

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.11.2016

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

WP.No.39633/2016

S.Dharmalingam

..

Petitioner

Versus

1.The Commissioner of Land Administration  
Chepauk, Chennai 600 005.

2.The District Collector  
Thiruppur District, Thiruppur.

3.The Revenue Divisional Officer  
Tharapuram, Thiruppur District.

4.The Tahsildar  
Kangeyam Taluk, Kangeyam  
Thiruppur District.

5.The Revenue Inspector  
Vellakovil, Kangeyam Taluk,  
Thiruppur District.

..

Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents to issue patta in favour of the petitioner by accepting the kist to be imposed by the respondents as contained in the notice issued by the 5<sup>th</sup> respondent dated 18.10.2016 in respect of the land comprised in S.NO.210/1, classified as Natham to an extend of 0.09.0 hectare, situated at Udaiyam village, Kangeyam Taluk, Tiruppur District, by considering the representation made by the petitioner dated 24.10.2016 within the time to be stipulated by this Court.

For Petitioner : Mr.R.Chandrasekaran  
For Respondents : Mr.A.Kumar, Spl.GP

ORDER

Heard the learned counsel for the petitioner and Mr.A.Kumar, learned Special Government Pleader, who accepts notice on behalf of the respondents and with the consent on either side, the writ petition is taken up for final disposal.

**2** A perusal of the affidavit filed in support of this writ petition and the typed set of documents would disclose that the petitioner is seeking for issuance of patta in respect of a Poramboke land lying adjacent to his property and in this regard, sent representations to the District Collector as well as to the other authorities concerned and since the same was not considered, he is before this Court by filing the present writ petition.

**3** It is seen that the petitioner has made an innocuous prayer seeking for consideration of his representation dated 24.10.2016 as it is clear that on 18.10.2016 itself the 5<sup>th</sup> respondent has issued an Eviction Notice under section 7 of the Land Encroachment Act calling upon the

petitioner to show cause as to why he should not be evicted from the said land and as to why the crops, cultivations, buildings and constructions in the said land be acquired from him. The petitioner also sent his reply to the said notice in the form of representation dated 24.10.2016, admitting the fact that the land in question is a poramboke land and that he and his ancestors were enjoying the said land. Now, in order to circumvent the said eviction proceedings, the petitioner is before this Court seeking a mandamus to consider his representation dated 24.10.2016.

**4** This Court, time and again had held in various decisions, in particular, in the judgment rendered by a Division Bench of this Court, in **M.Ingaci Vs. The Commissioner. Devakottai Municipality, Sivagangai District** reported in **2010 [2] Law Weekly 785**, that what cannot be considered, cannot be directed to be considered. The Division Bench in the decision cited supra, has held that there are several instances where unscrupulous petitioners have misused the direction issued to "consider". It was further held that there are large-scale misuse of the orders "to consider". The Division Bench also relied on the decision of the Hon'ble Supreme Court reported in the case of **A.P.SRTC Vs.G.Srinivas Reddy (2006)3 SCC 674=2006, 3 Law Weekly 170**, wherein in Para

Nos.18 to 20, it was held as under:-

“18. We may also note that sometimes the High Court dispose of the matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pilable' authorities have misused the direction to 'consider' issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation. When the court disposes of the petition with a direction to 'consider' the authority grants the relief, taking shelter under the order of the court directing him to 'consider'

the grant of relief. Instances are also not wanting where authorities unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider' may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction 'to consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption in to regular service is a species of cases, where there has been large-scale misuse of the orders 'to consider'.

20. Therefore, while disposing of the writ petition with a direction 'to consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for

consideration and decision. If no time frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter.”

**5** In view of the above cited decision, this Court is of the view that it is for the authority concerned to, either pass orders on the reply submitted by the petitioner dated 24.10.2016 to the Eviction Notice dated 18.10.2016 issued u/s.7 of the Land Encroachment Act after giving an opportunity to him.

**6** Accordingly, the writ petition stands disposed of with the above observations. No costs.

14.11.2016

AP

To

- 1.The Commissioner of Land Administration  
Chepauk, Chennai 600 005.
- 2.The District Collector  
Thiruppur District, Thiruppur.
- 3.The Revenue Divisional Officer  
Tharapuram, Thiruppur District.
- 4.The Tahsildar  
Kangeyem Taluk, Kangeyam  
Thiruppur District.
- 5.The Revenue Inspector  
Vellakovil, Kangeyam Taluk,  
Thiruppur District.

B.RAJENDRAN, J.,  
AP

WP.No.39633/2016

14.11.2016

<http://www.judis.nic.in>