

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

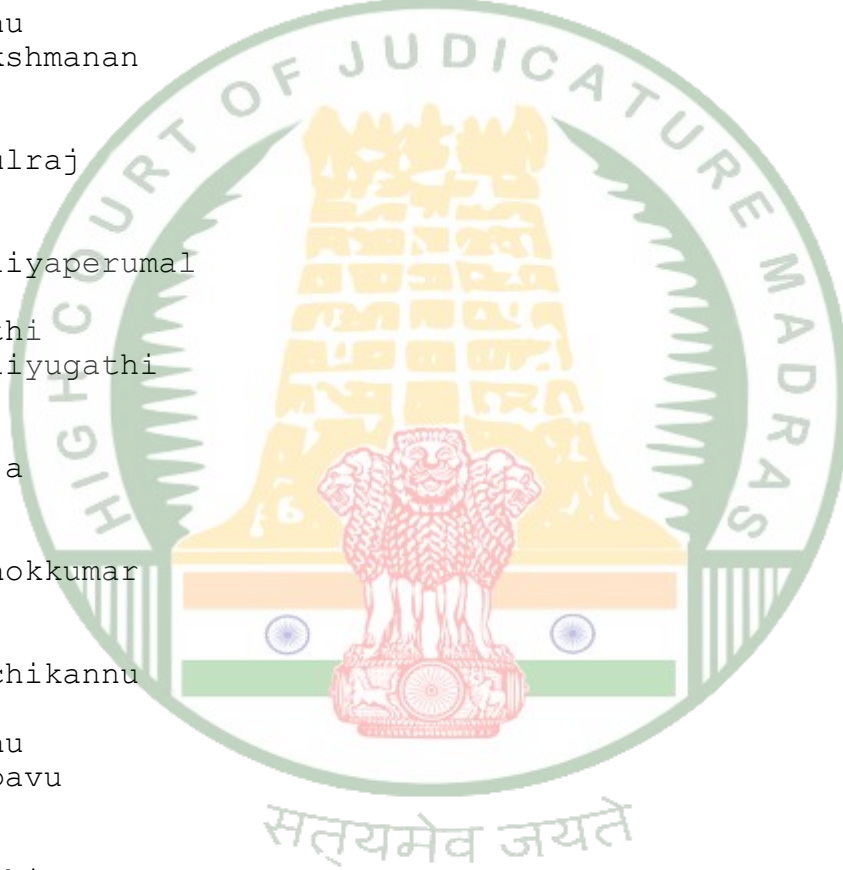
CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN  
AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.No.2936 of 2018  
and W.M.P.No.3598 of 2018

- 1.Ammaponnu  
W/o.Lakshmanan
- 2.Valli  
W/o.Arulraj
- 3.Anjalai  
W/o.Kaliyaperumal
- 4.Padmavathi  
W/o.Kaliyugathi
- 5.Yasodha  
W/o.Raja
- 6.Baby  
W/o.Ashokkumar
- 7.Kamalam  
W/o.Pachikannu
- 8.Marimuthu  
S/o.Appavu
- 9.Kavitha  
W/o.Mathivanan
- 10.Pachaiyammal  
W/o.Selvaraj
- 11.Valli  
W/o.Sakthivel
- 12.Rajam  
W/o.Dhandapani
- 13.Sumathi  
W/o.Venkatesan



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14.Anjammal  
W/o.Saravanan

15.Kuppammal  
W/o.Mohan

16.Malathi  
W/o.Baskar

17.Kiliyammal  
W/o.Pavadai

18.Muthal  
W/o.Ramalingam

19.Vasantha  
W/o.Pichandi

20.Ponmozhi  
W/o.Sekar

21.Sivakami  
W/o.Ravi

22.Arasakumar  
S/o.Kaliyaperumal

15.Chandra  
W/o.Vasudevan

... Petitioners

Vs

The Commissioner,  
Cuddalore Municipality,  
Cuddalore.  
Cuddalore District.

सत्यमेव जयते

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the respondent's impugned notice issued in Na.Ka.No.6322/2014/F1 dated 18.01.2018 and quash the same.

For Petitioners: Mr.K.Gandhi Kumar

For Respondents: Mr.T.M.Pappiah  
Special Government Pleader

O R D E R

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

By consent, the writ petition is taken up for final disposal.

2. The petitioners challenge the legality of the notice dated 18.01.2018 issued by the respondent u/s.340(1) and 344 of the Tamil Nadu District Municipalities Act, 1920.

3. The learned counsel appearing for the petitioners would submit that the petitioners are residing in their respective site for more than 30 years by putting up small superstructures and that the properties are also subjected to statutory levies and they have been issued with Aadhar Cards, Family Ration Cards, Voter Identity Cards and they are also recipients of freebies. It is further stated that since the site on which they put up superstructures, classified as 'Natham lands', they cannot be evicted.

4. The writ petition was entertained on 09.02.2018 and this Court, vide interim orders, has directed removal of encroachment in water channel/vaikal in Survey Nos.1100 and 1102 and accordingly, the respondent has filed the status report dated 09.04.2018 with supporting photographs stating that the encroachment in Survey No.1102 has been completely removed and a small portion of the encroachment in Survey No.1100 has also been demolished.

5. Mr.T.M.Pappiah, the learned Special Government Pleader, appearing for the respondent would submit that the points urged by the learned counsel appearing for petitioners revolve around disputed question on facts and would further add that the petitioners, being encroachers, cannot claim as a matter of right to remain in possession forever and by resorting to due process of law, they can be dispossessed also.

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

7. The Full Bench of this Court has taken into consideration the removal of encroachers from road and public streets viz-a-viz., the powers available under the Tamil Nadu District Municipalities Act, 1920, National Highways Act, 1956 and Tamil Nadu Land Encroachment Act, 1905. It is relevant to extract:

'38. ... (1) If the encroachment is on road or road margins, vested in Municipalities, the removal if any is to be effected only after following the

procedure contemplated in Chapter IX of the Tamil Nadu District Municipalities Act and more particularly the provisions contained in Section 182 and Section 183(6). Before taking action under Section 182 of the District Municipalities Act, notice in writing giving at least two weeks time should be served and, if the person avoids to receive the notice, such notice can be effected by affixure. However, notice by any other means, such as through public announcement or beating of drums or by general notice in newspapers, may not be sufficient.

(2) The decision in W.P.No.689 of 2005 cannot be construed as having abrogated the statutory power of the Council under Sections 182 and 183. The Council may grant licence to put up verandas, balconies, sunshades, weather-frames and the like. Similarly, the Council has power to lease road sides and street margins for occupation on such terms and conditions and for such period as the Council may fix. However, such power under Sections 183(1) and 183(3) should be exercised keeping in view the provisions contained in Section 183(4) and no such licence under Section 183(1) or lease under Section 183(3) should be granted if the projection, construction or occupation is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road as such. Any projection or construction put up under Section 183(1) or (2) can be removed on expiry of the licence or the lease, as the case may be. Compensation is required to be paid in matters coming within the scope of 182(2).

(3) Payment of property tax, provisions of water connection or electricity by themselves cannot be construed as conferring any independent right, if the encroachment is otherwise unauthorised.

(4) The above directions and observations are also applicable to encroachment in respect of road or road margins coming within the jurisdiction of Municipal Corporations or Town and Village Panchayats, in which event, necessary action can be taken by the concerned authorities by following the relevant provisions of law applicable to such Corporations or Panchayats.

(5) To the extent the National Highways Act, 1956 and the Control of National Highways (Land and Traffic) Act, 2002 are applicable, action can be taken only by following the procedure prescribed under such statutes. Similarly the provisions of the Tamil Nadu Highways Act, 2001, are applicable to the Roads coming under the State Act.

(6) If the encroachment is on the land belonging to the Local Authorities, but such land is not part of the road or road margin or roadside land, eviction can be effected by following the procedure contemplated in law, namely, either by taking recourse to the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 or any other law applicable or otherwise by taking recourse to Civil Courts and not by use of unilateral force.

(7) So far as the encroachment on the land belonging to the Government is concerned, action for eviction if any can be taken only by the appropriate authority and by following the procedure contemplated under the Tamil Nadu Land Encroachment Act, 1905.

(8) The directions issued in W.P.No. 689 of 2005 are applicable to removal of encroachments on roads and road margins and not other lands belonging to the Local Authorities or the State. The said decision should not be construed as giving a licence to the Local Authorities to cancel the existing license or lease or to remove the encroachments without following the procedure contemplated under the law.

(9) If any Civil Courts decree or interim order is holding the field, obviously, no action can be taken, unless and until such a decree or interim order is set aside or vacated in a manner known to law.'

8. It is brought to the knowledge of this Court that in response to the notice, the petitioners had given individual representations to the respondent. This Court grants liberty to the petitioners herein to submit individual representation along with a copy of this order by enclosing relevant and authenticated documents including Aadhar Cards, Family Ration Cards, Voter Identity Cards and documents evidencing statutory levies, within a period of four weeks from the date of receipt of a copy of this order and the respondent, upon receipt of the same, shall afford an opportunity of personal hearing to each of the petitioners and shall pass appropriate orders in accordance with law within a further period of twelve weeks thereafter and communicate the decision taken to each of the petitioners and till such time, shall defer further decision as to the removal or dispossession. It is also made clear that the petitioners, till the disposal of the representations by the respondent, shall not create any third party right in respect of the site in question and shall not alter the physical features also.

The writ petition stands disposed of accordingly. No costs.  
Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CS V)

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Sub Assistant Registrar

gm

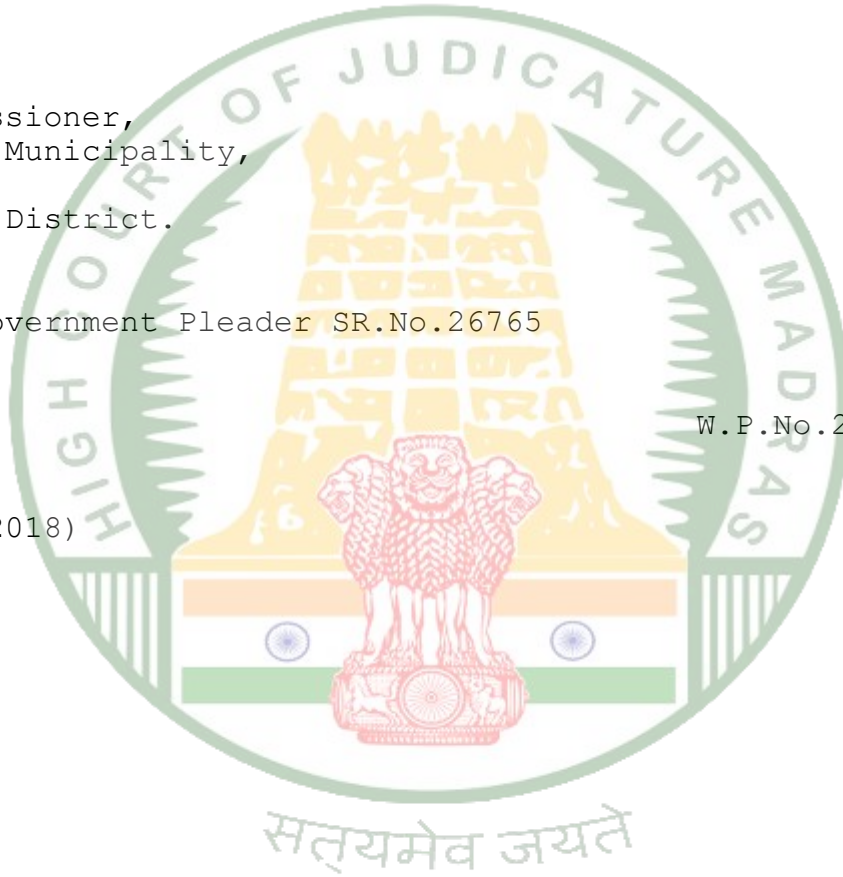
To

The Commissioner,  
Cuddalore Municipality,  
Cuddalore.  
Cuddalore District.

+1cc to Government Pleader SR.No.26765

W.P.No.2936 of 2018

VGII (CO)  
GN (03/05/2018)



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