

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 24.08.2017

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.12776 of 2017

and

W.M.P.Nos.13631 and 13632 of 2017

P.Venkatesan

... Petitioner

.. Vs ..

1. The Secretary,
Department of Revenue,
Fort St. George, Secretariat,
Chennai - 09.
2. The District Collector,
The Office of the Collector,
Kancheepuram District,
Kancheepuram - 631 501.
3. The Tahsildar,
Taluk Office Sriperumbudur,
Kancheepuram District.
4. Ashok Layland Employees Co-operative House
Construction Society Limited.,
KP (SPL) No.70,
Rep. by its President R.Jayakumar,
Having office at No.2, Sasthrinagar 3rd Street,
Ennore, Chennai - 600 057.

5. Sukumar
6. K.Rajendra Karuppan
7. G.Deenadayalan
8. A.Pananivelu
9. K.Rajasekaran
10. G.Marimuthu
11. K.Paneerselvam
12. K.Ekambaram
13. K.Viswanathan
14. S.Sivaramakrishnan
15. Ezekiel
16. K.R.Karuppaiah
17. K.R.Kamalakar
18. P.K.Mohan
19. M.A.Selvaraj
20. S.S.Vasan
21. C.D.Shanmugasundaram
22. V.Gnanasekaran
23. P.S.Mohansudaram
24. Dilvar Basha
25. R.Manivarma
26. A.Durairaj
27. G.Krishnamoorthy
28. N.Mohan
29. T.Kalimuthan
30. C.Muthulingam
31. P.Ayyadurai
32. N.Subramaniam
33. K.Venkatraman
34. R.Rajesh
35. Saju Thomas

... Respondents

[R-5 to R-35 impleaded as per order of this Court dated 24.08.2017 made in W.M.P.No.18008 of 2017 in W.P.No.12776 of 2017].

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus,

to call for the records on the file of first and third respondents in proceedings of G.O.990 dated 12.06.1990 insofar as S.No.361/1B measuring 20.02 acres as concerned at Aathanoor Village, Sriperumbudur Taluk, Kancheepuram District and that of the third respondent in ROC 4049/2013/A2 dated 24.04.2017 and quash the same as illegal, incompetent and without jurisdiction and further direct the statutory respondents to grant Patta to the occupants of the property.

For Petitioner : Mr.V.Raghavachari
For RR-1 to 3 : Mr.R.Vijayakumar,
Additional Government Pleader
For R-4 : Mr.S.S.Swaminathan
For RR-5 to 35 : Mr.R.Thiagarajan

ORDER

(Order of the Court was made by M.SATHYANARAYANAN,J.)

By consent, the writ petition itself is taken up for final disposal.

2. Mr.R.Vijayakumar, learned Additional Government Pleader appears for respondents 1 to 3 and Mr.S.S.Swaminathan, learned counsel appears for fourth respondent and Mr.R.Thiagarajan, learned counsel appears for newly impleaded respondents 5 to 35.

3. The petitioner claims to be the Vice President of Lakshmipuram Kudiirupor Podhu Nala Sangam, which is a registered body registered under Section 10 of the Tamil Nadu Societies Registration Act, 1975, addressed at No.112, Lakshmipuram Aadhanoor Village, Guduvancherry. The petitioner's Association are the residents of the property in Survey No.361/1B of Aadhanoor Village, Sriperumbudur Taluk, Kancheepuram District and the lands in their occupation are classified as [poromboke] and they are in possession of the said lands for more than 50 years and they have also put up superstructures and the superstructures put up by them are also subjected to statutory levies and almost, all the members of the petitioner's association were issued with Voters ID card. The grievance expressed by the petitioner is that the fourth respondent Society has been granted assignment of land admeasuring 89.77 acres in Survey Nos.361/1A, 361/1B, 361/3 and 361/4 in Aadhanoor Village within Chengai Anna District vide G.O.Ms.No.990, Revenue (D1) Department, dated 12.06.1990 and even prior to the assignment of the said lands, the members of the petitioner's association, continued to be in possession and enjoyment of the same and without proper inspection and verification, the lands have been assigned in favour of the fourth

respondent Society. Alleging encroachment, the fourth respondent had filed a writ petition in W.P.No.32501 of 2015 and the impleaded respondents have filed a writ petition in W.P.No.26539 of 2009 praying for the issuance of a Writ of Mandamus directing the official respondents to implement the order in G.O.Ms.No.990, Revenue (D1) Department, dated 12.06.1990 (cited supra) by removing the encroachments in Survey Nos.361/1A, 361/1B, 361/3 and 361/4 of Cherapanajery Sriperumbuthur Taluk, Kancheepuram District and the First Bench of this Court, had disposed of the said writ petitions, vide common order dated 02.01.2017 directing the respondent authorities to proceed in accordance with law and take necessary steps to ensure that the remaining land allotted to the petitioner's association is handed over free of encroachments within a maximum period of three months from the date of receipt of copy of that order and in all fairness, though the fourth respondent Society as well as the newly impleaded respondents are very well aware of the occupation of the members of the petitioner's association and having brought it to the knowledge of this Court and the third respondent, in compliance of the above said order, has issued impugned notice dated 24.04.2017 in ROC No.4049/2013/A2 calling upon them to vacate the land in

question within a period of two weeks from the date of receipt of a copy of that order, failing which action will be taken in the light of the above said order.

4. Mr.V.Raghavachari, learned counsel appearing for the petitioner would contend that the first respondent, before assigning the land in favour of the fourth respondent Society, very well aware of the occupation of the members of the petitioner's association, did not conduct proper verification and inspection and the said assignment came to the knowledge of the petitioner's association only after receipt of the impugned notice dated 24.04.2017 and hence, the petitioner is constrained to challenge the legality of the above cited G.O. as well as the impugned notice. It is the further submission of the learned counsel for the petitioner's association that if fair and proper enquiry has been held by the concerned responsible Government Officials, the fact of occupation of the members of the petitioner's association even prior to the assignment would have come to their knowledge and therefore, prays for appropriate orders.

5. Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that in compliance of the above said order passed by the First Bench of this Court, action will be taken strictly in accordance with law.

6. Mr.S.S.Swaminathan, learned counsel appearing for the fourth respondent would submit that the fourth respondent Society is on the higher footing in the light of the assignment granted by the first respondent vide G.O.Ms.No.990, Revenue (D1) Department, dated 12.06.1990 (cited supra) and it is followed by consequential proceedings dated 25.10.1990 and 30.04.1991 passed by the District Revenue Officer and District Collector, Kancheepuram respectively. Therefore, the fourth respondent Society had approached this Court by filing a writ petition in W.P.No.32501 of 2015 and take into consideration the over all facts and circumstances, the First Bench of this Court rightly passed order for removal of encroachment and prays for dismissal of the writ petition.

7. Mr.R.Thiagarajan, learned counsel appearing for the newly impleaded respondents 5 to 35 would submit that they have also filed a writ petition in W.P.No.26539 of 2009 and the said writ petition was taken up along with W.P.No.32501 of 2015 filed by the fourth respondent Society and take into consideration all the relevant facts and circumstances, especially, the above cited Government Order passed by the first respondent, the First Bench of this Court has passed appropriate orders for the implementation of the said Government Order.

8. This Court has carefully considered the rival submissions and perused the materials available on record.

9. A perusal of the common order dated 02.01.2017 passed in W.P.Nos.32501 of 2015 and 26539 of 2009, would disclose that the alleged encroachers have been made as parties. The typed set of papers also contains Voters List of Aadhanoor Village, Korukkanthangal - 603 202 which falls within Sriperumbudhur Assembly Constituency and it is a vehement and forcible submission of the learned counsel

appearing for the petitioner's association that in the light of the long occupation, members of the petitioner's association have been issued with Voters ID card and are being conferred with other benefits and the superstructures put up by them, are also subjected to statutory levies.

10. Be that as it may, the third respondent, in the event of proceeding further in compliance of the common order dated 02.01.2017 passed in W.P.Nos.32501 of 2015 and 26539 of 2009, is under statutory obligation and mandate to follow due process of law, before ordering eviction of the encroachers.

11. In the light of the above facts and circumstances of the case, the impugned notice dated 24.04.2017 issued by the third respondent, shall be treated as show cause notice and any one of the office bearers of the petitioner's association is at liberty to submit their response in the form of a detailed representation along with authenticated documents within a period of eight weeks from the date of receipt of a copy of this order to the third respondent and the third respondent, upon receipt of the same, shall put all the private

respondents on notice and rely upon the materials in the form of relevant and authenticated documents and thereafter, conduct enquiry in accordance with law and pass appropriate orders within a further period of twelve weeks thereafter and communicate the decision taken, to the petitioner's association as well to the private respondents and till such time, Status Quo with regard to possession of the members of the petitioner's association, shall be maintained by all the parties to this writ petition. It is also made clear that till such disposal of the representation by the third respondent, the members of the petitioner's association shall not create any third party rights in respect of the land and superstructures in question and shall not alter the physical features and shall not commit further encroachments.

The Writ Petition is disposed of with the above observations. No costs. Consequently, the connected miscellaneous petitions are closed.

[M.S.N.,J.] [N.S.S.,J.]
24.08.2017

Note:- Issue order copy on 07.09.2017

Index : Yes/No

Internet : Yes

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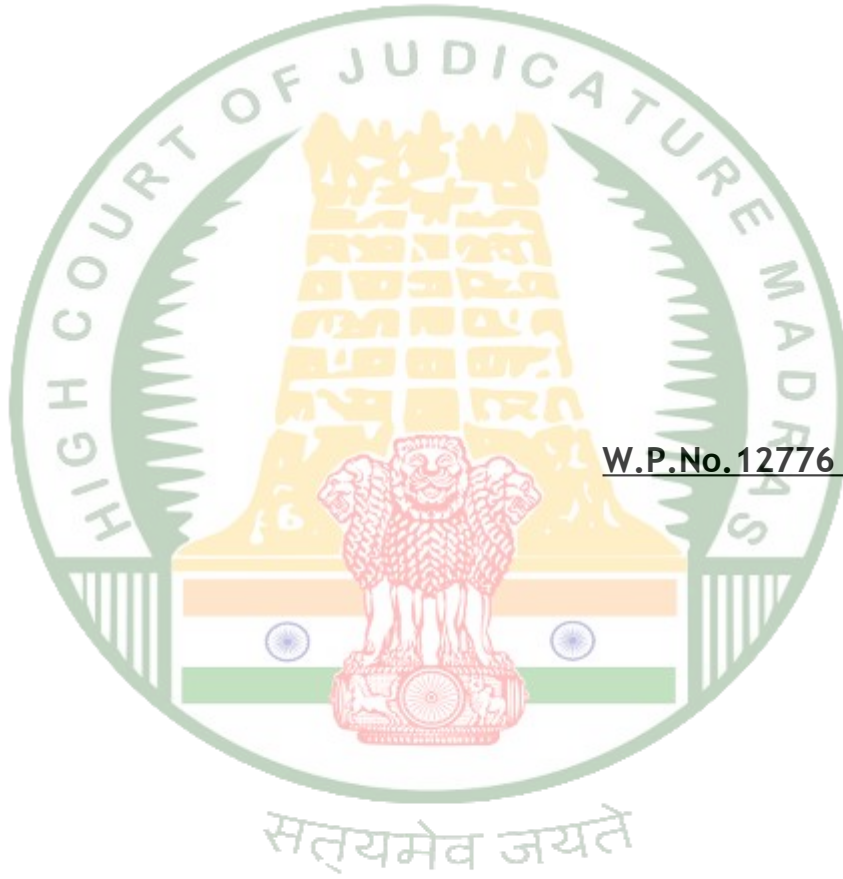
To

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