

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.No.10207/2018 & WMP Nos.12138 & 12139/2018

- 1.Moses
- 2.Wilson
- 3.M.Victor
- 4.D.Ramu
- 5.M.Kala
- 6.Shyam Kumar
- 7.Ranganayagi
- 8.Shanthi
- 9.Jayanthi
- 10.Paalpandian
- 11.Malliga
- 12.Roslin
- 13.Ranganayagi

.. Petitioners

Versus

- 1.The Principal Secretary
State of Tamil Nadu
Municipal Administration &
Water Supply Department
Fort St George, Chennai 600 009.
- 2.The Principal Secretary
Public Works Department
Fort St George, Chennai 600 009.
- 3.The District Collector
District Collectorate
Thiruvallur.
- 4.The Commissioner
Thiruverkadu Municipality
Tiruverkadu.
- 5.The Tahsildar
Maduravoyal Taluk
Chennai 600 095.

6.The Revenue Inspector
Maduravoyal Taluk
Chennai 600 095.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents 1 to 5, their men, agents or anybody claiming through them from in any manner attempting to evict the petitioners from the subject property in S.No.32, Keezh Ayanambakkam Village, pending disposal of the petitioners representation dated 13.02.2018.

For Petitioners : Mr.Ma.Gowthaman
For RR 1 to 3, 5 & 6: Mr.R.Udhayakumar, AGP
For R4 : Mr.P.Srinivas

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.R.Udhayakumar, learned Additional Government Pleader accepts notice on behalf of the respondents 1 and 2.

2 The petitioners claim that they are the residents of Anna Nagar, 4th Street, Keezhayanambakkam Village and their forefathers and after their demise, they deemed to be in possession and enjoyment of the sites and superstructures for nearly four decades and they have been issued with Family / Ration Cards, Voters ID Card, Aadhar Cards and also the recipients of freebies scheme announced by the Government of Tamil Nadu and their superstructures have also been provided with electricity service, water connection and the said superstructures are also subjected to statutory levies. The grievance expressed by the writ petitioners is that all of a sudden, individual notices has been issued to the writ petitioners by the 6th respondent under section 7 of the Tamil Nadu Land Encroachment Act, 1905, alleged that they are in possession of the lands in S.No.32 which is classified as "Kuttai" [small water body] and expressing apprehension that they will be dispossessed, without recourse to due process of law, came forward to file the present writ petition.

3 The learned counsel for the petitioners has drawn the attention of this Court to the typed set of documents as well as the Google Map relating to the area in question and would submit that the residences of the petitioners are far far away from the Coovum River course and there exist very many Marriage Halls, Multi-Storeyed Buildings and other commercial entities and without taking any action, they are targeting the petitioners who are poor and belong to downtrodden community and would

further add that in the event of their dispossession, they have to be in the streets along with the family and their children/wards are studying in the educational institutions and they will be put to grave hardship, difficulty and irreparable loss and prays for appropriate orders, protecting the interest of the petitioners.

4 Per contra, the learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that pursuant to the orders passed by the National Green Tribunal, Southern Bench, a survey is being conducted and since the petitioners are in possession of the sites and superstructures which are also unauthorisedly constructed very near the water course, action is being taken strictly in accordance with law and would further add that the writ petition is also premature for the reason that the notices u/s.6 of the Tamil Nadu Land Encroachment Act, 1905, will be issued individually to the petitioners as a follow-up of section 7 notices and due process of law will be followed and prays for dismissal of the writ petition.

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

6 It is relevant to extract sections 5B, 6 and 7 of the Tamil Nadu Land Encroachment Act, 1905:-

"5B-NOTICE BEFORE PROCEEDING UNDER SECTION 5 OR SECTION 5-A:-

Before taking proceedings under section 5 or section 5-A, the Collector or Tahsildar or Deputy Tahsildar or Revenue Inspector, shall cause to be served in the manner provided in section 7 on the person reputed to be in unauthorised occupation of land being the property of Government a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under section 5 or section 5-A.

Provided that where the notice under this section is caused to be served by the Revenue Inspector, he shall require the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Tahsildar or Deputy Tahsildar having jurisdiction and shall also make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Tahsildar or Deputy Tahsildar having jurisdiction.

6-LIABILITY PERSON UNAUTHORISEDLY OCCUPYING LAND TO SUMMARY EVICTION, FORFEITURE OF CROPS ETC.: -

(1) Any person unauthorisedly occupying any land for which he is liable to pay assessment under section 3 or section 3-A may be summarily evicted by the Collector or subject to his control, by the Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government in this behalf (hereinafter referred as the Authorised Officer) and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector or subject to his control, the Tahsildar or Deputy Tahsildar or authorised officer may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector or subject to his control by the Tahsildar, or Deputy Tahsildar, or authorised Officer and any property so forfeited shall be disposed of as the Collector or subject to his control the Tahsildar or Deputy Tahsildar or authorised officer) may direct.

(2) An eviction under this section shall be made in the following manner namely: By serving a notice in the manner provided in section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector or the Tahsildar or Deputy Tahsildar or Authorised Officer may deem reasonable after receipt of the said notice to vacate the land, and, if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstructed by any person, the Collector or the Tahsildar, or Deputy Tahsildar or authorised officer shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector or of any Tahsildar or Deputy Tahsildar or authorised officer for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for

imprisonment in the civil jail of the district for the like period.

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under sections 183, 186 or 188 of the Indian Penal Code in respect of the same facts.

(3) Any authorised officer taking proceedings under this section shall make a report in writing containing such particulars as may be specified in rules or orders made under Section 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction.

7: PRIOR NOTICE TO PERSON IN OCCUPATION:
Before taking proceedings under section 6 the Collector or tahsildar or Deputy Tahsildar or Revenue Inspector or any authorised officer or any other officer specified by the State Government in this behalf (not being an authorised officer) (hereinafter referred to as the 'specified officer' as the case may be) shall cause to be served on the person reputed to be in unauthorised occupation of land being the property of Government a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under section 6.

Such notice shall be served in the manner prescribed in section 25 of the Tamil Nadu Revenue Recovery Act, 1864, or in such other manner as the State Government by rules or orders under Section 8 may direct.

Provided that no such notice shall be necessary in the case of any person unauthorisedly occupying any land, if he had been previously evicted from such land under section 6 or if he has previously vacated such land voluntarily after the receipt of a notice under section 5-B or under this section:

Provided further that where the notice under this section is caused to be served by any Revenue Inspector or any specified officer he shall require the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Collector,

Tahsildar, Deputy Tahsildar or authorised person having jurisdiction, as the case may be and shall also make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar, Deputy Tahsildar or authorised person having jurisdiction, as the case may be".

7 Admittedly, notices u/s.7 of the Tamil Nadu Land Encroachment Act, 1905, has been issued by the 6th respondent and it shall be followed by section 6 Notice of the said Act. The petitioners, in response to the notices issued u/s.7 of the said Act, had also submitted their representations.

8 It goes without saying that the respondents before proceeding to evict the encroachers, have to strictly adhere to the provisions of the Tamil Nadu Land Encroachment Act, 1905, and the Rules framed thereunder. In the light of the submissions made by the learned Additional Government Pleader appearing for the respondents 1 to 3, 5 and 6, on instructions that notices issued u/s.7 would be followed by section 6 notices of the said Act, this Court is of the considered view that the writ petition is premature.

9 As and when Notices u/s.6 of the Tamil Nadu Land Encroachment Act, 1905, are issued to the petitioners, they are at liberty to submit their individual representations by enclosing relevant and authenticated documents and upon receipt of the same, the concerned official respondents shall consider and dispose of the same as expeditiously as possible and in accordance with law and till such time, the respondents shall defer further decision to evict the petitioners from the sites and superstructures in question said to be in their possession.

10 The writ petition stands disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CS-II)

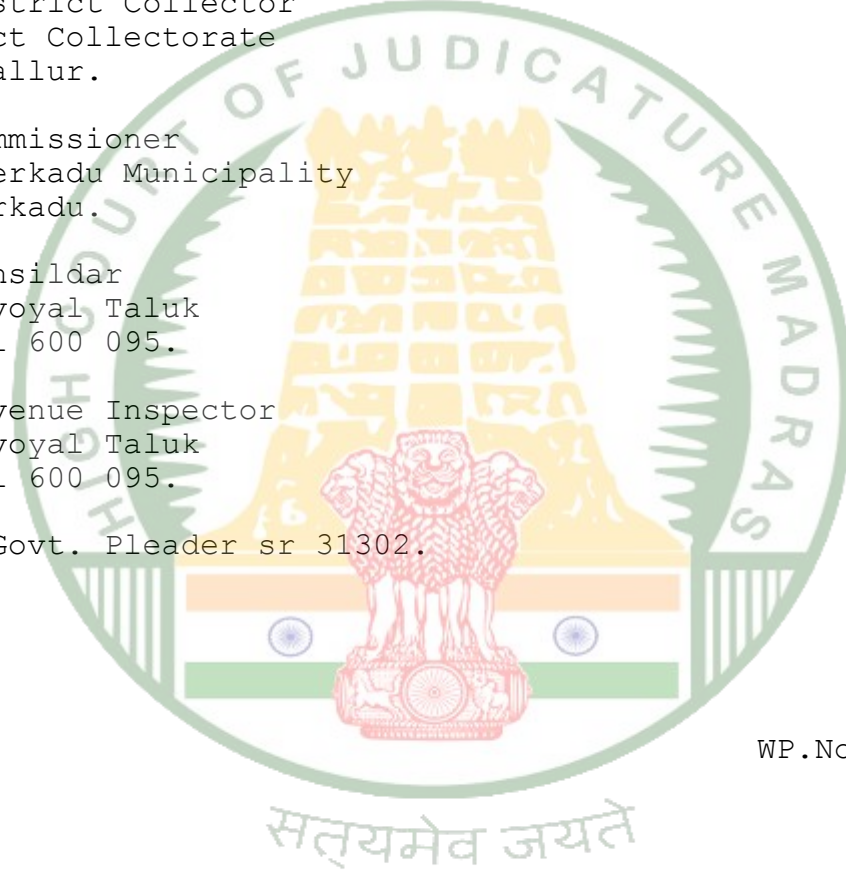
True Copy

Sub-Assistant Registrar

AP

To

1. The Principal Secretary
State of Tamil Nadu
Municipal Administration &
Water Supply Department
Fort St George, Chennai 600 009.
 2. The Principal Secretary
Public Works Department
Fort St George, Chennai 600 009.
 3. The District Collector
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 6. The Revenue Inspector
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SVI (CO)
SP(09/05/2018)

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