

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.12083, 12084, 12085 and 12086 of 2018
and

W.M.P.Nos.14085, 14086, 14087, 14088, 14089, 14090,
14091 and 14092 of 2018

Vijaya
W/o.Thiruppall ... Petitioner in W.P.No.12083/2018

Vasu
S/o.Murugesan ... Petitioner in W.P.No.12084/2018

Alamelu
W/o.Manogaran ... Petitioner in W.P.No.12085/2018

Kavitha
W/o.Saravana Selvan ... Petitioner in W.P.No.12086/2018

Vs

1.The District Collector,
Tiruvallur District.

2.The Revenue Divisional Officer,
Madavaram Taluk,
Tiruvallur District.

3.The Tahsildar,
Madavaram Taluk,
Tiruvallur District.

4.The Section Officer (PWD),
Irrigation Department,
Redhills, Chennai - 600 052.

.. Respondents in all Writ Petitions

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the notice No.79/B.Aa/2018 dated 10.04.2018 passed by the fourth respondent and quash the same and consequently, direct the respondents not to disturb the

petitioner from the peaceful possession and enjoyment of the premises at (1) No.8, 10th Lingam Street, Madavaram Village, Madavaram Taluk, Thiruvallur District - 601 201, (2)No.4, 10th Lingam Street, Madavaram Village, Madavaram Taluk, Thiruvallur District - 601 201, (3)No.3, 10th Lingam Street, Madavaram Village, Madavaram Taluk, Thiruvallur District - 601 201, and (4)No.2, 10th Lingam Street, Madavaram Village, Madavaram Taluk, Thiruvallur District - 601 201.

For Petitioners : Mr.R.Krishna Kumar
[in all W.Ps.]
For Respondents : Mr.R.Udhaya Kumar,
[in all W.Ps.] Additional Government Pleader

C O M M O N O R D E R

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

By consent, all the writ petitions are disposed of by this common order as the issue to be adjudicated is one and the same. Mr.R.Udhaya Kumar, learned Additional Government Pleader, accepts notice for respondents.

2.1. W.P.No.12083 of 2018:

Petitioner claims to be a permanent resident of the premises at No.8, 10th Lingam Street, Madavaram Village, Madavaram Taluk, Thiruvallur District - 601 201, admeasuring an extent of 1200 sq.ft. and according to him, it is a patta land bearing Survey No.602 and petitioner claims right, title and possession through an unregistered sale deed dated 09.10.2015. Petitioner would further aver that he has been issued with Family Card and Aadhar Card and the premises in question has also been given electricity service and the said property is subjected to statutory levies. However, to the shock and surprise, the petitioner was issued with the impugned notice by the fourth respondent and challenging the said notice, petitioner has come forward to file this writ petition.

2.2. W.P.No.12084 of 2018:

Petitioner claims to be a permanent resident of the premises at No.4, 10th Lingam Street, Madavaram Village, Madavaram Taluk, Thiruvallur District - 601 201, admeasuring an extent of 600 sq.ft. and according to him, it is a patta land bearing Survey No.602 and petitioner claims right, title and possession through an unregistered sale deed dated 25.03.2015. Petitioner would further aver that he has been issued with Family Card and Aadhar Card and the premises in question has also been given electricity service and the said property is subjected to statutory levies. However, to the shock and surprise, the

petitioner was issued with the impugned notice by the fourth respondent and challenging the said notice, petitioner came forward to file this writ petition.

2.3. W.P.No.12085 of 2018:

Petitioner claims to be a permanent resident of the premises at No.3, 10th Lingam Street, Madavaram Village, Madavaram Taluk, Thiruvallur District - 601 201, admeasuring an extent of 600 sq.ft. and according to him, it is a patta land bearing Survey No.602 and petitioner claims right, title and possession through an unregistered sale deed dated 19.10.2015. Petitioner would further aver that he has been issued with Family Card and Aadhar Card and the premises in question has also been given electricity service and the said property is subjected to statutory levies. However, to the shock and surprise, the petitioner was issued with the impugned notice by the fourth respondent and challenging the said notice, petitioner came forward to file this writ petition.

2.4. W.P.No.12086 of 2018:

Petitioner claims to be a permanent resident of the premises at No.2, 10th Lingam Street, Madavaram Village, Madavaram Taluk, Thiruvallur District - 601 201, admeasuring an extent of 600 sq.ft. and according to him, it is a patta land bearing Survey No.602 and petitioner claims right, title and possession through an unregistered sale deed dated 13.05.2015. Petitioner would further aver that he has been issued with Family Card and Aadhar Card and the premises in question has also been given electricity service and the said property is subjected to statutory levies. However, to the shock and surprise, the petitioner was issued with the impugned notice by the fourth respondent and challenging the said notice, petitioner came forward to file this writ petition.

3. Learned counsel appearing for the petitioners would submit that in the light of long possession and enjoyment, they cannot be termed as encroachers and though according to the respondents, the lands on which the superstructures have been put up are classified as water course/water body, in reality, it is not so and there are very many other residential buildings exist in the locality and without doing proper enumeration and verification in terms of the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and the rules framed thereunder, action is being taken by the third respondent, which is per se unsustainable and therefore, the petitioners are constrained to approach this Court challenging the impugned notices.

4. Per contra, learned Additional Government Pleader appearing for the respondents would submit that the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and the rules framed thereunder, have been strictly followed and all the petitioners and encroachers have been put on notice and they are also very well aware of the fact that they are rank encroachers and since due process of law is followed, it is not open to petitioners to challenge the impugned notices and prays for dismissal of the writ petitions.

5. This Court has considered the rival submissions and perused the materials on record.

6. The constitutional validity and vires of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007 and the rules framed thereunder was put to challenge in W.P.No.20021 of 2018 and the Division Bench of this Court in the judgment reported in 2010 (3) MLJ 771 [T.S.Senthilkumar v. Government of Tamil Nadu] has upheld the validity and in paragraph No.20(f) has given certain directions and it is relevant to extract the same:

"20....

(f) We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

(i) When the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, notice shall also be issued to the alleged encroacher to the effect that the survey indicates that the place in his/her occupation is an encroachment and secondly, the notice in Form-III of the Rules may be issued.

(ii) On receipt of the said notice, the encroacher may give his/her objections relating to the classification of the land in his/her occupation and the nature of the encroachment within a period of two weeks.

(iii) Thereafter, the authorities shall consider the objections and pass appropriate orders, in accordance with the provisions of the Act, giving time to the encroachers to remove the encroachment."

7. This Court, taking into consideration the above facts and circumstances and without going into the merits of the case

projected by the petitioners, directs that the impugned notices issued by the fourth respondent shall be treated as show cause notices, for which the petitioners are at liberty to submit their response in the form of written statement by enclosing all relevant and authenticated documents within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the fourth respondent is directed to consider the same and pass orders on merits and in accordance with law within a period of six weeks thereafter and communicate the decision taken, to the petitioner and till such time, the fourth respondent shall defer further decision in terms of the impugned notices. It is also made clear that the petitioners, pending decision of the fourth respondent, shall not create any third party rights on the sites/superstructures in question and shall not alter the physical features also.

The Writ Petitions are disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gm

To

1.The District Collector,
Tiruvallur District.

2.The Revenue Divisional Officer,
Madavaram Taluk,
Tiruvallur District.

3.The Tahsildar,
Madavaram Taluk,
Tiruvallur District.

4.The Section Officer (PWD),
Irrigation Department,
Redhills, Chennai - 600 052.

+4cc to Mr.T.Ganesan, Advocate Sr.No.38799, 38798, 38800, 38797

+1cc to Government Pleader Sr.No.39143

JP(CO)

sm:6.7.2018

W.P.Nos.12083, 12084, 12085 and 12086 of 2018