

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-01-2015

CORAM

THE HONOURABLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WRIT PETITION Nos.227 to 232 of 2015

and

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

Muslim Lubbai Sunnath Jamath
Hospital Road
Udhagamandalam
Nilgiris District
rep. By its President
Gul Mohammed

.. Petitioner in
WP 227/2015

Sunnath Jamath Federation
Eduljee Rd., Udhagamandalam
Nilgiris District
rep. By its President

.. Petitioner in
WP 228/2015

S.S.Jain Sangh
(Sweethambar Sthanakwasi
Jain Sangh)
100, Main Bazaar
Udhagamandalam
Nilgiris District
rep. By its President
M.Gyanmal

.. Petitioner in
WP 229/2015

Jain Youth Charitable Trust
Vittabba Koil Street
Lower Bazaar
Udhagamandalam
Nilgiris District
rep. By its Secretary
J.Maneckchand

.. Petitioner in
WP 230/2015

A.Jai Bunnisa
<https://hcservices.ecourts.gov.in/hcservices/>

.. Petitioner in
WP 231/2015

S.I.Syedhani

.. Petitioner in
WP 232/2015

vs

- 1.State of Tamil Nadu
rep. By the Secretary to Government
Municipal Administration & Water
Supply Department
Fort St. George, Madras 9.
 - 2.The Secretary to Government
Housing and Urban Development
Department
Fort St. George, Madras 9.
 - 3.The Director of Town & Country
Planning
Anna Salai, Chennai 2.
 - 4.The District Collector
Nilgiris District
 - 5.The Commissioner of Municipal
Administration
Chepauk, Madras 5.
 - 6.The Regional Director of
Municipal Administration
Tiruppur
 - 7.The Municipal Commissioner
Udhagamandalam Municipality, Ooty
- .. Respondents in
all petitions

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents 2 to 6 to act and pursue their further course of action on the strength of the Government's desire and policy as indicated by the first respondent in his proceedings No.43843/MA.1/2008 II dated 5.4.2013, and to implement and execute the grant of regularisation to unauthorized constructions in letter and spirit by levying proportionate fine on such unauthorized constructions if any, on taking into account,

(i) G.O.Ms.No.177 dated 17.12.2002 of the first respondent granting exemption to BTS Towers;

(ii) Orders dated 05.11.2009 and 16.04.2010 in M.P.Nos.1 and 2 in W.P.Nos.32747 and 28693 of 2008;

(iii) Proceedings of the sixth respondent dated 1.12.2011, 11.1.2013 and 28.2.2013;

(iv) Proceedings of the seventh respondent dated 11.3.2013;

(v) Report dated 9.4.2013 and the proceedings dated 24.1.2014, 24.1.2014, 28.1.2014, 6.2.2014, 11.2.2014 and 11.4.2014 of the seventh respondent;

(vi) Minutes of 49th Meeting held on 19.12.2013 of HACA and

(vii) Proceedings of the fifth respondent dated 20.12.2013,

by considering the representations of the petitioners dated 25.11.2014, 15.11.2014, 15.11.2014, 15.11.2014, 15.11.2014 and 27.11.2014 respectively, in accordance with law.

For Petitioners	: Mr.R.Shanmugam for M/s.Shanmugha Associates
For Respondents	: Mr.S.T.S.Moorthy Government Pleader

COMMON ORDER

(Order of the Court was made by THE HON'BLE CHIEF JUSTICE)

The petitioners seek to invoke the jurisdiction of this Court under Article 226 of the Constitution of India on a perceived threat of demolition at the hands of the respondents ostensibly on the basis of an order obtained at the back of the petitioners and without impleading them as parties.

2.We may note that the petitioners are located in Uthagamandalam, Nilgiri District, a hill area. Rampant unauthorised constructions in hill areas has resulted not only in an esoteric situation, but also natural calamities arising as a direct result of this. This has been witnessed in different parts of the country. For the sake of residents and citizens and to avoid natural calamities, it is necessary to take action and that is why from time to time, this Court has issued directions for taking action against unauthorised constructions in accordance with law.

3.In such proceedings, there is no question of impleading every violator as a party, as no specific direction is passed against any violator. What has been done is to wake up the authorities to do their statutory duties and for them to take action in accordance with law.

4.On a query, learned Counsel for petitioners does not state whether the construction is authorised or unauthorised, but states that this construction was made long time back. It is trite to say that there must have been some law, under which construction would have taken place. He, however, submits that according to the authorities, there is unauthorised construction.

5.The petitioners seek to take shelter under the garb of different communications issued by Government authorities from time to time suggesting that regularisation process is being examined. It is, however, admitted that at present, there is no culmination of any such regularisation process and thus, as on date, no protection of any such regularisation process can be made available to the petitioners or for that matter, any other violator.

<https://hcservices.ecourts.gov.in/hcservices/>

6.Learned Counsel submits that right to be heard is essential and the rule of audi alteram partem should not be violated.

He seeks to rely upon the judgment of the Supreme Court in MARIA MARGARIDA SEQUERIA FERNANDES AND OTHERS V. ERASMO JACK DE SEQUERIA (DEAD) THROUGH LRS (2012 (1) MWN (CIVIL) 840) to advance the proposition that even a trespasser cannot be dispossessed without recourse to law. That judgment, in our view, was rendered in the context of civil disputes inter se the private parties and the endeavour was not to evict trespassers other than by due process of law. A judgment has to be read in the facts in which it is given, and cannot be read like a statute by reading one sentence or other, hither and thither, to propound the proposition. The principles of law, which have been laid down in the judgment, have been culled up in para 101 and the said paragraph is reproduced hereunder to appreciate what is the ratio of the judgment:-

"101. Principles of law which emerge in this case are crystallized as under:

1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.
2. Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.
3. The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.
4. The protection of the Court can only be granted or extended to the person who has valid, subsisting rent Agreement, lease agreement or license agreement in his favour.
5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession."

7. What is of importance here is that there is no notice issued by the concerned authorities, which is assailed before us. If a notice is issued, the same may be subject to any appeal remedy, if available, and the right to approach the Court under Article 226 of the Constitution of India. There is only what the petitioners call, a perceived threat. In fact, we are aware that in view of various matters, which have come before us, the authorities had issued notices to parties and thereafter only, acted. Some of the parties have approached Courts for redressal of their grievances and wherever illegality has been found, even notices have been quashed by this Court. It is not possible to appreciate the present controversy in the absence of facts. It has not been set out what is authorised construction and what is unauthorised construction as perceived by the respondents. On a query as to under what provision of law the petitioners seek regularisation, once again, there is no answer, as no application has been made under any provision of law seeking regularisation. There are some general representations that no

action should be taken. Unauthorised construction or illegalities cannot be given the cloak of a religious institution to prevent action by the authorities in accordance with law.

8.We are, thus, of the view that this petition is not liable to be entertained, as there is no cause of action arising at this stage. Only when a notice is issued to the petitioners would the cause of action arise and at that stage, the petitioners can always take remedy as is available in law.

9.We see no reason to exercise the extraordinary jurisdiction under Article 226 of the Constitution of India at this stage.

10.The writ petitions stand dismissed. No costs. Consequently, connected MPs are also dismissed.

Sd/-
Deputy Registrar.

/true copy/

Sub Asst. Registrar.

nsv

To:

- 1.The Secretary to Government
Municipal Administration & Water
Supply Department
Fort St. George, Madras 9.
- 2.The Secretary to Government
Housing and Urban Development
Department
Fort St. George, Madras 9.
- 3.The Director of Town & Country
Planning
Anna Salai, Chennai 2.
- 4.The District Collector
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- 5.The Commissioner of Municipal
Administration
Chepauk, Madras 5.

6.The Regional Director of
Municipal Administration
Tiruppur

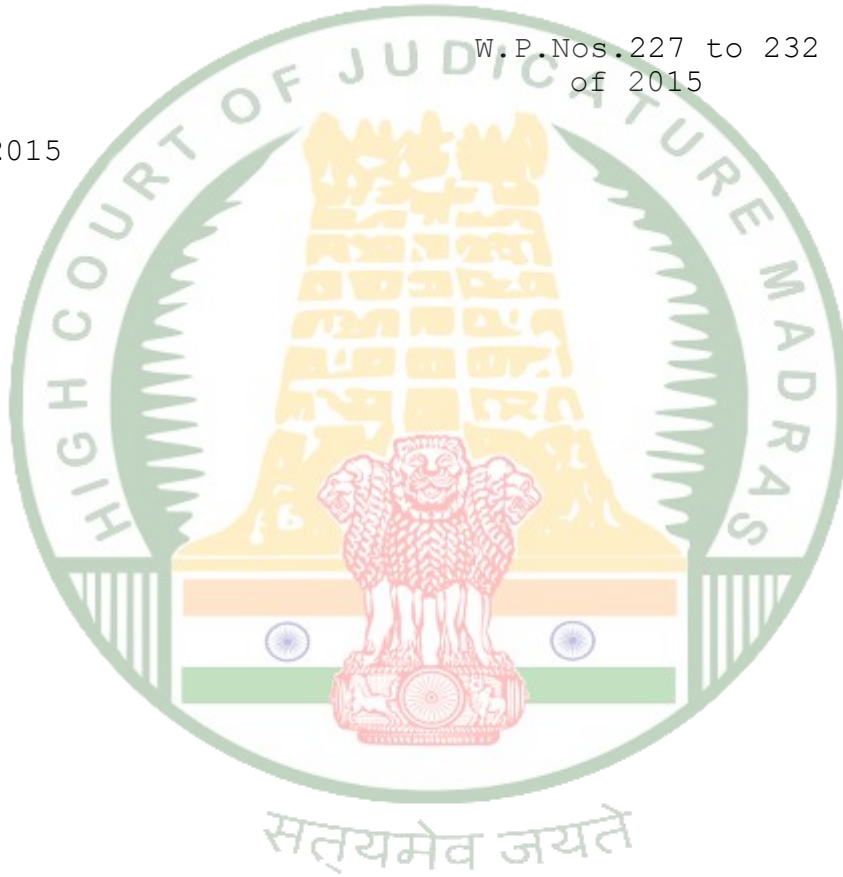
7.The Municipal Commissioner
Udhagamandalam Municipality, Ooty

1 CC to the Government Pleader SR NO 4748

+1cc to M/s.Shanmuga Associates,Advocate SR.No.4490

W.P.Nos.227 to 232
of 2015

sai[co]
gp/10.02.2015



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