

(2009) 10 MAD CK 0063

In the Madras High Court

Case No : Writ Petition No"s. 46899, 46900 and 46930 of 2002 and 1543, 16111, 16116 and 19016 of 2003

C.N. Babu and Others

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 27-10-2009

Acts Referred:

Tamil Nadu Land Encroachment Act, 1905 — Section 6, 7

Citation : (2009) 10 MAD CK 0063

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : S. Parthasarathy for Sarvabhauman Associates, for the Appellant; A. Arumugam, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—While, the prayer in the first four writ petitions is for a Writ of Mandamus directing the respondents to hand over

possession of a property situated in T.S. No. 117/1, Chinnakadai Street, Block No. V, Ward No. I, Tiruvannamalai Town, the prayer in the

remaining three writ petitions is to set aside a notice u/s 6 of the Tamil Nadu Land Encroachments Act, 1905 (hereinafter referred to as the Act).

2. Heard Mr. S. Parthasarathy, learned Senior Counsel appearing for the petitioner in all these writ petitions and Mr. A. Arumugam, learned

Special Government Pleader for respondents.

3. Admittedly, the petitioners in all these writ petitions were in occupation of small extents of land measuring somewhere between 2 cents and 4

cents in T.S. No. 117/1, Chinnakadai Street, Tiruvannamalai. According to the petitioners, there was a dispute between them and a temple which

claimed ownership to the entire extent of land. In the revenue records, the entire extent of land is classified as Anjeneya Swamy Temple

Poromboke land. After the temple was taken over by the Hindu Religious and Charitable Endowments Department, an Association known as

Balijakula Naidu Sangam" sought a declaration before the Deputy Commissioner that the temple belonged to their community. The claim was

rejected by the Department, but ultimately, the Sub Court, Tiruvannamalai set aside the orders of the Commissioner and declared the temple to be

a private temple belonging to the said community. The judgment and decree of the Sub Court were also confirmed by this Court in A.S. No. 767

of 1998.

4. The grievance of the petitioners is that at the instance of the said Sangam which claims ownership of the temple, the respondents forcibly evicted

the petitioners. The petitioners had earlier instituted a suit against Balijakula Naidu Sangam in O.S. No. 789 of 1989 and the same was decreed.

It is the contention of the petitioners that having suffered a decree before the Civil Court, the aforesaid Sangam prevailed upon the respondents to

initiate proceedings under the Tamil Nadu Land Encroachment Act and that therefore the proceedings are vitiated. Moreover it is the further

contention of the petitioners that without issuing a notice first u/s 7 of the Act, the notice u/s 6 of the Act was issued and that therefore the

procedure prescribed under the Act was not followed.

5. The respondents have produced the files and I have perused the same.

6. As on date, it is admitted by the petitioners that they have been dispossessed. This is why the petitioners have sought, in the first four writ

petitions, a prayer for a writ of mandamus to direct the respondents to hand over possession. It is admitted by the writ petitioners that they have

already been thrown out of possession even before the filing of the writ petitions.

7. The petitioners, admittedly filed civil suits for declaration and injunction before approaching this Court. These suits were filed on the file of the

District Munsif Court, Tiruvannamalai. The details of these suits are as follows:

W.P. No. Suit No. Date of disposal

W.P. No. 46899 of 2002 & O.S. No. 361 of 2002 Dismissed for default
W.P. No. 16116 of 2003 on 13.11.2007

W.P. No. 46900 of 2002 & O.S. No. 357 of 2002 Dismissed for default
W.P. No. 16111 of 2003 on 1.10.2007

W.P. No. 46930 of 2002 O.S. No. 352 of 2002 Dismissed for default
on 12.3.2008

W.P. No. 1543 of 2003 & O.S. No. 385 of 2002 Withdrawn with liberty
W.P. No. 19016 of 2003 on 7.4.2003

Admittedly, the petitioners sought interim orders of injunction before the Civil Court to protect their possession. Since interim orders were not granted, the petitioners were thrown out of possession. Thereafter, the petitioners have come up with the present writ petitions. On the date on which the writ petitions were filed and admitted, the Civil Suits were pending. Subsequently, they were either allowed to be dismissed for default or withdrawn without liberty. In such circumstances, I am of the view that no relief can be granted to the petitioners..

8. The records produced by the respondents show that notices were served. Unfortunately, the notices served on the petitioners were in a printed format, which according to the learned Special Government Pleader was used in common for the proceedings both u/s 7 and u/s 6 of the Act. In other words, according to the respondents, an opportunity was granted to the petitioners. In such circumstances, the petitioners cannot complain of violation of at least the principles of natural justice, though the violation of the procedures u/s 7 of the Act, to some extent may be made out.

9. In any event, since the petitioners have been dispossessed, this Court cannot grant any relief to the petitioners. Mr. S. Parthasarathy, learned Senior Counsel appearing for the petitioners relied upon a decision of this Court in B.M. Habibullah, etc. etc. Vs. State of Tamil Nadu and Others, in support of his contention that a person dispossessed without due process of

law can be put back to possession. However, I do not think that such a relief can be granted to persons who approached the Civil Court even before they were dispossessed and who failed to obtain interim orders before the Civil Court and who came up with writ petitions even while keeping those suits pending. Moreover, such a relief was declined by the Apex Court in M/s. Anamallai Club Vs. Government of Tamil Nadu and others, 10. Admittedly, the lands are classified as temple poramboke lands. The petitioners have been dispossessed even in the year 2002. There is no dispute that the petitioners were only encroachers. Therefore, the question of putting them back to possession, in the facts and circumstances of the case does not arise. Hence, these writ petitions are dismissed. No costs.