

(2011) 07 MAD CK 0338

In the Madras High Court

Case No : Writ Petition No. 10196 of 2010

Govindan and Others

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Citation : (2011) 07 MAD CK 0338

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : V.P. Rajendran, for the Appellant; Lita Srinivasan, GA for R1 to R4 and V. Raghavachari, for R5, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The Petitioners have filed the present writ petition challenging the impugned eviction order dated 19.04.2010 passed by the fifth Respondent.

2. Learned Counsel appearing for the Petitioners submitted that all the writ Petitioners are residing at Muthanai Village Thope, Virudhachalam Taluk, Cuddalore District, for more than 40 years. Since they are not owning any house in their name and hailing from poor financial condition and struggling for survival of the family, they have tried to obtain patta from the Revenue Department. Further, the land in Survey No. 179/1 is consisting of vast extent of land and having Government buildings, like, Village Administrative Office, Panchayat Office and Fair Price Shops, and on the eastern side of the road in Survey No. 179/1, the Petitioners are living for more than 40 years in Thope Poromboke. During the stay of the Petitioners in the said place, several candidates for President and District Village Panchayat Presidents, who are contesting in elections, used to give promises to issue patta to the Petitioners. But, due to the different political affiliation by the residents, they have suffered enmity, that delayed in getting the patta. Even though some of the political party elected representatives recommended the Petitioners' case to the authorities for grant of patta in the same place, yet they were not able to obtain patta till date.

3. While so, the sixth Respondent filed a Civil Suit in O.S. No. 14/2000 along with two others, against the first Respondent seeking permanent injunction with a false story, as if the sixth Respondent was in continued long possession along with Plaintiffs in O.S. No. 253 of 1998 before the Civil Court. The said suit appears to have been dismissed. In view of the dispute between the sixth Respondent and the then Village President for hosting the national flag on the republic day, they were beaten up and in the said scuffle, the Village President was saved by the family members of the Petitioners. Subsequently, the Village President gave a police complaint against the sixth Respondent narrating the fact of assault. Ever since the date of incident, the sixth Respondent and the present Union Council are trying to evict the Petitioners, who saved the then President by lodging a complaint to the Revenue Authorities. Subsequently, when the peace meeting was conducted by the Revenue Authorities on 21.12.1999, an assurance was given to the Petitioners' family members that they would not be evicted, pending civil case. But, due to change in political scenario, the sixth Respondent himself contested the election and got elected as Village President at present. After his selection as Village President, he started giving trouble against the Petitioners.

4. In that context, once again, a peace meeting was conducted on 14.11.2009 by the Revenue Divisional Officer and the Revenue Officials regarding issue of patta for persons, who are living for several decades, but, no such positive development took place. Finally, an order of eviction was issued, as if the Petitioners are living in watercourse. Therefore, the Petitioners were forced to file Civil Suit in O.S. No. 86 of 2002 on the file of the District Massif Court, Virudhachalam, by imp leading the authorities as contesting parties, since they have washed of their hands in granting patta. However, during the tendency of the suit, an assurance was given to the Petitioners that they would be issued with patta with a condition that they should withdraw the suit. Therefore, the said suit was not prosecuted further. But later on, when the promise was not fulfilled, the Petitioners once again filed a petition to restore the suit and the same is also pending, as there is no limitation for filing suit.

5. In his further submission, it was contended that the Petitioners are residing in the said place for more than 40 years, and their suit is also pending now for consideration, therefore, the Petitioners are entitled to get the patta on the basis of G.O. Ms. No. 854, Revenue, dated 30.12.2006, for the reason that they are not owning any house on their own name. Since the said GO empowers the Government to assign patta to the persons, who are occupying the land in question continuously for more than 10 years, the Petitioners are having every right to get patta. Therefore, the denial of patta is not legally justifiable.

6. He further submitted that the Petitioners have also filed a writ petition in W.P. No. 24221 of 2009 jointly seeking a relief of mandamus directing the Respondent to grant patta in respect of the Petitioner.

This Court, on consideration, quashed the eviction order dated 14.11.2009, for

the reason that the eviction order was passed without issuing prior notice and on that basis, treated the eviction order as show cause notice with a direction to the Petitioners to submit their explanation before the sixth Respondent and accordingly, the Petitioners also filed their reply on 10.04.2010. Again, the fifth Respondent, without any authority, passed the present eviction order repeating the very same order dated 14.11.2009. Hence, with above submission, he prayed for quashing the eviction order.

7. Per contra, learned Counsel appearing for the Respondents 1 to 4 submitted that the Petitioners have encroached the government land comprised in R.S.179/1, measuring 0.41.5 hectares in objectionable manner by way of construction of sheds and huts for running their business in one part and by dwelling on the other part. Since the place of encroachment made by the Petitioner belongs to the Panchayat, the Village Panchayat had initiated proceedings to evict them from the said land even some 10 years ago, against which the Petitioners and some others filed a suit in O.S. No. 139/99 on the file of District Munsif Court in Neyveli, which was transferred to the Additional District Munsif Court, Virudhachalam, in O.S. No. 86/2002, and the said suit was subsequently dismissed for non appearance of the Plaintiffs on 07.11.2005, and thereafter only, the Panchayat President of Mudhanai Village initiated eviction proceedings by issuing order of eviction on the encroachers. Aggrieved by the action of the Panchayat President, the Petitioners filed a writ petition before this Court in W.P. No. 24221/2009. But, this Court, by disposing of the said writ petition, treated the eviction order dated 14.11.2009 as show cause notice and further, the Petitioners were also directed to submit their reply to the sixth Respondent. In the light of the order passed by this Court, when the Petitioners submitted their reply, the sixth Respondent properly considered their objections and finally, rejected the same by passing the present eviction order dated 19.04.2010 and on that basis, she prayed for dismissal of the present writ petition.

8. Heard the learned Counsel appearing on either side and perused the materials available on record.

9. It is seen that the Petitioners have been encroaching the Government land for long time, which were considered as objectionable poramboke land. However, the Revenue Authorities have collected the details of the Petitioners and as per the enquiry conducted by the Respondents, the Revenue Authorities have come to the conclusion that the Petitioners are not houseless persons, since they are all owning houses in their own names. The details of the house owned by the Petitioners are given as under:

Sl.No.	Name of the Petitioner	Nature of encroachment	Details of house/sites owned
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1	Govindan S/o.Rathinasababathi	Thatched Shed (S.F.180-Odai)	He is not an individual office.
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- 2 Uthandaraman S/o.Kesavan Thatched Shed (S.F.180-Odai) Having a tiled house in 00138 sq.m.
- 3 Ramalingam S/o.Vaithiyalingam Tea stall & Hut (S.F.180-Odai) Holding No. 538. SF.No.665/2 Tiled House.
- 4 Subramaniyan S/oRajamanickam Tea Stall/Part, residential house S.F.179/1 Thopu Holding No. 554, tiled house
- 5 Sundaravadivel S/o.Uthandarayar Thatched residential house (S.F.179/1-Thopu) Vacant site having 1/2 share damaged terraced house.
- 6 Bharathirajan S/o.Uthandarayar Tea stall, part Thatched hut (S.F.179/1-Thopu) Vacant site having 1/2 share damaged terraced house.
- 7 Saroja W/o.Sandanam Thatched hut (S.F.179/1- Thopu) H.No.34, SF.No.643/10 00165 sq.mt. terraced house.
- 8 Ramadoss S/o.Rajappal Thatched hut (S.F.No.179-1 Thoppu) H.No.386 SF.No.259/2, vacant site 00100 sq.mt.
- 9 Palaniyappan S/o.Sadasivam Thatched hut (S.F.179/1- Thopu) H.No.119, SF No. 657/10, 00062 sm vacant site
- 10 Arumugam S/o.Vathiyalingam Cycle Shop Thatched Thopu) H.No.538, SF.No.665/2 00640 sm. titled house.
- 11 Ayyakannu S/o.Kuppusamy Thatched hut (S.F.No.179/1-Thopu) H.No.74, SF.No.168/4, 00200 sm. vacant site.
- 12 Thayalnayake W/o.Ramadoss Thatched hut (S.F.No.179-1 Thopu)
- 13 Anbalagan S/o.Kolanji Grocery shop / part (SF.469/1B Thopu) H.No.333, SF.No.660/4, Titled house
- 14 Kangarasu S/o.Krishnan Damaged Thatched house (SF.No.469/1B - Thopu) H.No.91, SF No. 697/2, Thatched house.
- 15 Renganatan S/o.Uthandi Thatched residential house SF.No.469/1BThopu
- 16 Masco S/o.Ukkaravel Thatched shed (SF.No.180 - Odai) Having no individual shed as a party office.

The above details show that all the Petitioners are having their own houses and some of them are having their party offices, tea stall, etc., therefore, the contentions made by the learned Counsel for the Petitioner that they are all houseless and poor persons, are totally incorrect statements. Since no other suitable government land is available for running daily market, this land has been selected by the local panchayat for construction of buildings with a view to conduct the shandi (daily market) in an organized manner and to augment the revenue of the Village panchayat. As the encroachments put up by various persons have been posing hindrance for the construction of shandi building, the

panchayat initiated proceedings to evict them. Further, a sum of Rs. 35 lacs has been allotted by the Kammapuram Panchayat union by their resolution No. 58, dated 16.09.2009, for the construction of shopping complex and shandi buildings. Since the Petitioners had already filed a writ petition against the action taken by the panchayat President to evict the encroachment, the construction work could not be carried out. Therefore, the Respondents, only after proper enquiry, came to the conclusion that the Petitioners are not houseless persons and while some of them own house, others have encroached upon the land in SF. No. 179/1 utilizing the same for commercial purposes. Further, a few of them are in encroachment of the government land for running their party offices. Under these backgrounds, when the Respondents issued an eviction notice, the Petitioners filed a writ petition in W.P. No. 24221/2009, on the ground that no notices were issued to them. Therefore, this Court, by order dated 08.03.2010, directed the Petitioners to treat the earlier eviction order as a show cause notice and thereafter, the Petitioners submitted their objection dated 10.04.2010, and after duly considering the same, their cases came to be rejected by passing the present eviction order dated 19.04.2010. Even in the year 1999, when the Village Panchayat, by passing resolution, decided to evict the Petitioners from the objectionable poramboke land, some of the Petitioners filed a suit in O.S. No. 139/99 on the file of the District Munsif Court, Neyveli, which was transferred to the Additional District Munsif Court, Virudhachalam, in O.S. No. 86/2002. The said suit was also subsequently dismissed for non appearance of the Plaintiffs/the Petitioners herein, on 07.11.2005. Thereafter, the President of Mudhanai Village initiated eviction proceedings by issuing order of eviction on the encroachers/the Petitioners herein. Challenging the said eviction order, when a writ petition in W.P. No. 24221/2009 was filed, as I mentioned above, this Court, by treating the eviction order as show cause notice, directed the Respondents to consider their case. In the light of the order passed by this Court, when the Respondents came to the conclusion that the Petitioners are not houseless persons and again when they are not utilizing the land for residential purpose, but for commercial and party offices, I do not find any infirmity in the present impugned order passed by the Respondents.

10. Further, G.O. Ms. No. 854, Revenue Department, dated 30.12.2006, is meant for regularizing the encroachment by way of houses that are built on Government lands and continuously used for more than 10 years. Subsequently, the said period of encroachment was minimized for 5 years and once again, the period of 5 years was reduced to three years for getting patta from the Government. The said GO was brought into operation with a view to provide free house pattas to those who are unable to purchase a house site on their own. But, the details given in the counter filed by the Respondents clearly show that the present writ Petitioners are having their own houses, therefore, they are not depending only on the present place. Further, they are not utilizing the said land for residential purpose, but for commercial purpose and still some of them are running their respective party offices, therefore, the present writ petition filed by

the Petitioners is not maintainable and accordingly, the same stands dismissed by vacating the interim order passed in M.P. No. 2 of 2010 in W.P. No. 10196/2010, dated 05.05.2010. No Costs.