

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.08.2018

Coram:

THE HON'BLE MR.JUSTICE M.VENUGOPAL
AND
THE HON'BLE MRS.JUSTICE S.RAMATHILAGAM

W.P.No.21203 of 2018
and
W.M.P.No.24871 of 2018

1.R.Vasuki
2.R.Rajendran

.... Petitioners

vs.

1.The District Collector,
Thiruvallur District,
Thiruvallur.

2.The Director of Town Panchayat,
Directorate of Town Panchayat,
Chennai.

3.The Tahsildar,
Poonamallee Taluk,
Poonamallee

4.The Executive Officer,
Thirumazhisai Town Panchayat,
Thiruvallur District

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari calling for the records of the 4th Respondent in Na.Ka.No.95/2018-A1, dated 09.08.2018 and quash the same.

For Petitioners : Mr.M.Selvam

For Respondents :Mr.J.Pothiraj,Spl.G.P.

ORDER

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

The Petitioners have preferred the instant Writ Petition seeking to call for the records from the file of the 4th Respondent/Executive Officer, Thirumazhisai Town Panchayat, Thiruvallur District, in Na.Ka.No.95/2018-A1, dated 09.08.2018 and to quash the same.

2. Heard both sides.

3.No counter is filed on behalf of R1 to R4.

4.According to the Petitioners, they took possession of the land measuring an extent of 2312 sq.feet in S.No.242, New S.No.242/4, Thirumazhisai Village, in the year 1980 and from that time onwards, they are in possession and enjoyment of the property. After levelling the land, they had put up a house and living with their family. As a matter of fact, they are in peaceful, continuous and uninterrupted possession and enjoyment of the property from the year 1980. Indeed, for the house in the aforestated land, Door No.40 was assigned by the Local Authority and later, the Local Body formed 'Elankalai Amman Nagar' and assigned Door No.71 and the present Door Number is 55.

5.It comes to be known that the Petitioners projected an Application before the 3rd Respondent/Tahsildar, Poonamallee Taluk, Poonamallee, for issuance of Patta in respect of the land in their occupation. The 3rd Respondent, by means of his Proceedings dated 01.08.2008 had issued Patta bearing No.00947 in respect of the land in their occupation in respect of 100 sq.meter. In reality, the Petitioners are in possession and occupation of an extent of 2313 sq.ft and they also obtained Electricity Connection in No.544-003-570. The Petitioners, apart from residing in the said land, are using a portion as 'Cattle Shed' and for storing 'Fodder', 'Manure' and other related purposes.

6.It appears that the Petitioners filed a Suit in O.S.No.118 of 2015 on the file of the Learned District Munsif, Poonamallee, seeking for an Injunction to restrain those persons from disturbing their peaceful possession of the property. As a counter blast, O.S.No.314 of 2015 was filed by the Defendants in O.S.No.118 of 2018, who figured as Plaintiffs, on the file of the Learned District Munsif, Poonamallee, seeking a relief of Mandatory Injunction against the present Writ Petitioners.

7. At this stage, the Learned Counsel for the Petitioners submits that based on the Complaint by one Vandana, who is in no way connected to the Petitioners' property, in New Survey No.242/4 (Old Survey No.242), the 4th Respondent/Executive Officer, Thirumazhisai Town Panchayat, Thiruvallur District, had issued a Notice in Na.Ka.No.95/2018/A1, dated 24.07.2018, calling upon the Petitioners to appear before him in person along with the necessary documents and to submit their explanation. The Second Petitioner furnished his reply/explanation, dated 25.07.2018, by filing all relevant documents, including Patta No.00947 and Receipts for payment of Kist and Property Tax before the 4th Respondent. Apart from that, the Second Petitioner had explained about the pendency of the two Suits in respect of the property in question.

8. The real grievance of the Petitioners is that the 4th Respondent/Executive Officer, Thirumazhisai Town Panchayat, Thiruvallur District, without traversing upon the merits of their case, had issued the Impugned Notice dated 09.08.2018, in a hurried manner and further directed them to remove the encroachments within seven days. Moreover, the stand of the Petitioners is that the 4th Respondent/Executive Officer, Thirumazhisai Town Panchayat, Thiruvallur District, had not given any explanation in the Impugned Notice.

9. The primordial contention advanced on behalf of the Petitioners is that the 3rd Respondent/Tahsildar, Poonamallee Taluk, Poonamallee, had issued a Patta in respect of the Subject land in issue and as such, the 4th Respondent/Executive Officer, Thirumazhisai Town Panchayat, Thiruvallur District, cannot reclassify the land, classified by the 3rd Respondent/Tahsildar, Poonamallee Taluk. In this connection, the Petitioners take a plea that they are not encroachers and their possession is recognised by the Revenue Department. Since the Impugned Notice issued by the 4th Respondent/Executive Officer, Thirumazhisai Town Panchayat, Thiruvallur District is bad in Law, the same is liable to be set aside. सत्यमेव जयते

10. Per contra, it is the submission of the Learned Special Government Pleader for the Respondents that in the Impugned Notice dated 09.08.2018, the 4th Respondent had categorically mentioned that the Survey No.242 is a 'Burial Ground' and the same is under the maintenance of Town Panchayat and therefore, the Petitioners were directed to remove the 'Temporary Shed' put up by them in the Town Panchayat, by themselves, failing which, based on Revenue Documents, the encroachment would be removed by taking continuous consequent actions.

11. At the outset, this Court significantly points out

that Section 116 of the Tamil Nadu Panchayats Act, 1994 speaks of 'Common burial and burning grounds, etc'. It is to be remembered that the Tamil Nadu Village Panchayats (Provision of Burial and Burning Grounds) Rules, 1999 were issued in G.O.Ms.No.213, Rural Development (C-4), dated the 5th October 1999.

12.Rule 3 of Tamil Nadu Village Panchayats (Provision of Burial and Burning Grounds) Rules, 1999 deals with 'Provision and collection of rent and fees for burial and burning grounds'; Rule 4 relates to 'Registration of burial and burning grounds'; Rule 5 prescribes 'Conditions for opening of burial and burning ground' and Rule 6 enjoins 'Registers to be maintained'. More importantly, Rule 7 pertains to 'Place for burial and burning grounds'. Moreover, in the decision between T.Ramesh vs. District Collector, Ramanathapuram District, Ramanathapuram and Others [reported in (2007) 6 MLJ 264]], this Court has observed and held as under:

"The practice of burying and burning dead persons in the private lands is contrary to the provisions of the Act of 1994 and the Rules of 1999 and unless and until, a licence is granted in terms of Rule 5 of the Rule of 1999, the private property cannot be used to bury any dead person."

13.A mere running of the eye over the contents of the Notice dated 09.08.2018, issued by the 4th Respondent/Executive Officer, Thirumazhisai Town Panchayat, Thiruvallur District, addressed to the Petitioners latently and patently indicates that the said Notice only speaks of submission of Records through Registered post by the Second Petitioner, dated 25.07.2018. In fact, there is no qualitative and quantitative discussions in a threadbare fashion in record to the documents submitted by the Second Petitioner and in this regard, the Notice, dated 09.08.2018, of the 4th Respondent is shorn of necessary details. Even when an Administrative Order is passed by an Executive Authority, the same should be of a reasoned one. An unreasoned Order may be a just and valid one from the point of view of the Concerned Authority, who passed that Order. Per contra, in so far as the affected/aggrieved persons are concerned, the said Order is an invalid and illegal one, because of the reason that no adjudication of the documents mentioned by the concerned Person/Petitioners were discussed or deliberated by the Concerned Authority.

14.Apart from the above, it comes to light that the Writ Petitioners had filed a Civil Suit in O.S.No.118 of 2015 against one Karthick and two Others on the file of the Learned District Munsif, Poonamallee, seeking a relief of Permanent Injunction,

etc. In fact, the Defendants in O.S.No.118 of 2015, as Plaintiffs, had filed a Suit in O.S.No.314 of 2015, on the file of the District Munsif, Poonamallee, seeking for a Mandatory Injunction directing the Defendants 1 and 2 (Writ Petitioners) to remove the constructions in the 'B' Schedule Passage and Board fixed in the 'B' Schedule Passage; for Mandatory Injunction directing the 3rd Defendant/Thirumazhisai Town Panchayat, rep. by its Executive Officer, to maintain Suit 'B' Schedule as 30 feet width by removing the construction put up by the Defendants 1 and 2 and to remove the Board fixed in the 30 feet width passage and for a Permanent Injunction restraining the Defendants 1 and 2, their men, agents, servants, etc., from in any manner interfering with the Plaintiffs' right of access to reach 'A' Schedule property through 'B' Schedule Passage from Thiruvallur Main Road on the South and vice versa. To put it precisely, the 4th Respondent/The Executive Officer, Thirumazhisai Town Panchayat, Thiruvallur District, in the present Writ Petition is shown as 3rd Defendant in O.S.No.314 of 2015, filed by the Plaintiffs therein. Admittedly the aforesaid two Suits are pending on the file of the Trial Court.

15.The Petitioners heavily rely on the Allotment/Assignment Order dated 09.08.2008, in respect of Survey No.242/4, measuring an extent of 100 sq.metre and this Order was issued under Permanent Order No.21, Para 7, Part (ii). The said Assignment Order was issued in favour of the First Writ Petitioner.

16.Inasmuch as the Impugned Notice dated 09.08.2018, issued by the 4th Respondent requiring the Petitioners to remove the encroachment within seven days (by removing the temporary Sheds, voluntarily etc.), is based on the reason that Survey No.242 is a 'Burial Ground' and the same is maintained by the Town Panchayat, and this Court, bearing in mind the divergent stand taken by the Petitioners that the land was assigned as per Allotment Order dated 09.08.2008, to the First Writ Petitioner, at this stage, this Court, without expressing any opinion on the merits of the matter and also not delving deep into the same, simpliciter, directs the 4th Respondent/Executive Officer, Thirumazhisai Town Panchayat, Thiruvallur District, to conduct a De novo enquiry into the subject matter in issue, by calling upon the Petitioners to appear before him on a date and time to be specified by him and on the said date and time, the Petitioners are directed to appear before the 4th Respondent/Executive Officer, Thirumazhisai Town Panchayat, Thiruvallur District, with all supporting documents to substantiate their version of the case. The 4th Respondent/Executive Officer, Thirumazhisai Town Panchayat, shall provide an adequate opportunity of 'personal Hearing' to the Petitioners, if they so desire, by adhering to the

Principles of Natural Justice. Soon after the submission of necessary documents, if any, (other than the documents submitted by the Petitioners on earlier occasion), the 4th Respondent shall look into the same and to pass a reasoned speaking Order on merits in a qualitative and quantitative fashion, especially in a fair, just, unbiased and in a dispassionate manner, within a period of two weeks thereafter. It cannot be gainsaid that the fresh Order in the subject matter in issue shall be passed by the 4th Respondent/Executive Officer, Thirumazhisai Town Panchayat, Thiruvallur District, in a manner uninfluenced and untrammelled with any of the observations made by this Court in the present Writ Petition.

17. It is open to the Petitioners to raise all factual and legal pleas before the 4th Respondent/Executive Officer, Thirumazhisai Town Panchayat, Thiruvallur District, who shall advert to the same by answering them and to pass a reasoned speaking Order in the subject matter in issue within the time adumbrated by this Court. Till such time, the 4th Respondent/Executive Officer, Thirumazhisai Town Panchayat, Thiruvallur District, shall not take any coercive action against the Petitioners. It is made quite clear that if the 4th Respondent/Executive Officer, Thirumazhisai Town Panchayat, Thiruvallur District, comes to a definite conclusion, based on record (by means of Documentary evidence) that the subject land in Survey No.242/4 is situated in a 'Burial Ground', then, it is open to him to take such further action, as he deems fit and proper, based on the facts and circumstances of the present case.

With the above observations/directions, the Writ Petition shall stand disposed of. No costs. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

msk

To

1. The District Collector,
Thiruvallur District,
Thiruvallur.

2.The Director of Town Panchayat,
Directorate of Town Panchayat,
Chennai.

3.The Tahsildar,
Poonamallee Taluk,
Poonamallee.

4.The Executive Officer,
Thirumazhisai Town Panchayat,
Thiruvallur District

+1cc to Mr.M. Selvam, Advocate SR.No.56805

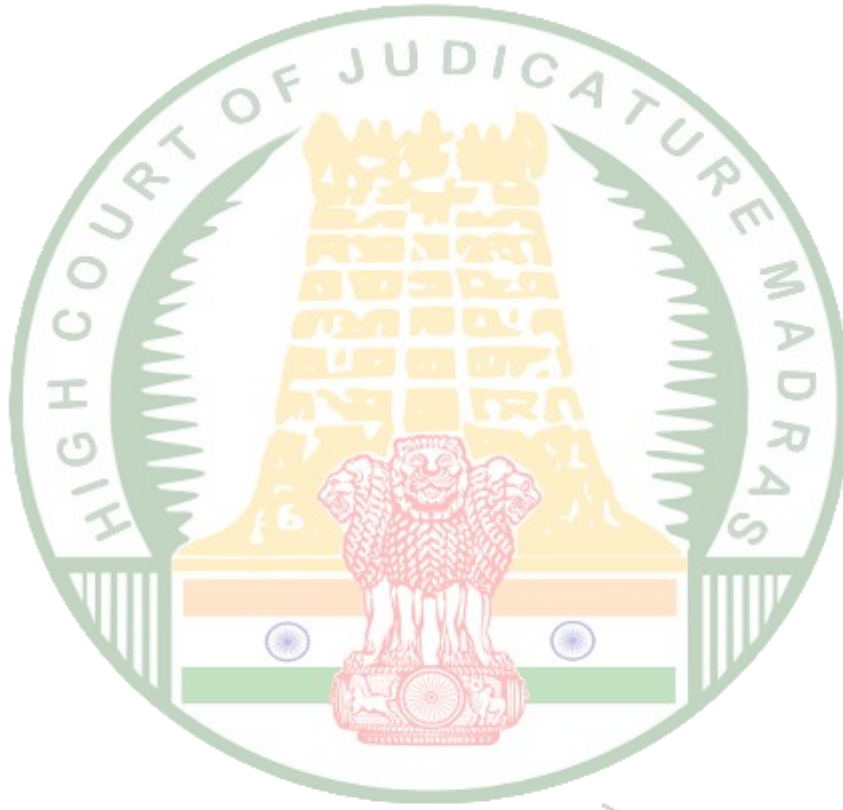
+1cc to Government Pleader SR.No.57193

W.P.No.21203 of 2018

GMV (10/09/2018)



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