said order, show cause notices were issued to the writ petitioners and they have also submitted their reply. The petitioners herein had approached the second respondent by a representation dated 13.08.2020 seeking to rectify the error in the revenue records claiming that it has been wrongly entered as poramboke land when the same is a private patta property. The second respondent herein arrived at a finding that the petitioners have never filed any suit for declaration of their title, despite an observation made by the Division Bench in its order dated 21.03.2018.

11. Based upon the revenue records, the second respondent herein rejected the request of the petitioners and confirmed that the Survey No.370A/10 is a Government poramboke. This order of the second respondent has not been challenged. Instead, the petitioner is said to have filed a civil suit before the District Court, Tirunelveli for the relief of declaration of title, permanent injunction and for recovery of a sum of Rs.38,12,495/-. The said suit is yet to be numbered.

12. Though this Court by its order dated 21.03.2018 had observed that the petitioners have to establish their title only before the civil Court, the petitioners



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have chosen to file such a suit only after a period of six years which is yet to be numbered. The order of the second respondent confirming that Survey No. 370A/10 and Survey No.370A/1 are Government poramboke lands remain unchallenged. The present writ petition has been filed only for a direction forbearing the respondents not to evict the petitioners from Survey Nos.370A/1 and 370A/10. So far the petitioners are not able to establish the fact that there is a wrong entry in the revenue records that it is Government poramboke. Therefore, the petitioners have not made out any case for issuing a direction as against the authorities forbearing them from evicting the petitioners from the above said survey numbers. However, the authorities have to follow due process of law before evicting the writ petitioners.

Conclusion:

13.In view of the above said deliberations, there are no merits in the writ petition. The writ petition stands dismissed. The authorities are at liberty to initiate appropriate proceedings to evict the writ petitioners by strictly following due process of law. No costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K.J.,)

(R.V.J.,)

14.02.2024



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Index :yes
Internet :yes
NCC : Yes/No
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To

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Tirunelveli District
Tirunelveli

2.The District Revenue Officer
Tirunelveli

3.The Thasildhar
Ambasamudram Taluk
Tirunelveli District



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AND
R.VIJAYAKUMAR, J.**

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Pre-delivery Order made in
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