



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

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

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.Nos.20198 to 20201 of 2020

and

**W.M.P.Nos.24955, 24958, 24961, 24962, 24956, 24957, 24959
and 24960 of 2020**

Mr.B.M.Habibullah	... Petitioner in W.P.No.20198 of 2020
Mr.B.M.Iqbal	... Petitioner in W.P.No.20199 of 2020
Mr.N.Moorthy	... Petitioner in W.P.No.20200 of 2020
Mr.V.Thomas	... Petitioner in W.P.No.20201 of 2020

Vs.

1. The State,
by Additional Chief Secretary to Government,
(Revenue & Disaster Management Department)
Land Disposal Wing (LD.6(2) Section),
Fort St.George, Chennai – 600 009.

2. The District Collector,
Nilgris District,
Nilgris.

3. The Tahsildar,
Coonoor,
Nilgris District.

... Respondents in all W.Ps



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Common Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the 1st respondent in G.O. (Ms) No. 503 Revenue and Disaster Management Department Land Disposal Wing (Ld. 6 (2)) Section dated 18.09.2020 and all further proceedings quash the same.

For Petitioners : Mrs.M.Sneha (in all W.Ps)

For Respondents : Mr.A.Selvendran,
Special Government Pleader
(in all W.Ps)

COMMON ORDER

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

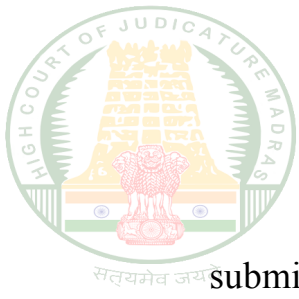
The rejection of the Revision Petition by the Government in G.O.Ms.No.503, Revenue and Disaster Management Department Land Disposal Wing, (LD.6(2)) Section dated 18.09.2020 under Section 10A(1)(c) of the Tamil Nadu Land Encroachment Act, 1905 is under challenge in the present writ proceedings.

2. The Writ Petitions on hand are classic cases, where through continuous litigative process, the writ petitioners are in occupation of



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objectionable water course poromboke, which are registered as "River" in the revenue records, from the year 1992 onwards. The writ petitioners are encroachers of water course poromboke, classified as "River" in the revenue records. By way of continuous litigations one after another and by virtue of interim orders or based on the proposals of the Authorities, they are allowed to continue in the water course poromboke, classified as "River", which causes serious obstruction of free flow of traffic in Mettupalayam-Coonoor-Ooty Main Road at Coonoor Junction. In the subject location, Coonoor Bus Stand, railway line and market situates. On account of encroachments in objectionable water course poromboke, further obstructions are caused to the public at large for free usage of road and vehicular traffic. The District Administration and the Government Authorities are trying hard to evict these encroachers for several years and they are unable to succeed on account of numerous litigations continuously instituted by these encroachers. The Government has not renewed the lease in favour of the writ petitioners beyond the year 2003. From the year 2003 onwards, all the writ petitioners are in occupation unauthorizedly and illegally and without any lease or permission.



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3. The learned counsel for the writ petitioners, Smt.M.Sneha would submit that the actions initiated under the Tamil Nadu Land Encroachment Act, 1905 is untenable. Admittedly, a lease was granted in favour of the writ petitioners by the Government in G.O (Ms) No.677, Revenue Department dated 13.08.1998 for three years. Thereafter, the lease was renewed. Therefore, the writ petitioners cannot be construed as encroachers. If at all the writ petitioners are considered as unauthorized occupants, then actions ought to have been initiated under the provisions under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975. Therefore, the actions initiated under the Tamil Nadu Land Encroachment Act, 1905 is untenable and the grounds raised by the writ petitioners in this regard before the District Collector and the Government were not considered. Thus, the present Writ Petitions are to be allowed.

4. The learned Special Government Pleader, Mr.A.Selvendran would oppose the said contention by stating that the writ petitioners are encroachers. The lease granted for a period of three years in G.O (Ms) No.677, Revenue Department dated 13.08.1998 expired in the year 2001. Thereafter, the writ petitioners were permitted to continue till 10.10.2003.



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Even during the said period, renewal of lease was not granted. They were permitted to continue and vacate the premises and hand over vacant possession to the Government for the purpose of maintaining the water course, classified as "River" and to protect free flow of water. Thus, the petitioners are encroachers of water body and thus, actions initiated under the competent authority is tenable.

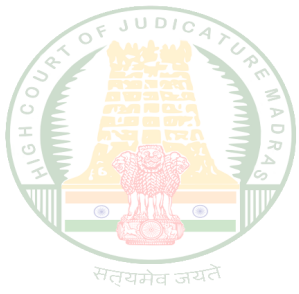
5. Even before grant of lease in G.O (Ms) No.677, Revenue Department dated 13.08.1998, the writ petitioners were encroached upon the water course poromboke. They have instituted writ proceedings in W.P.Nos.5513, 5514 and 5659 to 5661 of 1992. The said Writ Petitions were ordered mainly on the ground that the Tahsildar, Coonoor and the Commissioner, Coonoor exceeded their powers. Few other encroachers filed W.P.Nos.41556 to 41558 of 2002 and an order was passed on 22.09.2003. Those Writ Petitions were dismissed by the learned Single Judge. Another set of Writ Petitions were filed in W.P.Nos.10076 to 10081 of 2010 by some encroachers. By order dated 05.05.2010, the learned Single Judge of this Court directed the authorities to consider the representation and pass orders after affording reasonable opportunity to the writ petitioners. Meanwhile, the



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District Collector addressed a letter dated 20.12.2010 to the Commissioner Municipal Administration, Chennai - 600005, submitting proposal for renewal of lease on the ground that the High Court granted an interim order and further, the encroachers had given an undertaking that they will withdraw the Writ Petitions and on that pretext, the proposal was submitted by the District Collector. The impugned Government order passed in the revision would reveal that no renewal of lease was granted, but permission was granted to continue to be in possession till 10.10.2003. Thereafter, the writ petitioners were asked to vacate the premises. But the writ petitioners failed to vacate the premises and filed another set of Writ Petitions in W.P.Nos.3860 to 3865 of 2004 and all those Writ Petitions were dismissed on 11.01.2019. W.A.Nos.183, 184, 186 and 187 of 2019 were filed and the Hon'ble Division Bench of this Court passed final orders on 27.04.2019 as follows:-

“5. In view of the categorical statement made by the learned counsel for the appellants that stay application will be preferred within a week from today, the respondents are directed to maintain status quo as on today for a period of

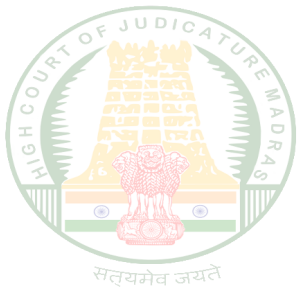


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ten days from today. The appellate authority is directed to decide the appeal to be filed by the appellants on merits and in accordance with law, without being influenced by any of the observations made in W.P.Nos.3680 to 3865.”

6. Pursuant to the order of the Hon'ble Division Bench of this Court, the Revision Petition filed before the Secretary to Government, Revenue Department was taken up for adjudication. Opportunities were afforded to the writ petitioners. The Government elaborately considered the facts and circumstances and finally, arrived at a conclusion by stating that the encroachments made by the revision petitioners are highly objectionable water course poromboke, which are registered as "River" in the revenue records. The District Collector, Nilgris has rightly observed while rejecting the appeal petition that these encroachments, which are in and around the Coonoor Bus Stand is a big hindrance to the free flow of traffic in Coonoor and thereby cause infringement of the public right. Citing the above reasons, the revision petitions were rejected. Thus, the present Writ Petitions came to be instituted.



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7. With reference to the grounds raised by the writ petitioners that the Tamil Nadu Land Encroachment Act, 1905 would not be applicable and the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 alone would be applicable is incorrect. Section 2(e) of the the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 defines "Public Premises" means "any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980) under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat".

8. The objectionable water course poromboke is not falling under the definition of "Public Premises" under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975. It is a water course poromboke, classified as "River" and such lands cannot be leased out by the



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Authorities. The original lease granted in the year 1998 itself is *void ab initio*. Water course porombokes cannot be leased out for establishing commercial shops. Admittedly, the writ petitioners are running commercial establishments in the objectionable water course poromboke. Therefore, the lease granted in the year 1998 by the Government itself is null and void. However, the lease for a period of three years expired in the year 2001 and a permission was granted to continue till 10.10.2003 and thereafter, the writ petitioners were asked to vacate the premises, dismantle the commercial establishments and allow free flow of water in the river.

9. It is brought to our notice that the commercial establishments in the water course poromboke are not only causing obstruction to free flow of traffic but it is creating flood during rainy seasons. Coonoor is a hilly area and on account of sudden flooding, the residences in that locality are being affected. On account of heavy vehicular traffic in that Coonoor Bus Stand Junction, people are unable to freely move on and proceed towards Udhagamandalam or to Mettupalayam on both sides and also to other villages situate in hill areas in and around Coonoor Taluk. At the outset, the obstruction of commercial establishments in water course poromboke are



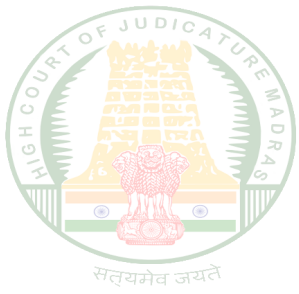
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posing danger to the road users and the commuters in that locality. On account of such serious situation, the Authorities have initiated action under the Land Encroachment Act, 1905. Since the lease expired in the year 2001 and the permission granted expired in the year 2003. We are of the considered opinion that the lease granted in an objectionable water course poromboke is null and void. Thus, the writ petitioners are rightly construed as encroachers of the water course poromboke.

10. Section 2 of the Tamil Nadu Land Encroachments Act, 1905 reads as under:-

***" Right of property in public roads etc.,
waters and lands***

(1) All public roads, streets, lanes and paths, the bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark, and of rivers, streams, nalas, lakes and tanks, and [all back waters, canals and watercourses] [Substituted for the words 'all canals and watercourses' by section 4 of, and the Second Schedule to, the Tamil Nadu (Transferred Territory) Extension of Laws Act, 1960 (Tamil



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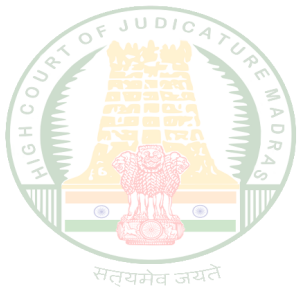


Nadu Act 23 of 1960).] and all standing and flowing water, and all lands, wherever situated, save in so far as the same are the property-

(a) of any [zamindar] [Zamindar estate has been abolished. See section 3 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Tamil Nadu Act XXVI of 1948).], poligar, mittadar, shrotriendar or [inamdaror] [Inam Estate has been abolished. See section 3 of the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 (Tamil Nadu Act 26 of 1963).] any person claiming through or holding imder any of them, or

(b) of any person paying shit, kattubadi, jodi, poruppu or quit-rent to any of the aforesaid persons, or

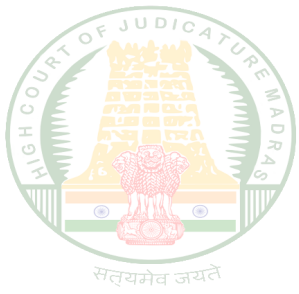
(c) of any person holding under ryotwari tenure [including that of



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a janmi in the Gudalur taluk of the Nilgiris district] [Substituted for the words 'including that of a janmi in Malabar, or of a wargdar in South Kanara' by the Madras Adaptation of Laws Order, 1957.] [and in the transferred territory] [Inserted by section 4 of, and the Second Schedule to, the Tamil Nadu (Transferred Territory) Extension of Laws Act, 1960 (Tamil Nadu Act 23 of 1960).] or in any way subject to the payment of land-revenue direct to Government, or (d) of any other registered holder of land in proprietary right, or (e) of any other person holding land under grant from [the Government] [The words 'the Crown' were substituted for the word 'Government' by the Adaptation Order of 1937 and the word 'Government' was substituted for 'Crown' by the



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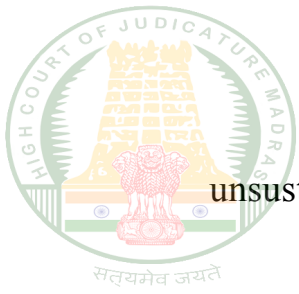


Adaptation Order of 1950.]

otherwise than by way of licence,

and, as to lands, save also in so far as they are temple site or owned as house-site or back yard, are and are hereby declared to be [the property of Government] [The words 'Crown property' were substituted for the words 'the property of Government' by the Adaptation Order of 1937 and the words 'the property of Government' were substituted for 'Crown property' by the Adaptation (Amendment) Order of 1950.] except as may be otherwise provided by any law for the time being in force, subject always to all rights of way and other public rights and to the natural and easement rights of other land-owners, and to all customary rights legally subsisting."

11. Therefore, in respect of rivers and streams, the encroachers can be evicted by invoking the provisions of the Tamil Nadu Land Encroachment Act, 1905. As per the revenue records, the subject property is classified as "River", which is an objectionable water course poromboke. Therefore, the action initiated for eviction of encroachers by invoking the provisions of the Tamil Nadu Land Encroachment Act, 1905 cannot be termed as



unsustainable.

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12. It is not in dispute that notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 was issued to the writ petitioners/encroachers. Objections were received. Order under Section 6 was passed. The writ petitioners/encroachers preferred an appeal before the District Collector under Section 10 of the Act which was rejected. Finally, they have preferred a revision before the Government under Section 10A(1)(c) of the Tamil Nadu Land Encroachment Act, 1905. The Government also afforded opportunity to all the writ petitioners/encroachers. An elaborate adjudication was done before the Additional Chief Secretary to Government, Revenue and Disaster Management Department. After conducting an elaborate enquiry by affording opportunity to all the writ petitioners, the Government found that the commercial establishments are installed in objectionable water course poromboke, which all are classified as "Odai" and "River". The reason for rejection of revision petition that the encroachments made by the writ petitioners are highly objectionable water course poromboke. Further, the District Collector, Nilgris observed that the encroachments in and around Coonoor Bus Stand cause big hindrance to

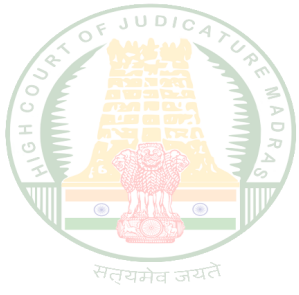


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free flow of traffic in Coonoor and thereby cause infringement of the public interest, especially the rights of the common public. The reasons stated for rejection of revision petition by the Government are candid and convincing.

13. The writ petitioners/ encroachers are successfully prolonged and increased the longevity of the litigations right from the year 1992 onwards. For about 30 years, they are running commercial establishments in the highly objectionable water course poromboke, classified as "Odai" and "River". That being so, any further leniency by the Court would result in infringement of public right for free usage of road and to protect the free flow of water, to prevent flooding during rainy seasons.

14. For all these reasons, we are not inclined to entertain these Writ Petitions. Accordingly, all the Writ Petitions are dismissed. The respondents are directed to evict the writ petitioners immediately within a period of two weeks from the date of receipt of a copy of this order, if necessary, with the assistance of the police. The District Superintendent of Police is directed to provided necessary police protection for removal of encroachments in that locality. Consequently, the Miscellaneous Petitions are closed. No costs.



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15. Post the matter under the caption "For Reporting Compliance" on
25.03.2024.

(S.M.S.,J.) (K.R.S.,J.)
29.02.2024

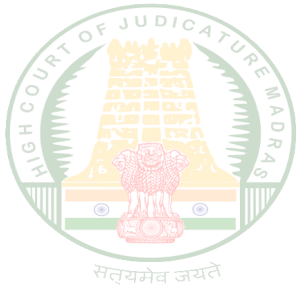
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Index : Yes

Speaking order

To

1. The Additional Chief Secretary to Government
(Revenue & Disaster Management Department),
Land Disposal Wing (LD.6(2) Section),
Fort St.George, Chennai – 600 009.
2. The District Collector,
Nilgris District, Nilgris.
3. The Tahsildar,
Coonoor,
Nilgris District.



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W.P.Nos.20198 to 20201 of 2



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

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