

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2015

CORAM

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

W.P.Nos.4000 to 4002 of 2015
and
M.P.Nos.1,1 and 1 of 2015

R.Manoharan ... Petitioner in
W.P.No.4000 of 2015
Mrs.K.Krishnammal ... Petitioner in
W.P.No.4001 of 2015
Mrs.G.Pappa ... Petitioner in
W.P.No.4002 of 2015

Vs.

- 1.The Government of Tamil Nadu,
rep by its Secretary,
Revenue Department,
Fort St. George,
Chennai-600 009.
 - 2.The District Collector,
Collectorate Compound,
Salem.
 - 3.The Tahsildar,
Taluk Office,
Shevapat,
Salem-636 002.
 - 4.The Executive Officer,
Elampillai Town Panchayat,
Elampillai, Salem District.
- ... Respondents in
all writ petitions

W.P.Nos.4000 to 4002 of 2015 are filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records relating to fourth respondent's impugned order issued in Na.Ka.No.387/2007 dated 10.2.2015 and quash the same by directing the respondents not to disturb the peaceful possession and enjoyment of house constructed in S.No.23/3 to an extent of 950 sq.ft, 800 sq.ft and 900 sq.ft in Door No.7-1/156, 157 and 158, S.No.23/3 to an extent of 1050 sqft each in

Door No.8-1/255 and 257 Santhapettai Main Road and S.No.23/3 to an extent of 1240 sq.ft in Door No.7-1/162, Pattappan Koil Street respectively.

For Petitioner : Mr.S.R.Balasubramaniam
For Respondents : Mr.N.Sakthivel, GA for RR1 to 3
Mrs.P.Rajalakshmi for R-4

COMMON ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

Being aggrieved by the notices issued under Sections 3(1), 5-A and 7 of the Tamil Nadu Land Encroachment Act, 1905, dated 10.2.2015, the petitioners have come up with these writ petitions, seeking to quash the same on the ground that no opportunity of hearing was afforded to the petitioners before directing them to remove the encroachment by demolishing the alleged unauthorised structure.

2. It is contended by the learned counsel for the petitioners that the petitioners were in peaceful possession of the properties, in question for a long period. Without affording an opportunity of hearing, all of a sudden, the petitioners have been directed to vacate the premises, in question and also to demolish the same, as according to the authorities, the premises in question were on the Government land.

3. The notices in question have been issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. Section 7 of the Act contemplates service of notice on the person reputed to be in unauthorised occupation of land being the property of the Government. It also contemplates that the notice should specify the land so occupied and calling on the encroacher to show cause as to why he should not be proceeded against under Section 6 before a certain date. However, the first proviso provides that no such notice shall be necessary in the case of any person unauthorizedly occupying the land, if he had been previously evicted from such land under Section 6 or if he has previously vacated such land voluntarily after the receipt of a notice under Section 5-B under this section.

4. On perusal of the notice, it is noticed that there is no reference about the fact that the petitioners have been either previously evicted, pursuant to the order under Section 6 or have vacated after the receipt of notice under Section 5-B or under the provisions of the Act. Though, at this stage, the petitioners, even if they are in unauthorised occupation, cannot be directed to vacate the encroachment without affording an opportunity of hearing to them before passing an order under Section 6.

5. Accordingly, we direct the authorities to consider the representation / reply filed by the petitioners if any pursuant to

this notice and pass an order thereafter under Section 6, on its own merit and according to law. It is, thereafter, open to the authorities to take appropriate action as provided under the provisions of the Act. The petitioners, on their request, are granted two weeks time to file their reply/representation to the impugned notices, from the date of receipt of a copy of this order. Thereafter, further two weeks time is granted to the authorities to consider the same and take appropriate action on its own merit and according to law. Accordingly, these writ petitions are disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

Dated:24.2.15

True Copy

Sub Assistant Registrar

To

1.The Secretary,
The Government of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai-600 009.

2.The District Collector,
Collectorate Compound,
Salem.

3.The Tahsildar,
Taluk Office,
Shevapet,
Salem-636 002.

4.The Executive Officer,
Elampillai Town Panchayat,
Elampillai, Salem District.

+2 cc to Mr.S.R.bala subramaniam, Advocate,SR.8350, 8352.

+1 cc to Government Pleader,SR.8794.

km(co)

krd 5/3

W.P.Nos.4000 to 4002 of 2015