

V. Venu and Vs. the Tahsildar,

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Court : Chennai

Decided On : Mar-31-2010

Judge : V. Dhanapalan, J.

Acts : Encroachment Act

Appeal No. : W.P. Nos. 15297 and 15298 of 2005

Appellant : V. Venu And; Chennaiyan

Respondent : The Tahsildar,; the Revenue Inspector And; the Village Administrative Officer

Advocate for Def. : A.C. Manibharathi, Government Adv.

Advocate for Pet/Ap. : T. Murugamanickam, Adv.

Judgement :

ORDER

V. Dhanapalan, J.

1. By consent of the learned Counsel on either side, these writ petitions are taken up for final disposal.

2. The prayer in the writ petitions is to forbear the respondents from dispossessing the petitioners from the lands situated in S. Nos. 50/1, 50/5 and 51/1 of Achalvadi

Village, Harur Taluk.

3. The petitioner in W.P.No.15297 of 2005 and the petitioner in W.P. No. 15298 of 2005 claim that they are the patta owners of lands situated in S. Nos. 51/2 and 50/2A and in S. No. 50/2B, respectively, in Achalvadi Village. According to them, adjoining these patta lands, there are Government poramboke lands in S. Nos. 50/1, 50/5 and 51/1 in Achalvadi village of an extent of 40 cents and those lands are in possession and enjoyment of the families of the petitioners for quite some time and they have cultivated some crops in it. As there was demand of tax by means of 'B' Memo, the petitioners claim that their possession is recognised. According to the petitioners, some persons of the respondent Office have inspected those lands and threatened to evict them from the properties in question without following due process of law. Aggrieved by the said action of the respondents, the petitioners have filed these petitions.

4. It is the stand of the respondents in the counter that the Village Panchayat President has applied to the Tahsildar, Harur Taluk for the demarcation of the lands in S. Nos. 50/1, 50/5 and 98 of Achalvadi Village on 10.02.2005 and remitted the required charges for the measurement of the lands, which is classified as path poramboke in the Revenue Accounts and they are vested properties of the Panchayat.

5. The Field Surveyor measured the lands on 04.03.2005 in the presence of the Panchayat President and obtained a statement from the President to the effect that the lands are measured in his presence and the boundaries are known to him. The 1st respondent Tahsildar has also inspected the lands on 06.06.2005 after the receipt of notices in these writ petitions and also noticed that there were no encroachments by the petitioners in the said lands. The respondents have not evicted any encroachments in the said lands, which were said to be encroached upon by the petitioners. It is also ascertained that the local Panchayat requires the above lands for a public purpose, i.e. for a formation of a road. Since lands are vested property of local body, the Panchayat is the competent authority to carry out eviction and the respondents have no idea of eviction of encroachments. It is also stated by the respondents that they have nothing to do with the alleged

eviction and that they can co-ordinate with local bodies in maintaining law and order during the eviction of encroachment, if it is necessary.

6. The respondents have further stated that the petitioner in W.P. No. 15297 of 2005 owns patta lands in S. Nos. 51/2 and 50/2A of Achalvadi Village and the petitioner in W.P. No. 15298 of 2005 owns patta lands in S. No. 50/2B of Achalvadi Village and adjacent to these lands, there are poramboke lands bearing S. Nos. 50/1, 50/5 and 51/1. It is also a fact that a portion of the above poramboke lands were under the effective occupation of the families of the petitioners for more than 20 years.

7. I have heard the submissions of the learned Counsel on either side and perused the material documents annexed in the typed set of papers and the counter filed by the respondents.

8. A perusal of the case would reveal that the petitioners are in encroachment of the Government lands adjacent to their patta lands and they are in possession of 'B' Memo. It is specifically admitted in the counter filed by the respondents that the petitioners own patta lands in S. Nos. 51/2 and 50/2A and in S. No. 50/2B, respectively, of Achalvadi Village and adjacent to these lands there are poramboke lands bearing S. Nos. 50/1, 50/5 and 51/1 of Achalvadi Village, Harur Taluk. It is also a fact that a portion of the above poramboke lands were under the effective occupation of the families of the petitioners for more than 20 years and that the respondents have also booked 'B' memo in the name of Vengiya Gounder, father of the writ petitioner in W.P. No. 15297 of 2005, who is no more. It is stated in the counter that the petitioner, namely, Venu was paying 'B' Memo charges for the encroachment to the Government till Fasli 1414.

9. Learned Counsel for the petitioners have raised a question that even if the petitioners' possession of Government lands are to be dispossessed, that should be done in accordance with law and proper notice has to be issued by following the procedures in effect. He would further submit that it is an admitted fact that the petitioners are in possession of the Government lands and therefore, without following the the due process of law, they cannot be evicted.

10. Learned Government Advocate appearing for the respondents would submit that whenever there is an action by the respondents, the procedures and the provisions made under the Encroachment Act should be followed and the eviction has to be carried out only after following the due process of law.

11. Admittedly, the petitioners are in possession of the Government lands, for which they have filed writs of mandamus seeking to forbear the respondents from dispossessing them from the lands mentioned above.

12. In the light of the above, this Court is of the view that if the respondents are required to proceed with the eviction of the petitioners, it should be done in accordance with law after issuing notice and after following the procedures contemplated under the provisions of the law, otherwise, the petitioners are not to be disturbed.

These writ petitions are disposed of with the above direction. No costs. Consequently, connected W.P.M.P. Nos. 16639 and 16640 of 2005 and W.P.M.P. No. 133 of 2010 are closed.

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