

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.Nos.9171 to 9176/2018 & WMP.Nos.10992 to 11003/2018

A.Hayath Basha	..	Petitioner in WP.No.9171/2018
Habisa Bee	...	Petitioner in WP.No.9172/2018
Mahboob Basha	..	Petitioner in WP.No.9173/2018
Noorjhaan	..	Petitioner in WP.No.9174/2018
Thiruvalar Samadhis, Qalandariya Trust rep.by A.Ashlam Basha	..	Petitioner in WP.No.9175/2018
A.Dawlath Begam	..	Petitioner in WP.No.9176/2018

Versus

1.The District Collector
Singaravelan Maligai,
Chennai District, Chennai.

2.The District Revenue Officer,
Chennai District, Chennai-01.

3.The Revenue Divisional Officer
Egmore, Division, Chennai 600 031.

4.The Tahsildar
Guindy Taluk
Chennai 600 032.

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5.The Inspector of Police
J3 Guindy Police Station
Chennai.

6.The Director
Kings Institute of Preventive Medicine
and Research, Guindy,
Chennai 600 032.

..

Respondents

Common Prayer:- Petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records pertaining to the proceedings No.Nil of the 4th respondent dated 28.03.2018 and to quash the same as illegal, incompetent and ultravires and consequently, direct the respondents not to vacate the petitioner from the property at Block No.6, Town Survey No.1, measuring to an extent of 172 sq.ft. [WP.No.9171/2018] ; 199 sq.ft. [WP.No.9172/2018] ; 217 sq.ft. [WP.No.9173/2018] ; 253 sq.ft [WP.No.9174/2018] ; 262 sq.ft. [WP.No.9175/2017] ; and 378 sq.ft [WP.No.9176/2018] at Alandur Road, Adayar Village, Guindy Taluk, Chennai, until the final decision of the pending cases before the appropriate Forum.

For Petitioners in
all WPs : Mr.V.Ragahvachari for
Mr.K.Suthan

For Respondents in
all WPs : Mr.A.N.Thambidurai, Spl.GP

COMMON ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

By consent, all the writ petitions are taken up together for hearing and are disposed of by this common order, as the issue raised and to be adjudicated is one and the same.

WP.No.9171/2018:-

2 The petitioner claims to be the resident of Door No.1, Arulayiyamman Street, Guindy Industrial Estate, Chennai - 32 and he would aver that the property comprised in Block No.6, Town Survey No.1, admeasuring to an extent of 172 sq.ft., belongs to his mother ancestrally and was in her possession and enjoyment and after her demise, he has succeeded to the said estate and he has been issued with Aadhar Card, Family/Ration Card etc., and is also provided with electricity service connection. The

petitioner would further aver that adjacent to his land, there is a Dargah and also a Mosque land and the Dargah is his family property and the Government Orders in G.O.No.1151 dated 14.10.1903 ; G.O.Ms.No.348 dated 16.02.1905 as well as the Gazette Notification dated 21.02.1905 make it very clear that the property belongs to his family and the Dargah is in existence in the said property.

3 It is also averred by the petitioner that the 6th respondent, somehow managed to mutate the revenue record in their name and started making a claim over the same and in this regard, the Qalandariya Trust had filed WP.No.30692/2017 against the 6th respondent, praying for appropriate direction, forbearing them or their men from putting up a construction on their land in Block No.6 in TS.No.1, Adyar Village, Guindy Taluk, Alandur Road, Chennai..

4 The grievance expressed by the petitioner is that his mother was issued with a notice dated 09.02.2018 u/s.7 of the Tamil Nadu Land Encroachment Act, 1905, by the 6th respondent for which, the petitioner along with 5 others had submitted a detailed response dated 12.02.2018 tracing their right, title and possession in respect of the land in question and it has also been indicated that the petitioner's mother, Tmt.Rahima Bee, is also no more. However, the 4th respondent has issued the impugned notice dated 28.03.2018 and challenging the legality of the same, the petitioner came forward to file the present writ petition.

WP.No.9172/2018:-

5 The petitioner claims to be the resident of Door No.1, Arulayiyamman Street, Guindy Industrial Estate, Chennai - 32 and she would aver that the property comprised in Block No.6, Town Survey No.1, admeasuring to an extent of 199 sq.ft., belongs to her and she is in possession and enjoyment of the same and she has been issued with Aadhar Card, Family/Ration Card etc., and is also provided with electricity service connection. The petitioner would further aver that adjacent to her land, there is a Dargah and also a Mosque land and the Dargah is her family property and the Government Orders in G.O.No.1151 dated 14.10.1903 ; G.O.Ms.No.348 dated 16.02.1905 as well as the Gazette Notification dated 21.02.1905 make it very clear that the property belongs to her family and the Dargah is in existence in the said property.

6 It is also averred by the petitioner that the 6th respondent, somehow managed to mutate the revenue record in their name and started making a claim over the same and in this regard, the Qalandariya Trust had filed WP.No.30692/2017 against the 6th respondent, praying for appropriate direction, forbearing them or their men from putting up a construction on their land in Block No.6 in TS.No.1, Adyar Village, Guindy Taluk, Alandur

Road, Chennai.

7 The grievance expressed by the petitioner is that she was issued with a notice dated 09.02.2018 u/s.7 of the Tamil Nadu Land Encroachment Act, 1905, by the 6th respondent for which, the petitioner along with 5 others had submitted a detailed response dated 12.02.2018 tracing their right, title and possession in respect of the land in question. However, the 4th respondent has issued the impugned notice dated 28.03.2018 and challenging the legality of the same, the petitioner came forward to file the present writ petition.

WP.No.9173/2018:-

8 The petitioner claims to be the resident of Door No.1, Arulaiyamman Street, Guindy Industrial Estate, Chennai - 32 and he would aver that the property comprised in Block No.6, Town Survey No.1, admeasuring to an extent of 217 sq.ft., belongs to him and he is in possession and enjoyment of the same and he has been issued with Aadhar Card, Family/Ration Card etc., and is also provided with electricity service connection. The petitioner would further aver that adjacent to his land, there is a Dargah and also a Mosque land and the Dargah is his family property and the Government Orders in G.O.No.1151 dated 14.10.1903 ; G.O.Ms.No.348 dated 16.02.1905 as well as the Gazette Notification dated 21.02.1905 make it very clear that the property belongs to his family and the Dargah is in existence in the said property.

9 It is also averred by the petitioner that the 6th respondent, somehow managed to mutate the revenue record in their name and started making a claim over the same and in this regard, the Qalandariya Trust had filed WP.No.30692/2017 against the 6th respondent, praying for appropriate direction, forbearing them or their men from putting up a construction on their land in Block No.6 in TS.No.1, Adyar Village, Guindy Taluk, Alandur Road, Chennai.

10 The grievance expressed by the petitioner is that he was issued with a notice dated 09.02.2018 u/s.7 of the Tamil Nadu Land Encroachment Act, 1905, by the 6th respondent for which, the petitioner along with 5 others had submitted a detailed response dated 12.02.2018 tracing their right, title and possession in respect of the land in question. However, the 4th respondent has issued the impugned notice dated 28.03.2018 and challenging the legality of the same, the petitioner came forward to file the present writ petition.

WP.No.9174/2018:-

11 The petitioner claims to be the resident of Door No.1, Arulayiyamman Street, Guindy Industrial Estate, Chennai - 32 and she would aver that the property comprised in Block No.6, Town Survey No.1, admeasuring to an extent of 253 sq.ft., belongs to her and she is in possession and enjoyment of the same and she has been issued with Aadhar Card, Family/Ration Card etc., and is also provided with electricity service connection. The petitioner would further aver that adjacent to her land, there is a Dargah and also a Mosque land and the Dargah is her family property and the Government Orders in G.O.No.1151 dated 14.10.1903 ; G.O.Ms.No.348 dated 16.02.1905 as well as the Gazette Notification dated 21.02.1905 make it very clear that the property belongs to her family and the Dargah is in existence in the said property.

12 It is also averred by the petitioner that the 6th respondent, somehow managed to mutate the revenue record in their name and started making a claim over the same and in this regard, the Qalandariya Trust had filed WP.No.30692/2017 against the 6th respondent, praying for appropriate direction, forbearing them or their men from putting up a construction on their land in Block No.6 in TS.No.1, Adyar Village, Guindy Taluk, Alandur Road, Chennai.

13 The grievance expressed by the petitioner is that she was issued with a notice dated 09.02.2018 u/s.7 of the Tamil Nadu Land Encroachment Act, 1905, by the 6th respondent for which, the petitioner along with 5 others had submitted a detailed response dated 12.02.2018 tracing their right, title and possession in respect of the land in question. However, the 4th respondent has issued the impugned notice dated 28.03.2018 and challenging the legality of the same, the petitioner came forward to file the present writ petition.

WP.No.9175/2018:-

14 The petitioner claims to be the Founder and President of the Trust and further claims to be the resident of Door No.1, Arulayiyamman Street, Guindy Industrial Estate, Chennai - 32 and he would aver that the property comprised in Block No.6, Town Survey No.1, admeasuring to an extent of 262 sq.ft., belongs to him and he is in possession and enjoyment of the same and the petitioner/President has been issued with Aadhar Card, Family/Ration Card etc., and is also provided with electricity service connection. The petitioner would further aver that adjacent to the said land, there is a Dargah and also a Mosque land and the Dargah is his family property and the Government Orders in G.O.No.1151 dated 14.10.1903 ; G.O.Ms.No.348 dated

16.02.1905 as well as the Gazette Notification dated 21.02.1905 make it very clear that the property belongs to his family and the Dargah is in existence in the said property.

15 It is also averred by the petitioner that the 6th respondent, somehow managed to mutate the revenue record in their name and started making a claim over the same and in this regard, the Qalandariya Trust had filed WP.No.30692/2017 against the 6th respondent, praying for appropriate direction, forbearing them or their men from putting up a construction on their land in Block No.6 in TS.No.1, Adyar Village, Guindy Taluk, Alandur Road, Chennai.

16 The grievance expressed by the petitioner is that he was issued with a notice dated 09.02.2018 u/s.7 of the Tamil Nadu Land Encroachment Act, 1905, by the 6th respondent for which, the petitioner along with 5 others had submitted a detailed response dated 12.02.2018 tracing their right, title and possession in respect of the land in question. However, the 4th respondent has issued the impugned notice dated 28.03.2018 and challenging the legality of the same, the petitioner came forward to file the present writ petition.

WP.No.9176/2018:-

17 The petitioner claims to be the resident of Door No.1, Arulaiyamman Street, Guindy Industrial Estate, Chennai - 32 and she would aver that the property comprised in Block No.6, Town Survey No.1, admeasuring to an extent of 378 sq.ft., belongs to her and she is in possession and enjoyment of the same and she has been issued with Aadhar Card, Family/Ration Card etc., and is also provided with electricity service connection. The petitioner would further aver that adjacent to her land, there is a Dargah and also a Mosque land and the Dargah is her family property and the Government Orders in G.O.No.1151 dated 14.10.1903 ; G.O.Ms.No.348 dated 16.02.1905 as well as the Gazette Notification dated 21.02.1905 make it very clear that the property belongs to her family and the Dargah is in existence in the said property.

18 It is also averred by the petitioner that the 6th respondent, somehow managed to mutate the revenue record in their name and started making a claim over the same and in this regard, the Qalandariya Trust had filed WP.No.30692/2017 against the 6th respondent, praying for appropriate direction, forbearing them or their men from putting up a construction on their land in Block No.6 in TS.No.1, Adyar Village, Guindy Taluk, Alandur Road, Chennai.

19 The grievance expressed by the petitioner is that she was issued with a notice dated 09.02.2018 u/s.7 of the Tamil

Nadu Land Encroachment Act, 1905, by the 6th respondent for which, the petitioner along with 5 others had submitted a detailed response dated 12.02.2018 tracing their right, title and possession in respect of the land in question. However, the 4th respondent has issued the impugned notice dated 28.03.2018 and challenging the legality of the same, the petitioner came forward to file the present writ petition.

20 Mr.V.Raghavachari, learned counsel assisted by Mr.V.Suthan, learned counsel appearing for the petitioners would submit that the notice u/s.7 of the Tamil Nadu Land Encroachment Act, 1905, was issued by the 6th respondent and he is not competent to issue such notice and the petitioners had submitted their detailed representations in response to the said notice and however, the impugned notice u/s.6 of the said Act came to be passed by the 4th respondent and since the said notice is the follow-up of Section 7 Notice and that section 7 Notice has been issued by an official who is not competent to issue the same under the provisions of the Tamil Nadu Land Encroachment Act, 1905, the impugned notices warrant interference and prays for appropriate orders.

21 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1 to 6 would submit that the petitioners are rank encroachers and as per the order dated 25.10.2017 in WP.No.30692/2017 filed by Qalandariya Trust - Petitioner in WP.No.9175/2018, possession is protected only to an extent of 262 sq.m. Only and therefore, the petitioners, who claim to be in possession of the sites and superstructures, are rank encroachers and as such, action has been taken strictly in accordance with law and prays for dismissal of these writ petitions.

22 This Court has considered the rival submissions and also perused the materials placed before it.

23 As per section 6[1] of the Tamil Nadu Land Encroachment Act, 1905, "any person, unauthorisedly occupying any land, for which he is liable to pay assessment under section 3 of section 3-A, may be summarily evicted by the Collector subject to his control, by the Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government in this behalf..." Section 7 of the said Act is also similarly worded and this Court, has also put a specific question to the learned Special Government Pleader as to whether any authorisation has been given to the 6th respondent to issue notices u/s.7 of the said Act and the answer is in negative.

24 In the considered opinion of the Court, in the absence of any authorisation, the 6th respondent is not the competent authority to issue the notice u/s.7 of the Tamil Nadu Land

Encroachment Act, 1971 and though the impugned notices u/s.6 have been issued by the 4th respondent, in the considered opinion of the Court, it is a follow-up of the notice issued u/s.7 of the Act. Hence, on this sole ground, the impugned notices warrant interference.

25 In the result, the writ petitions are partly allowed and the impugned notices issued under sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, dated 09.02.2018 and 28.03.2018 respondents 6 and 4 respectively are set aside and the 4th respondent is granted liberty to proceed under the provisions of the Tamil Nadu Land Encroachment Act, 1905, and is also at liberty to issue notices u/s.7 of the said Act, to the petitioners within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the petitioners are at liberty to submit their representations with relevant and authenticated documents within a further period of three weeks thereafter and upon receipt of such representations from the petitioner, the 4th respondent is at liberty to proceed further in terms of the said Act in accordance with law and communicate the decision taken, to the petitioners as expeditiously as possible and till such time, the 4th respondent shall defer further decision as to the dispossession of the petitioners from the sites and superstructures in question and it is made clear that the petitioners, till the disposal of the representations to be submitted by them, by the 4th respondent herein, shall not create any third party rights in respect of the sites and superstructures in question and shall not alter the physical features also. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

AP

To

1.The District Collector
Singaravelan Maligai,
Chennai District, Chennai.

2.The District Revenue Officer,
Chennai District, Chennai-01.

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3.The Revenue Divisional Officer
Egmore, Division, Chennai 600 031.

4.The Tahsildar
Guindy Taluk
Chennai 600 032.

5.The Inspector of Police
J3 Guindy Police Station
Chennai.

6.The Director
Kings Institute of Preventive Medicine
and Research, Guindy,
Chennai 600 032.

+6cc to Mr.Mr.K.Suthan, Advocate, S.R.No.27951 to 27956
+1cc to the Government Pleader, S.R.No.28067

WP.Nos.9171 to 9176/2018

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