

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.07.2015

DATED : 23.07.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.Nos.18077 to 18081 of 2015
and
M.P.Nos.1 to 1 of 2015

- 1.MadheswariPetitioner in W.P.18077 of 2015
2.T.MuruganPetitioner in W.P.18078 of 2015
2.SigamaniPetitioner in W.P.18079 of 2015
3.KannagiPetitioner in W.P.18080 of 2015
4.K.R.PerumalPetitioner in W.P.18081 of 2015

Vs.

1. The Commissioner,
Dharmapuri Municipality,
Dharmapuri.
2. The District Collector,
Dharmapuri District,
Dharmapuri.Respondents in all the petitions

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus, calling for the records pertaining to the impugned eviction dated 16.04.2015 vide proceedings Encroachment Notice No.3162/2013/F1 of the First Respondent and quash the same as illegal and consequently, forbearing the Respondents from evicting the petitioners from the lands in their occupation without following the due process of law.

For Petitioner : Mr.D.Baskar
in all the WPs.

For Respondent-1 : Mrs.A.Sri Jayanthi
in all the WPs.

For Respondent-s : Mr.P.S.Sivashanmugasundaram
in all the WPs. Spl. Government Pleader

C O M M O N O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

The Petitioners have preferred the present Writ Petitions praying for passing of orders by this Court in calling for the records relating to the impugned eviction notice dated 16.04.2015 vide proceedings Encroachment Notice No.3162/2013/F1 of the First Respondent and to quash the same as illegal ones. Further, they have sought for passing of an order forbearing the Respondents in evicting them from the lands under their occupation without following due process of law.

2.According to the Petitioners, they are residing at Door.No.32, 18, 16 & 18A, New Thirupathur Road, Thirupathur Road, Mathikonpalayam, Dharmapuri respectively and they are in possession and enjoyment of the said lands for the past 70 years. Earlier, their forefathers were in possession and after them, they are in possession of the said lands by putting up a packa buildings over the same. In short, they are in possession and enjoyment of the properties without any interruption whatsoever.

3.The stand of the Petitioners is that they are paying necessary property tax to the authorities concerned and also obtained electricity service connection for their dwelling houses. Moreover, they have sent repeated representations to the Tahsildar requesting him to grant patta to the lands in their favour by considering their long possession and enjoyment. However, the said representations are pending and no orders are passed till date. That apart, the said lands are classified as Government Poramboke lands (Boosthithi Pathway) coming under the domain of the Revenue Department.

4.It comes to be known that the First Respondent/ Commissioner, Dharmapuri Municipality had issued the impugned notice dated 16.04.2015 alleging that they had encroached the land in Ward No.B, Block No.9, T.S.No.1, Old Survey No.367/A1A, T.S.No.59, Old Survey No.512/549 which is classified as Government

Poramboke (Boosthithi Pathway) and Ward-B, Block No.10, which is also classified as Government Poramboke land. As a matter of fact, they were called upon to remove the encroachment thereon seven days from and over the said lands failing which the said encroachment will be removed by demolishing their dwelling houses. In this connection, the plea of the Petitioners is that no explanation were called for from them before issuance of eviction notice dated 16.04.2015.

5.The Learned counsel for the Petitioners brings it to the notice of this order that the officials of the First Respondent/Municipality came to their residence on 29.05.2015 and asked them to evict within three days, failing which their houses would be demolished with the help of police and bull dozer. Apart from that, the land in their possession and occupation belongs to Government and there is no jurisdiction on the part of the First Respondent/Municipality to issue the impugned notice dated 16.04.2015 for eviction. Further, the said impugned notice bristles with baldness and in violation of 'Principles of Natural Justice'.

6.In response, the Learned counsel for the First Respondent/Municipality submits that there are 47 encroachers in three different Survey Nos.1, 59, 96 of Ward No.B, Block No.9, T.S.No.1, Old Survey No.367/A1A of New Thirupathur Road, Mathikonpalayam, Dharmapuri which leads to Krishnagiri District, Harur and Thirupathur road by encroaching the public road on either side by putting the thatched houses, RCC roof and tiled houses. It is also the stand of the First Respondent that due to encroachment on either side of the road, the width of the road became less and due to that there is heavy traffic and also several accidents are taking place. As such, the District Administration had taken a decision to evict the encroachers to control the traffic and to avoid accidents.

7.The Learned counsel for the First Respondent proceeds to state that out of 47 encroachers, only five encroachers have filed the present writ petitions and other encroachers had accepted to vacate the encroached portion and one of them had given an undertaking by addressing a letter to the Second Respondent/District Collector, Dharmapuri.

8.The Learned counsel for the First Respondent adds that the First Respondent had issued several notices from the year 2013 onwards to all the encroachers on several dates i.e., the first notice on 21.06.2013, second notice on 26.12.2013, third notice on 16.04.2015 and fourth notice on 29.05.2015. The Petitioners had given reply on 04.05.2015, requesting the Authorities seeking time and indeed, the Authority had given 30 days time for eviction. But the Petitioners had filed the present writ petitions. That apart,

the revenue records clearly establishes that the Petitioners had encroached extent of 22.44 Sq.m., 20 Sq.m., 31.92 Sq.m., 64 Sq.m., 13.68 Sq.m. of lands in Survey No.96, Block No.10, Ward No.B of the New Thirupathur Public Road, Mathikonpalayam, Dharmapuri.

9.At this stage, the Learned counsel for the Petitioners relies on the Full Bench Division of this Court Ramaraju Vs. The State of Tamil Nadu, rep. by its Secretary to Government, Revenue Department, Fort St. George, Chennai and others reported in 2005 (2) CTC 741 wherein it was held among other things that "the eviction in respect of unauthorised encroachment on Government land can be taken by following procedure contemplated under Tamil Nadu Land Encroachment Act, 1905".

10.A perusal of the final notice dated 16.04.2015 addressed to the Petitioners unerringly pointed out that they were directed to remove the encroachment by removing the buildings themselves, failing which they would be removed as per Tamil Nadu Municipalities Rules and necessary cost incurred thereto would be recovered from them besides filing case before Court of Law.

11.It is quite patently and latently evident from the final individual notice issued to the Petitioners dated 16.04.2015 that the First Respondent/Municipality had not provided opportunity to the Petitioners to submit their explanations in regard to the subject matter to the alleged encroachment. In this regard, this Court of the considered opinion that the First Respondent/Municipality had not adhered to the 'Principles of Natural Justice'. As such, there is a negation of 'Principles of Natural Justice'. Therefore, this Court is of the considered view that the Petitioners are entitled to offer their individual explanation to the notice dated 16.04.2015 issued by the Municipality and accordingly, this Court in the interest of Equity, Fair Play, Justice, Good Conscience and even as a matter of Prudence directs the Writ Petitioners to submit their individual explanation to the First Respondent/Municipality for their issuance of notice dated 16.04.2015 within two weeks from the date of receipt of copy of this order. Soon after receipt of individual explanation submitted by the Writ Petitioners, the First Respondent/Municipality is directed to pass a reasoned speaking orders on merits, of course, by providing an opportunity of personal hearing (situation so warrants) and also after adhering to the Principles of Natural Justice within two weeks thereafter. Till a reasoned order is passed by the First Respondent, the Authorities are directed to maintain status quo.

12.With the aforesaid observations and directions, the Writ Petitions stands disposed of. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Commissioner,
Dharmapuri Municipality,
Dharmapuri.
2. The District Collector,
Dharmapuri District,
Dharmapuri.

1 CC to the Government Pleader, SR.No. 37629

1 CC to Mrs.A.Sri Jayanthi, Advocate SR.No. 37324

2 CCs to M/s.R.Thamarai Selvam, Advocate SR.No. 37462

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and M.P.Nos.1 to 1 of 2015

PPA (CO)
PSI (04.08.2015)

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