

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.5862 of 2018
and

W.M.P.No.7205 of 2018

1. V.Murugesan
2. P.Manoharan
3. R.Anbarasu
4. C.K.Gopi
5. M.Kumudha
6. R.Manickam
7. M.Murugan
8. N.Kasi
9. V.Uma
10. S.Vasugi
11. Lakshmi (alias) Dhanlakshmi
12. M.Ganapathy
13. R.Lakshmi (alias) Lakshmi Ammal
14. V.Mandhirikumar
15. M.Marimuthu
16. S.Muthupandi
17. P.Sakthivel
18. P.Arumugam
19. C.Thiyagarajan
20. S.Kasi Mariyappan
21. G.Radhakrishnan
22. P.Pillaiyammai
23. K.R.Binthosh Ramadevan
24. M.Prabakaran

.. Petitioners

Vs.

1. The Secretary,
State of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.
2. The District Collector, Thiruvallur District.

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3. The Revenue Inspector,
Maduravoyal Firka and Taluk,
Thiruvallur District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to forbear the respondents from in any manner disturbing, removing or demolishing the petitioners' properties situated in Survey Nos.17, 89, 255, 552/2 and 632 Ayanambakkam, Maduravoyal Taluk, Thiruvallur District, in pursuance of the eviction notice, dated 13.02.2018 issued by the third respondent, consequentially direct the first and second respondents to either issue Revenue Patta to the petitioners' properties or, allot alternate accommodation to the petitioners' properties equivalent to the area in possession with the petitioners, within the territorial limits of Maduravoyal Taluk, Thiruvallur District.

For petitioner : Mr.K.M.Vijayan, Senior Counsel for
Mr.N.V.N.Margandeyan

For respondents: Mr.R.Udaya Kumar, Addl.G.P

ORDER

(The Order of the Court was made by S.Vaidyanathan, J)

The petitioners have come forward with the above Writ Petition praying for issuance of a Writ of Mandamus to forbear the respondents from in any manner disturbing, removing or demolishing the petitioners' properties situated in Survey Nos.17, 89, 255, 552/2 and 632 Ayanambakkam, Maduravoyal Taluk, Thiruvallur District, in pursuance of the eviction notice, dated 13.02.2018 issued by the third respondent, consequentially direct the first and second respondents to either issue Revenue Patta to the petitioners' properties or, allot alternative accommodation to the petitioners' properties equivalent to the area in possession with the petitioners, within the territorial limits of Maduravoyal Taluk, Thiruvallur District.

2. The petitioners are apprehending that without considering the reply of the petitioners for the notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, action would be taken and that the petitioners would be dispossessed and hence, they have come forward with the present Writ Petition contending that they have been residing in the place for more than a decade and some are residing for more than two decades. In support of his submissions, learned Senior Counsel appearing for the petitioners relied on a decision of this Court reported in 2015 SCC Online Madras 521 (W.P.No.3455 of 2012, dated 07.01.2015) (Thiruvallur Nagar Residents' Society Vs. Corporation of

Chennai).

3. It is to be noted that this Court, in W.P.No.3546 of 2018, by order dated 19.02.2018, with regard to the provisions of the Tamil Nadu Land Encroachment Act, has observed as follows:

"7. Before parting with the case, this Court points out that where the impugned order assails the notice issued under Section 7 of the Tamil Nadu Land Encroachment Act (Act-III) of 1905, the petitioner has a right to furnish the reply to the said notice and after hearing the parties and the complainant, if any, necessary orders will have to be passed by the competent authority under Section 6 of the said Act. Against this order passed under Section 6, an appeal is provided under the said Act. Also that, if the appeal under Section 10 of the Act, 1905, is not filed by the aggrieved person, then, the filing of the Writ Petition without exhausting effective, efficacious, viable and alternative remedy, is a premature and otiose one, in the considered opinion of this Court. Further, if the reply is given, the petitioner must file necessary proof. If the said reply is not referred to in the order passed under Section 6 of the Act, or if there is no reference to the fact that no reply was filed by the petitioner, or if any proof for sending the reply or acknowledgement is not filed, the Office of the Registry of this Court may ask for necessary details from the petitioner prior to the numbering of the Writ Petition. Further, the authorities must ensure that the final order passed by them refers to the reply, if any filed by the person who received the notice under Section 7 of the Act, and if the same is not adverted to in the order passed by the authority, then as against the erring/deviant authority, necessary departmental action may be taken against him for his lapse/derelection in regard to the discharge of his duties. The Registry is directed to comply with these directions in future, when the Writ Petitions are filed challenging the notices/orders passed under the provisions of the Tamil Nadu Land Encroachment Act."

4. Further, one of us (S.Vaidyanathan, J), in W.P.No.21239 of 2005, etc. batch, by order dated 18.12.2017, observed as follows with regard to the procedures to be followed by the authorities who conduct summary proceedings:

"6. This Court makes it further clear that the regularisation proceedings shall be conducted by the respondents after hearing necessary parties who are likely to be affected and if there are complainants, they should also be heard. Whenever parties appear, the applicant(s) as well as the complainant(s) shall be heard and the conduct of the proceedings should be written down by the officer concerned who is hearing the matter, and he shall obtain signatures in the proceedings after recording the submissions if any made. It is like summary proceedings. The documents filed by the parties need to be given Exhibit numbers. A copy of the proceedings shall be furnished immediately thereafter to the parties concerned to avoid unnecessary allegation against the officials that the records have been manipulated. The authority concerned shall seek for written submissions from the petitioner(s) / applicant(s) / complainant (s) within a time frame and thereafter, the authority shall pass appropriate orders within thirty days in accordance with law.... ."

5. Even though the abovesaid order in W.P.No.21239 of 2005, etc. batch, has been passed in the context of the authorities who deal with the provisions of the Tamil Nadu Town and Country Planning Act, the same procedures will also have to be followed by the authorities even under the Tamil Nadu Land Encroachment Act.

6. In this case, subsequent to the issuance of notice under Section 7 of the said Act, as on date, no order is passed under Section 6 of the said Act. If there is any adverse order passed against any of the persons, there is a provision under Section 10 of the said Act to prefer an Appeal, or Revision under Section 10-A, as the case may be, and there is also a provision for getting interim stay of the operation of the order passed by under Section 6 of the said Act and that there is time limit prescribed for preferring Appeal or Revision and that the authorities under Section 11 of the Tamil Nadu Land Encroachment Act are empowered to condone the delay if any reasonable cause is given.

7. As on date, in this case, there is no adverse order against the petitioners herein. The only grievance of the petitioners is that, as they are residing in the place for more than a decade and some are residing for more than two decades, the request of the alternative site may be considered, if any of the persons are held to be encroachers. This Court cannot render a finding with regard to the alternative accommodation, as the relief sought for to that extent is premature.

8. The Supreme Court, in a catena of decisions, held that possessing Aadhar Card, Ration Card, Electricity Connection, Water Connection, etc., cannot be a ground for the encroachers to remain in the encroached place. The above observations made by this Court cannot be construed that we have rendered any finding that the petitioners are the encroachers and these observations are made only to distinguish the said decision reported in 2015 SCC Online Madras 521 (cited supra), relied on by the learned Senior Counsel appearing for the petitioner, wherein at paragraph 7, this Court has clearly observed among other things that, "... to show their proof of residence/living, viz., family card, Voters I.D. if any and to transmit the same to the sixth respondent/Tamil Nadu Slum Clearance Board, Chennai,". These observations are made only to show the proof of residence by possessing Family Card, Voter's ID card, Electricity Connection, payment of Revenue charges/dues, etc., and possessing those proof of residence will not, by any stretch of imagination, confer any title with regard to the ownership of the properties in question.

9. Hence, without rendering any finding with regard to the second part of the prayer sought for by the petitioners, and as per the above directions issued by this Court in W.P.No.3546 of 2018, dated 19.02.2018, and in W.P.No.21239 of 2005, etc. batch, dated 18.12.2017, extracted supra, we direct the authorities to consider the request of the petitioners by giving an opportunity of hearing to the petitioners and also the complainant, if any and thereafter the authorities shall pass detailed order under Section 6 of the said Land Encroachment Act, 1905, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. The enquiry shall go on day-to-day basis and shall not be adjourned beyond seven working days at any point of time. Furthermore, for a period of three months from the date on which this order copy is made ready, the possession of the petitioners in the properties in question, shall not be disturbed.

10. Further, in case of Appeal/Revision being filed within the time frame under the said Act, 1905, without delay, the Authorities are directed to dispose of the same within a month. In case of delay in filing the Appeal/Revision, it is open for the Authorities to condone the delay if sufficient case is shown, but however, the electricity supply/water supply to those Appellants/Revision petitioners shall be disconnected during the

pendency of the Appeal/Revision and only after final orders are passed under Section 10 of the Act and thereafter under Section 10-A, the aggrieved person can approach this Court and shall not seek restoration of electricity supply/water supply till the Appeal/Revision is disposed of. This condition will ensure the affected party to approach the Authorities within time without any delay.

11. Moreover, before orders are passed under Section 6 of the Encroachment Act, 1905, the parties shall send their objections by Speed Post/RPAD and produce proof of the same and contending that a copy has been handed over and that there is no acknowledgement, cannot be accepted. The procedures laid down by this Court in W.P.No.3546 of 2018, order dated 19.02.2018 and W.P.No.21239 of 2005, etc. batch, dated 18.12.2017, extracted supra, need to be followed by the Authorities under the various enactments like the Tamil Nadu Land Encroachment Act, 1905, the Tamil Nadu Town and Country Planning Act, etc.

12. Further, it is to be observed that while passing the order under Sections 6 and 10 of the Tamil Nadu Land Encroachment Act, the respective authorities must mention in the order that the aggrieved person has got right to Appeal/Revision and that the same has to be preferred within the time prescribed under the said Encroachment Act, 1905. This will enable the aggrieved person not to file Appeal/Revision before a different authority, as we come across several orders of return passed by the Government authorities that they are not the Appellate/Revisional authority. Till the Appeal time is over, without there being a delay, even though there is a provision to condone the delay, the aggrieved persons shall not be disturbed. If there is any delay in filing the Appeal or Revision, this will not preclude the authorities from proceeding further in the matter beyond the time prescribed under the Act, even though an Appeal can be entertained, till the delay is condoned, there is no Appeal/Revision in the eye of law and the authorities can bring the issue to a logical conclusion by removing the encroachment by using Police force, and disconnecting the electricity supply and water connection. Further, it has to be mentioned that if the complainant is not made a party, the Authorities shall throw the Appeal/Revision and the applicants who are encroachers, shall not be shown any indulgence, as there is a habit of those encroachers getting an order behind the back of the complainant and stay in the encroached place forever. Even though the principles of natural justice are not applicable to the encroachers, to enable their children/family members of the violator not to suffer for the mistake committed by the violator, the above observations are made to not to disturb them during the time meant for Appeal/Revision only if the Appeal/Revision is filed within time, without reference to Section 11 of the Tamil Nadu Land Encroachment Act.

13. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

cs

To

1. The Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.
2. The District Collector, Thiruvallur District.
3. The Revenue Inspector,
Maduravoyal Firka and Taluk,
Thiruvallur District.

+1cc to Government Pleader SR.No.20084

+2cc to Mr.N.V.N.Margandeyan, ADvocate Sr.No.19450

SSD(CO)

sm:2.4.2018

W.P.No.5862 of 2018

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