

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2015

CORAM:

THE HON'BLE MR. JUSTICE M. VENUGOPAL
AND
THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P. Nos.4369 to 4371 of 2015 and M.P. Nos.1 of 2015

R. Mala	Petitioner in WP No.4369/2015
K. Bangarammal	Petitioner in WP No.4370/2015
S. Govindaraju	Petitioner in WP No.4371/2015

vs.

- 1 The Government of Tamil Nadu
represented by its Secretary
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
- Respondents in all the WPs

W.P. No.4369 of 2015:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records relating to the fourth respondent's impugned order issued in Na.Ka.No.387/2007 dated 10.02.2015 and quash the same and direct the respondents not to disturb the peaceful possession and enjoyment of house constructed in S.No.23/3 to an extent of 960 sq. ft. in No.7-1/94 of Pattappan Koil Street, Elampillai, Salem District .

W.P. No.4370 of 2015:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records relating to the fourth respondent's impugned order issued in Na.Ka.No.387/2007 dated 10.02.2015 and quash the same and direct the respondents not to disturb the peaceful possession and

enjoyment of house constructed in S.No.23/3 to an extent of 2,500 sq. ft. in No.7/1 of Pattappan Koil Street, Elampillai, Salem District .

W.P. No.4371 of 2015:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records relating to the fourth respondent's impugned order issued in Na.Ka.No.387/2007 dated 10.02.2015 and quash the same and direct the respondents not to disturb the peaceful possession and enjoyment of house constructed in S.No.118/1 to an extent of 2,150 sq. ft. of Door No.7-1/174 and 175 of Pattappan Koil Street, Elampillai, Salem District .

For petitioner in
all the WPs

Mr. S.R. Balasubramanian

For respondents in
all the WPs

Mr. N. Sakthivel
Government Advocate

COMMON ORDER

(Common order of the Court was made by M. VENUGOPAL, J.)

According to the petitioners, the pucca houses in question in the respective survey numbers were constructed by spending a huge amount 50 years ago (of course, with the approval of plan sanction of the fourth respondent/Executive Engineer, Elampillai Panchayat, Salem District) and the said properties were assessed to property and water taxes which were paid all along, regularly. As a matter of fact, the Electricity Board, with the consent of the fourth respondent, had provided service connection to the aforesaid door numbers in which the petitioners are residing.

2 The stand of the petitioners (in W.P. No.4369 and 4370 of 2015) is that the respondents granted house patta during the year 1995 to their adjacent houses bearing Door Nos.155, 163, 165, etc. which were named by the fourth respondent after allotting and permitting the respective occupiers to build their houses more than 50 years ago. It is represented on behalf of the petitioners that on the request like that of them, the respondents, indiscriminately, for majority of the house owners, granted patta during the year 1995 itself by leaving the petitioners and a few others without granting patta which is a clear case of discrimination by issuing patta according to their whims and fancies in a "pick and choose" method for the reasons best known to them.

3 The stand of the petitioner (in W.P. No.4371 of 2015) is that, in the housesite allotted by the respondents 1 to 3 in Survey No.118/1, measuring an extent of 2,150 sq. ft of Grama Natham, for which patta no.48 was issued by the Revenue authorities, his father had constructed a pucca house and further, the petitioner, with his brothers Sathasivam and Manoharan and their sister Kamala lived from their childhood onwards along with

their parents and presently, the said house is owned by the petitioner and his siblings jointly. It is the further stand of the petitioner (in W.P. No.4371 of 2015) that his father, in the total extent of 2,150 sq. ft., had constructed a house 50 years ago, including the northern side of S.No.118/1 of 700 sq. ft. which is in the said survey number of patta no.48, issued by the respondents 1 to 3.

4 It comes to be known that the petitioners requested the second respondent for issuance of patta continuously and their last representations were dated 09.02.2015 which are pending before the second respondent/District Collector, Salem. Pending decision of the same, the fourth respondent had issued a demolition order at the instigation of the second respondent, which is illegal and untenable in law.

5 At this juncture, the learned counsel for the petitioners brings it to the notice of this Court that in the year 2005, under similar circumstances, the respondents 1 to 3, without issuing any notice and not providing an opportunity, suddenly, planned to demolish houses without ascertaining whether such houses were constructed in the Eri Poramboke or otherwise and at that point of time, similarly placed persons like that of the petitioners filed W.P. No.31894 and 31895 of 2005 before this Court and obtained an order of interim injunction on 01.10.2005. In fact, the writ petitions were admitted and notices were ordered to be issued. Also, in W.P. Nos.31558 of 2005 to 31665 of 2005 as well as in W.P. Nos.31777 and 31778 of 2005, this Court passed final orders on 18.01.2013 and 30.09.2005 respectively by directing the respondents 1 to 3 to follow the procedure envisaged in the relevant rules and to provide a reasonable opportunity to the petitioners therein by issuing show cause notice, calling for explanation and to proceed further and pass orders within a period of six months from the date of receipt of copy of the orders.

6 The real grievance of the petitioners is that the fourth respondent, in violation of the orders passed by this Court, had straightaway issued an order of eviction under Section 7 read with Rule 3 of the Tamil Nadu Land Encroachment Act, 1905 (for short "the Act") by directing them to remove the alleged encroachment within 7 days, failing which, it was stated that their houses would be demolished by removing the encroachments at their cost.

7 Further, it is the contention of the learned counsel for the petitioners that without providing any opportunity to the petitioners, the respondents 1 to 3 had instigated the fourth respondent to demolish the purported encroachment and therefore, the notices dated 10.02.2015 are per se illegal in the eye of law.

8 At this juncture, it is to be borne in mind that Section 7 of the Act visualises service of notice on the person reported 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. But, the first proviso enjoins that no such notice shall be necessary in the case of any person unauthorisedly 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.

9 A mere running of the eye over the contents of notices dated 10.02.2005 issued by the fourth respondent and addressed to the petitioners indicate that there is no reference about the fact that the petitioners were either previously evicted, pursuant to the order under Section 6 or they had vacated after the receipt of notice under Section 5-B or under the provisions of the Act. Although, at this stage, the petitioners, even if they are in occupation, cannot be called upon to vacate the encroachment without providing an opportunity of hearing before passing an order under Section 6 of the Act.

10 Be that as it may, it is to be borne in mind that the principles of natural justice are not the edicts of a statute. It is true that the principles of natural justice are in unwritten form. However, it is to be noted that no order can be passed against a person without providing an adequate opportunity of hearing (including the request of personal hearing, if so demanded). Indeed, the Executives/authorities of administration are to satisfy the rudimentary requirements of adhering to the principles of natural justice. Only after providing an adequate opportunity of hearing to an affected/aggrieved person and also by considering his representation in a fair, just and objection fashion, a competent authority is duty bound to pass appropriate orders in a given proceedings. To put it differently, the executives/authorities of administration, cannot by-pass or give a go-by to the principles of natural justice, in the considered opinion of this Court. सत्यमेव जयते

11 That apart, the aim of rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice. At this stage, it is to be remembered that the general ingredients of fair hearing are (i) prior notice, (ii) right to make representation and (iii) right to be heard. In reality, the principles of natural justice do not supplant the law. Per contra, they supplement the law.

12 At this juncture, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in The Chairman, Board of Mining Examination and Chief Inspector of Mines and another vs. Ramjee reported in AIR 1977 SC 965, at special page 969, whereby and whereunder, it is observed and held as under:

"Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision maker to the man proceeded

against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt - that is the conscience of the matter."

13 Accordingly, this Court, to secure the ends of justice based on equity, good conscience and fairplay, directs the concerned authorities to consider the representation/reply filed by the petitioners, if any, pursuant to the notices dated 10.02.2015 and to pass orders thereafter under Section 6 of the Act on merits, by taking into consideration, the facts and circumstances of the case, which float on the surface and also in the manner known to law. Thereafter, it is open to the authorities to take appropriate action, as envisaged 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 dated 10.02.2015 (issued by the fourth respondent) from the date of receipt of a copy of this order. Thereafter, within a period of two weeks, the authorities are to look into the representations of the petitioners and to pass appropriate orders as they deem fit and proper in accordance with law.

14 These writ petitions are disposed of accordingly. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar
Dated:26.2.15

True Copy

Sub Assistant Registrar

To

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

2 The District Collector
Collectorate Compound
Salem

3 The Tahsildar
Taluk Office
Shevapet
Salem 636 002

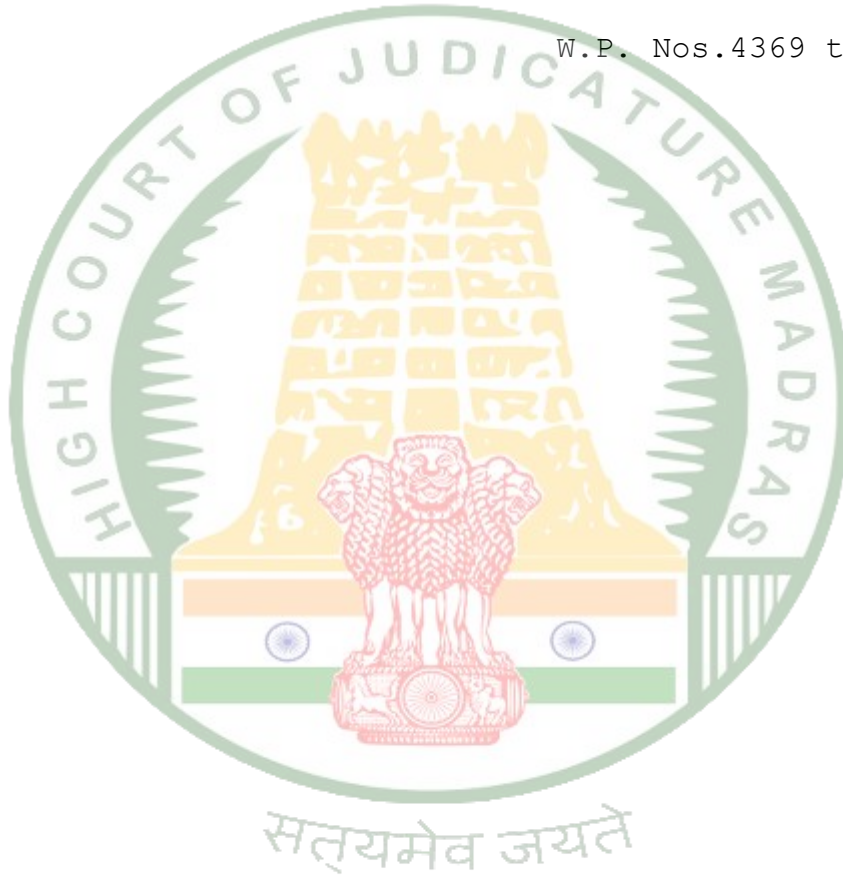
4 The Executive Officer
Elampillai Town Panchayat
Elampillai
Salem District

+3 cc's to M/s.S.R.Balasubramanian, Advocate,SR.9427 to 9429

+1 cc to Government Pleader,SR.9516.

rsk(co)
krd 3/3

Common order
W.P. Nos.4369 to 4371 of 2015



WEB COPY