



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2016

CORAM:

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THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN**and****THE HONOURABLE MR.JUSTICE S.S.SUNDAR****W.P. (MD)Nos.14008 to 14011 of 2016, 14060 to 14069 of 2016, 14247 to 14254 of 2016 and 14255 to 14260 of 2016****&****W.M.P. (MD)Nos.10403 to 10410/2016, 10437 to 10456/2016, 10560 to 10575/2016 and 10576 to 10587/2016**

S.A.KARNAN	...	PETITIONER	in	WP (MD)	No.14008	of	2016
SHANMUGAM	...	PETITIONER	in	WP (MD)	No.14009	of	2016
A.NOORDEEN	...	PETITIONER	in	WP (MD)	No.14010	of	2016
TAJUDEEN	...	PETITIONER	in	WP (MD)	No.14011	of	2016
M.PALANICHAMY	...	PETITIONER	in	WP (MD)	No.14060	of	2016
J.ABDUL RAHEEM	...	PETITIONER	in	WP (MD)	No.14061	of	2016
S.K.ANANDARAJAN	...	PETITIONER	in	WP (MD)	No.14062	of	2016
EASWARAN	...	PETITIONER	in	WP (MD)	No.14063	of	2016
P.K.RAMACHANDRAN	...	PETITIONER	in	WP (MD)	No.14064	of	2016
H.USMAN ALI	...	PETITIONER	in	WP (MD)	No.14065	of	2016
J. KADHAR PILLAI	...	PETITIONER	in	WP (MD)	No.14066	of	2016
M.BOSE	...	PETITIONER	in	WP (MD)	No.14067	of	2016
K.MAHABOO	...	PETITIONER	in	WP (MD)	No.14068	of	2016
SEENI MIRASA	...	PETITIONER	in	WP (MD)	No.14069	of	2016
JAMEELA AMMAL	...	PETITIONER	in	WP (MD)	No.14247	of	2016
THIRU MURUGAN	...	PETITIONER	in	WP (MD)	No.14248	of	2016
N. AYUB KHAN	...	PETITIONER	in	WP (MD)	No.14249	of	2016
S.ABDULLAH GANDHI	...	PETITIONER	in	WP (MD)	No.14250	of	2016
KAMARAJAR LIBRARY							
REP. BY ITS ADMINISTRATOR							
N.RAJAJI	...	PETITIONER	in	WP (MD)	No.14251	of	2016
POOSAI	...	PETITIONER	in	WP (MD)	No.14252	of	2016
M.GOVINDAN	...	PETITIONER	in	WP (MD)	No.14253	of	2016
VIJAYAN	...	PETITIONER	in	WP (MD)	No.14254	of	2016
SIVAKAMI	...	PETITIONER	in	WP (MD)	No.14255	of	2016
S.NAMBURAJAN	...	PETITIONER	in	WP (MD)	No.14256	of	2016
SHANMUGANATHAN	...	PETITIONER	in	WP (MD)	No.14257 & 14258/2016		
SULTHAN IBRAHIM	...	PETITIONER	in	WP (MD)	No.14259	of	2016
P.SHAHUL HAMEED	...	PETITIONER	in	WP (MD)	No.14260	of	2016

-VS-



2 THE COMMISSIONER,
MANDAPAM PANCHAYAT UNION,
UCHIPULI,
RAMANATHAPURAM DISTRICT. ... RESPONDENTS IN ALL WPS

WEB COPY

Prayer in WP(MD) No.14008,14009, 14010 AND 14011 of 2016:

Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the impugned proceedings of the 2nd respondent dated 15.07.2016 and the consequential proceedings dated 22.07.2016 and quash the same as illegal.

Prayer in WP(MD) No.14060 to 14069 and 14247 to 14254 of 2016:

Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for records relating to the impugned proceedings of the 2nd respondent in Na.Ka. NO/A2/4242/2015 dated 21.04.2016 and the consequential proceedings dated 15.07.2016 and 22.07.2016 and quash the same as illegal.

Prayer in WP(MD) No.14255 to 14259 and 14260 of 2016:

Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for records relating to the impugned proceedings issued by the 2nd respondent in Na.Ka. NO/A2/4242/2015 dated 21.04.2016 addressed to petitioner dead father and the consequential proceedings dated 15.07.2016 and 22.07.2016 and quash the same as illegal.

For Petitioners : Mr.M.Ajmal Khan,
Senior Counsel,
For M/s.Ajmal Associates
For Respondent No.1 : Mr.A.K.Baskarapandian,
Additional Government Pleader
For Respondent No.2 : Mr.K.P.Krishnadoss,
Government Advocate

COMMON ORDER

[Common Order of the Court was made by K.K.SASIDHARAN, J.]

These Writ Petitions are directed primarily against the proceedings of the Commissioner, Mandapam Panchayat Union, dated 15 July, 2016 and the consequential proceedings dated 22 July, 2016, directing eviction of the concerned petitioners from the

public property, failing which, it was indicated that they would be evicted summarily.

2. The Commissioner, Mandapam Panchayat Union, initiated eviction proceedings against some of the petitioners earlier and the same resulted in passing orders on 21 April, 2016. The individual orders were challenged before this Court in W.P.(MD) Nos.10777 to 10780 of 2016, on the ground that it was made in violation of the principles of natural justice. After hearing the learned counsel for the petitioners and the learned counsel for the respondents, the Writ Petitions were disposed of giving opportunity to the petitioners to submit their objections on or before 20 July, 2016 and directing the Block Development Officer, Mandapam Panchayat Union, to pass appropriate orders on merits and as per law.

3. Some of the writ petitioners have challenged the subsequent order passed by the Commissioner, Mandapam Panchayat dated 15 July, 2016, on the ground that even before submitting objections, orders were passed. In some of the connected Writ Petitions, the petitioners have taken up a contention that the objections were not considered before passing the impugned orders of eviction.

4. The petitioners have, therefore, come up with these Writ Petitions with a prayer to quash the orders of eviction passed by the second respondent.

5. The learned Senior Counsel for the petitioners, by placing reliance on the judgment of a Division Bench in **G.Radhakrishnan v. President, Edayakottai Panchayat [2008(1) MLJ 1132]**, contended that the Village Panchayat has no authority to evict the encroachers. According to the learned Senior Counsel, it is only the concerned revenue authority who is vested with the power to evict the encroachers from public property. The learned Senior Counsel further contended that the second respondent, even before the last date fixed by this Court for filing objections, issued the orders of eviction and as such, the impugned orders are liable to be set aside.

6. The materials produced by the petitioners *prima facie* proved that even before the expiry of the cut-off date prescribed for filing objections, the second respondent passed the orders of eviction. We, therefore, directed the second respondent to appear before this Court in person today.

7. The second respondent appeared before us in person and submitted that he would consider the objections once again and pass appropriate orders on merits and as per law.



8. There are two questions involved in this batch of Writ Petitions. The first question relates to the power of the Panchayat Union to pass orders of eviction. The second issue relates to the legality of the order passed by the Commissioner without considering the objections filed by the petitioners.

THE FIRST ISSUE:

9. The learned Senior Counsel for the petitioners placed heavy reliance on the judgment of the Division Bench in **G.Radhakrishnan's** case cited *supra*. The said judgment is not an authority for the proposition that the Village Panchayat is not empowered to direct eviction of encroachers.

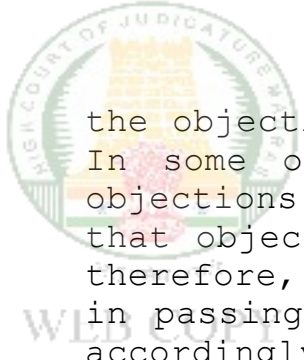
10. The Division Bench extracted Section 131 of the Tamil Nadu Panchayats Act, 1994 and clearly observed in paragraph No.9 that the executive authority or the Commissioner either upon a report of the Village Administrative Officer concerned as to the encroachments or *suo motu* can initiate proceedings under the Tamil Nadu Panchayats Act, 1994, for removal of encroachments. The Division Bench, further, observed that in case the executive authority of the Panchayat finds it impossible to get the encroachment removed, then the revenue department will come into picture to initiate action under the provisions of the Act. The observation made by the Division Bench clearly shows that it is only in case the executive authority of the Village is unable to get possession from the encroachers, he has to approach the revenue department. However, that does not mean that the executive authority of the Village is not empowered to evict the encroachers.

11. The judgment in **G.Radhakrishnan's** case would not help the petitioners to contend that the executive authority of the Village is not empowered to evict the encroachers. Sub-Section (2) of Section 131 of the Tamil Nadu Panchayats Act, 1994, empowers the executive authority of the Village to evict the encroachers. There is an option given to the executive authority to approach the revenue authority, in case they are not in a position to clear the encroachment. However, that does not mean that the executive authority of the Village is helpless in the matter of eviction. We are, therefore, of the view that there is no merit in the contention taken by the learned Senior Counsel with respect to the power of the Village Panchayat to evict the encroachers.

12. The first issue is, therefore, decided against the petitioners.

13. The next question relates to the legality and correctness of the order passed by this Court.

<https://hcservices.ecourts.gov.in/hcservices> is clear from the materials available on record that even before the expiry of the time limit prescribed for submitting



the objections, the executive authority passed orders of eviction. In some of these matters, orders were passed after submitting objections. However, such orders does not contain any indication that objections were considered by the second respondent. We are, therefore, of the view that the second respondent was not correct in passing the impugned orders of eviction. The second issue is, accordingly, decided in favour of the petitioners.

15. The next question relates to the further proceedings to be taken by the second respondent. The petitioners claimed that they have put up shops in question long back and they have been doing business. In view of the contentions taken by the petitioners, necessarily, they should be given reasonable time to submit objections.

16. The petitioners are given time till 05.00 p.m., on 29 August, 2016 to submit their objections. The Commissioner, Mandapam Panchayat Union is directed to consider the objections and pass appropriate orders on merits and as per law. *Status quo*, as on today, shall be maintained till the disposal of the matter by the executive authority.

17. The Writ Petitions are allowed as indicated above. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

SML/KRK

To

1.The District Collector, Ramanathapuram,
Ramanathapuram District.

2.The Commissioner, Mandapam Panchayat Union,
Uchipuli, Ramanathapuram District.

+1CC to M/S.Ajmal Associates, Advocate Sr.No.42660

+4CC to Spl.Government Pleader Sr.No.42932, 42933, 42931, 42930

GJM/DB/29.8.16-5p-8c

**Common Order made in
W.P. (MD) Nos.14008 to 14011 of 2016,
14060 to 14069 of 2016,
14247 to 14254 of 2016 and 14255 to 14260 of 2016
05.08.2016**