

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2015

CORAM

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

W.P.Nos.5215 and 5216 of 2015
and
M.P.Nos.1 and 1 of 2015

1.Saroja
2.P.Sidhuraju

... Petitioners in
W.P.No.5215 of 2015

1.M.Rajeswari
2.J.P.Madhu Rajan

... Petitioners in
W.P.No.5216 of 2015

Vs.

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

2. The District Collector,
Collectorate Compound,
Salem-636 001.

3. The Tahsildar,
Salem South,
Collectorate Compound,
Salem-636 001.

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

... Respondents in
both writ petitions

W.P.Nos.5215 and 5216 of 2015 are filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the records of the fourth respondent in his notice in Na.Ka.No.387/2007 dated 10.02.2005, quash the same and to direct the respondents to issue house site patta to the petitioners property in Survey No.23/3, Elampillai Village in D.No.7-1/166(2) and D.No.7-1/166(1) Pattapan Koil Street, Elampillai, Salem District.

For Petitioner : Mr.P.Jagadeesan

For Respondents : Mr.N.Sakthivel, GA for RR1 to 3
Mr.M.Digvijay Pandian, AGP for R-4

COMMON ORDER

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

The challenge in both these writ petitions is to the notice dated 10.2.2015 issued under Section 7 of the Tamil Nadu Land Encroachment Act to remove the encroachment by demolishing the building situated on the Government land.

2. The learned counsel for the petitioners would submit that Section 7 of the Act contemplates show cause notice to the alleged encroachers and after affording an opportunity of hearing to represent their case, a final order for removal of encroachment can be passed only under Section 6 of the Act.

3. We have heard the learned counsel for the respondent State also. We are informed that the petitioners were not afforded an opportunity of hearing before the impugned notice was issued for removal of the alleged encroachment. Section 6 of the Act clearly provides that before passing the order under Section 6, a show cause notice under Section 7 of the Act be issued calling upon the alleged encroachers to submit their explanation / representation and thereafter, a formal order under Section 6 can be passed on finding that the encroachment is illegal and unauthorised.

4. It appears that such exercise has not been done. In that view of the matter, we reserve liberty to the petitioners to file an explanation / representation before the authority concerned, within a period of two weeks from the date of receipt of copy of this order. Thereafter, the authorities are competent to pass proper order in accordance with law and on its own merit to ensure that no Government

land is under any encroachment. Needless to state that no action of removal can be taken before passing proper order under Section 6 of the Act. Accordingly, both writ petitions are disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

vvk

To

1. The Secretary to Government,
The Government of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai-600 009.
2. The District Collector,
Collectorate Compound,
Salem-636 001.
3. The Tahsildar,
Salem South,
Collectorate Compound,
Salem-636 001.
4. The Executive Officer,
Ellampillai Town Panchayat,
Salem District.

+1cc to M/s.Digvijay Pandian, Advocate/Addl. Govt. Pleader,
S.R.No.10911,10912
+1cc to M/s.P.Jagadeesan, Advocate, S.R.No.10980
+1cc to the Government Pleader, S.R.No.11153

ACA(CO)
CA(09/03/2015)

W.P.Nos.5215 and 5216 of 2015

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