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W.P.No.3002 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.3002 of 2018

Gunasekaran

.. Petitioner

Vs

- 1 The State of Tamil Nadu
Rep by its Secretary to Government
Revenue Department
Fort St. George
Chennai – 600 009.
- 2 The Secretary to Government
Law (OP-V) Department
Secretariat
Chennai – 600 009.
- 3 The District Collector
Salem, Salem District.
- 4 The Tahsildar
Taluk Office
Omalur Taluk
Salem District.

.. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of declaration declaring Section 6 of the Land Encroachment Act 1905 and notice dated 13.4.2017 issued by the 4th respondent under Section 6 of the Act as null and void.

For the Petitioner : Mr.M.Elango

For the Respondents : Mr.P.Muthukumar
State Government Pleader

ORDER

(Order of the court was made by the Hon'ble Chief Justice)

The petitioner seeks declaration that Section 6 of the Tamil Nadu Land Encroachment Act, 1905 [for brevity, "*the Act of 1905*"] is void and violates Articles 14, 19(1)(e) and 21 of the Constitution of India.

2.1. Mr.M.Elango, learned counsel for the petitioner, submits that Section 6 of the Act of 1905 is arbitrary, discriminatory and unreasonable. Right to shelter is a fundamental right under Article 21 of the Constitution of India. The impugned Section 6 of the Act of 1905 takes away the right



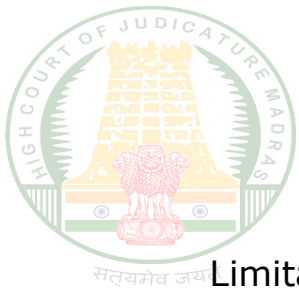
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of residence of the petitioner and other persons.

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2.2. Learned counsel for the petitioner submits that by virtue of the operation of Article 13 of the Constitution of India, the impugned Section 6 of the Act of 1905 is deemed to be void. The Act of 1905 is a pre-constitutional Act and is not in conformity with the fundamental rights guaranteed under Part III of the Constitution of India. The Governor has not granted any approval to the Act of 1905 after the Constitution came into force.

2.3. It is also submitted by learned counsel for the petitioner that Section 6 of the Act of 1905 is discriminatory, as it applies only to the government lands, whereas in case of private lands the parties have to file a civil suit. In a summary manner, eviction takes place under Section 6 of the Act of 1905. Under Section 6 of the Act of 1905, the Revenue Officer can evict a person. The government cannot be treated differently. The



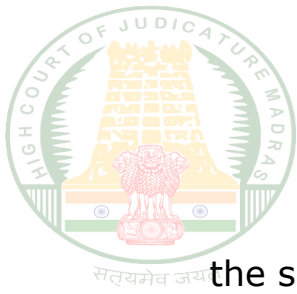
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Limitation Act, 1963 applies to the government also. The right to equality is violated. With the passage of time, the provision has become unreasonable.

2.4. Reliance is placed on the judgment of the Apex Court in the case of *Joseph Shine v. Union of India*, (2019) 3 SCC 39, to submit that a statutory law is required to be struck down if found unreasonable and that there is no presumption of constitutionality of a pre-constitutional law. The provisions would have to be tested on the anvil of Part III of the Constitution of India.

2.5. Relying upon the judgment of the Apex Court in the case of *Satyawati Sharma v. Union of India*, (2008) 5 SCC 287, it is contended that a legislation, which may be reasonable at the time of its enactment, may, with the lapse of time and/or due to change of circumstances, become arbitrary, unreasonable and violative of the doctrine of equality. The court can strike down



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the same even if the same was upheld earlier.

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2.6. Reliance is also placed on the judgments of the Apex Court in the cases of *Maganlal Chhaganlal (P) Ltd v. Municipal Corporation of Greater Bombay and others*, (1974) 2 SCC 402; and *Krishena Kumar and another v. Union of India and others*, (1990) 4 SCC 207, and submitted that the *ratio decidendi* in the previous case is only applicable.

2.7. To substantiate his submission that the earlier judgment of the Apex Court in the case of *Pandia Nadar and others v. The State of Tamil Nadu and others*, (1974) 2 SCC 539, would not apply, learned counsel for the petitioner relies on the judgment of the Apex Court in the case of *Dr. Shah Faesal and others v. Union of India and another*, (2020) 4 SCC 1, and submits that if the relevant provisions were not considered, the same can be considered in a subsequent case.



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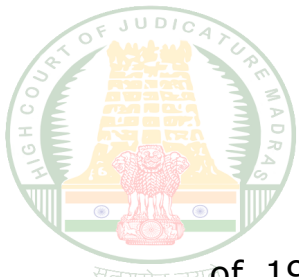
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3. Mr.P.Muthukumar, learned State Government Pleader appearing on behalf of the respondents, relies upon the judgment of the Apex Court in the case of *Pandia Nadar* (supra) and submits that the constitutional validity of the Act of 1905 has been upheld by the Apex Court and it is not open for the petitioner to re-agitate the same.

4. We have given our thoughtful consideration to the submissions canvassed by learned counsel for the petitioner and learned State Government Pleader.

5. The Act of 1905 and, more particularly, Section 6 of the said Act, is the subject-matter of challenge in the present petition.

6. The constitutional validity of the Act of 1905 was the subject-matter of consideration before the Constitution Bench of the Supreme Court in the case of *Pandia Nadar* (supra). The Act



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of 1905 was upheld by the Apex Court in its entirety. While upholding the Act of 1905, the Constitution Bench of the Apex Court navigated through the various provisions of the Act of 1905 and held it to be valid and *intra vires*.

7. The contention of learned counsel for the petitioner is that the grounds raised by him in the present petition were not raised in the case of *Pandia Nadar* (supra). The constitutionality of a provision once upheld by the Supreme Court, would not be open to challenge again on a new ground.

8. In the case of *Delhi Cloth and General Mills Ltd v. Shambhu Nath Mukherji and others*, (1977) 4 SCC 415, the Apex Court observed as under:

"11. ... If this Court held Section 10 as intra vires and repelled the objection under Article 14 of the Constitution it would not be permissible to raise the question again by submitting that a new ground could be raised to sustain the objection. It



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is certainly easy to discover fresh grounds of attack to sustain the same objection, but that cannot be permitted once the law has been laid down by this Court holding that Section 10 of the Act does not violate Article 14 of the Constitution.”

9. Even otherwise, a person in unauthorised occupation cannot claim protection of Article 21 of the Constitution of India. Under Article 21 of the Constitution of India, a person cannot be deprived of his life or personal liberty except according to the procedure established by law. Before proceeding under Section 6 of the Act of 1905, a notice has to be given to the party under Section 7 of the Act of 1905. A reply is solicited. An opportunity is given to the party to put forth his case pursuant to the notice under Section 7 of the Act of 1905. The reply is required to be considered by the authority before passing an order under Section 6 of the Act of 1905. Thereafter, an appeal is provided under Section 10 of the Act. Once it is found that the petitioner was unauthorisedly occupying the government property and if



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procedure of law is followed, there is no gainsaying that the petitioner would not be entitled to protection under Article 21 of the Constitution of India. The procedure prescribed is reasonable.

10. The reliance on Article 13 of the Constitution of India is misplaced. Article 13(1) of the Constitution of India provides that all laws in force in the territory of India immediately before the commencement of the Constitution, insofar as they are inconsistent with the provisions of Part-III of the Constitution of India, shall, to the extent of such inconsistency, be void. To attract Article 13(1) of the Constitution of India, the petitioner will have to demonstrate that the Act of 1905 is inconsistent with the provisions of Part III of the Constitution of India. As discussed above, Article 21 of the Constitution of India would not be violated.

11. For evicting the unauthorised occupants of the



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government lands, a special speedy procedure is prescribed under the Act of 1905. The said classification would be reasonable. The legislature in its wisdom has considered the same.

12. Reliance placed by learned counsel for the petitioner on Article 19(1)(e) of the Constitution of India is too far-fetched. Article 19(1)(e) of the Constitution of India states that all citizens shall have the right to reside and settle in any part of the territory of India. However, the same would not mean to reside and settle in any part of the territory of India unauthorisedly. The law would never come to the aid of the person who, without authority of law, unauthorisedly and illegally squats on the property of the government. A person who unauthorisedly possesses the property cannot be heard to say that he has a constitutional right to unauthorisedly occupy the property.

13. Apropos the contention of learned counsel for the



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petitioner that Section 6 of the Act of 1905 is discriminatory, inasmuch as it applies only to the government lands, whereas in case of private lands the parties have to file a civil suit, it needs to be accentuated that an *intelligible differentia* exists between the occupiers of a public property and the occupiers of a private property. It is in the interest of the public that eviction of unauthorised occupants is made possible through a speedier procedure. The government property can be used for public purpose and an individual cannot be allowed to occupy the same.

14. Once the Constitution Bench of the Apex Court has upheld the constitutional validity of the Act of 1905, and more particularly the same provision assailed by the petitioner, it will not be permissible to again consider the challenge to the same. The petitioner could not remotely show a semblance of right over the subject writ property. The procedure has been followed while evicting the petitioner.



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In the light of the above, the writ petition deserves to be dismissed and is hereby dismissed. There will be no order as to costs. Consequently, W.M.P.No.3670 of 2018 is closed.

(S.V.G., CJ.)

(D.B.C., J.)

23.11.2023

Index : Yes
Neutral Citation : Yes
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