

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.11.2018
CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
W.P.No.25911 of 2018
and WP No.29398 of 2018 & WMP No.34357 of 2018
and WP No.29401 of 2018 & WMP No.34361, 34364 of 2018

S.Muthumeena ... Petitioner in WP 25911/18
Micheal ... Petitioner in WP 29398/18

- 1.N.Gangadharan
Proprietor, G.N.Sabari Cool Bar,
No.254/290 Ethiraj Salai,
Egmore, Chennai 8.
- 2.G.N. Vijayan
Proprietor, G.N.Sabari Snacks Bar,
No.254/290 Ethiraj Salai,
Egmore, Chennai 8. ... Petitioners 1 & 2 in WP 29401/18

Vs.

1. The Secretary to the Government of Tamil Nadu,
Public Works Department,
Secretariat, Chennai 600 009.
2. The Executive Engineer,
Public Works Department,
WRO, Araniyar Basin Division,
Chepauk, Chennai 5.
3. The Commissioner,
Corporation of Cehnnai,
Rippon Building, Chennai.
4. The Executive Engineer & Zonal Office-V
Corporation of Chennai,
No.61, Basin Bridge Road,
Chennai 600 021. ... Respondents 1 to 4 in WP 25911
29398/18
5. Mr.S.Antony
Proprietor,
Evergreen Ethiraj Salai,
Egmore, Chennai 600 008.
... 5th Respondent in WP 25911/18

1. The Secretary to the Government
Public Works Department,
Buckkingham Canal Division,
Secretariat, Chennai 600 009.

2. Executive Engineer,
Public Works Department,
Buckkingham Canal Division,
Secretariat, Chennai 600 009.

3. Assistant Executive Engineer,
Public Works Department,
Buckkingham Canal Division,
Secretariat, Chennai 600 009.

... Respondents 1 to 3 in WP 29401/18

Writ Petition Prayer in WP.No. 25911 of 2018:- Petitions filed under Article 226 of the Constitution of India praying for

(i) Prayer in WP.No. 25911 of 2018: issuance of a Writ of Mandamus, directing the respondents 1 to 4 herein to take action against the 5th respondent's encroachment of Land and unauthorized construction in Survey No.1637/2, Egmore Village, Chennai District pursuant to the petitioner's representation dated 06.04.2018.

(ii) Prayer in WP.No. 29398/18: Writ of Mandamus, forbearing the respondents herein or their subordinates or any body acting through them from in any manner evicting or dispossessing the petitioner or in any manner demolishing the temporary structure put up by the petitioner herein in Plot No.1/G3, Ethiraj salai, Egmore, Chennai 600 008 without invoking the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised occupants) Act, 1975 and the rules made therein or any under other provision of law.

(iii) Prayer in W.P.No. 29401/18: Writ of Mandamus, directing the respondents not to demolish the Petitioner's shop at No.254/290, Commander in Chief Road, presently Ethiraj Salai, Egmore, Chennai 600 008 without due process of law.

For Petitioner : Mr.K.Krishnan, petitioner in WP 25911/18

Mr.V.Karthic, Senior Counsel
for Mr.N.Damodaran for R5 in WP 25911/18
& Petitioner in WP 29398/18

Mr.Krishna Ravindran
for A.Charles Darwin for petitioner in WP 29401/18

For Respondents : Mrs.Thangavadhana Balakrishnan
Addl. Govt. Pleader for R 1 & 2
in W.P.NO. 25911/18, AND WP.NO. 29398/18 &
R1 to R3 IN W.P.NO. 29401/18

Mr. K.Soundarajan for R 3 & 4 in
W.P.25911/18, 29398/18

C O M M O N O R D E R

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The prayer in the Writ Petitions are as follows:

(i) issuance of a Writ of Mandamus, directing the respondents 1 to 4 herein to take action against the 5th respondent's encroachment of Land and unauthorized construction in Survey No.1637/2, Egmore Village, Chennai District pursuant to the petitioner's representation dated 06.04.2018. (in WP 25911/2018)

(ii) Writ of Mandamus, forbearing the respondents herein or their subordinates or any body acting through them from in any manner evicting or dispossessing the petitioner or in any manner demolishing the temporary structure put up by the petitioner herein in Plot No.1/G3, Ethiraj salai, Egmore, Chennai 600 008 without invoking the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised occupants) Act, 1975 and the rules made therein or any under other provision of law.(in WP 29398/18)

(iii) Writ of Mandamus, directing the respondents not to demolish the Petitioner's shop at No.254/290, Commander in Chief Road, presently Ethiraj Salai, Egmore, Chennai 600 008 without due process of law. (in WP 29401/18)

2. While the petitioner in Writ Petition No.25911 of 2018, seeks a Writ of Mandamus, directing the respondents 1 to 4 therein to take action against the 5th respondent to remove the encroachments in Survey No.1637/2, Egmore Village, Chennai District, pursuant to the petitioner's representation dated 06.04.2018, the petitioners in other two writ petitions, who claim to be persons in possession of portions of land in Survey No.1637/2, seek a Writ of Mandamus forbearing the respondents therein from evicting them except under due process of law.

3. Since the 5th respondent in WP No.25911 of 2018 and the petitioners in WP Nos.29398 and 29401 of 2018 are in occupation of portions of land in the very same area, these Writ Petitions are taken up together for disposal.

4. We have heard Mr.l.Krishnan, learned counsel appearing for the petitioner in WP No.25911 of 2018, Mr.V.Karthic, learned Senior Counsel appearing for Mr.N.Damodaran, learned counsel appearing for the 5th respondent in WP No.25911 of 2018 and the petitioner in WP No.29398 of 2018. Mr.Krishna Ravindran, learned counsel appearing for the petitioners in WP No.29401 of 2018, Mrs.Thangavadhana Balakrishnan, learned Additional Government Pleader appearing for respondents 1 & 2 in WP Nos.25911/18, 29398/18 and respondents 1 to 3 in WP 29401/18 Mr.K.Sounthararajan, learned counsel appearing for respondents 3 & 4 in WP Nos.25911/18, 29398/18

5. It is the claim of the 5th respondent in WP No.25911 of 2018 and the petitioners in WP Nos. 29398 and 29401 of 2018 that they are in possession of these lands, pursuant to a lease granted by the 2nd respondent as early as on 22.07.1986. It is also their claim that they have been paying the lease rent as fixed.

6. Mrs.Thangavadhana Balakrishnan, learned Additional Government Pleader appearing for the Official respondents, namely respondents 1 and 2, would contend that the lease granted to the occupants, namely the 5th respondent in WP No.25911 of 2018 and petitioners in other two Writ Petitions has been cancelled by the 2nd respondent as early as on 08.12.2017 and notices have been issued to them for removal of encroachment on 12.12.2017.

7. The occupants would however, claim that they have not received any notice. After some arguments, the 5th respondent in WP No.25911 of 2018 and the petitioners in WP Nos. 29398, 29401 of 2018 had filed separate affidavits stating that the notice dated 12.12.2017 may be treated as show cause notice and they would submit their objections within 15 days from today. Even though, the eviction proceedings are said to have been taken under the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007, and the said enactment does not require a show cause notice before eviction, a Division Bench of this Court in T.S.Senthil Kumar v. Government of Tamil Nadu and others, reported in (2010) 3 MLJ 771, has held that the principles of natural justice should be followed even in proceedings under the Special Enactment, namely the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007.

8. We have also considered a similar question in WP Nos.28643, 26970, 24785, 26974, 28031, 28034, 28041, 28572 and

28578 of 2018 and held that the authorities are bound to follow the directions issued by the Division Bench in T.S.Senthil Kumar 's case, cited supra. However, in view of the fact that the 5th respondent in WP No.25911 of 2018, and the petitioners in WP Nos. 29398, 29401 of 2018 have filed affidavits, accepting that the notices dated 12.12.2017 may be treated as show cause notices and they would submit their explanation within 15 days from today, we direct them to submit their explanation or objection to the proposed eviction within 15 days from today. The 2nd respondent is directed to consider the objections objectively and proceed further in accordance with law.

9. Accordingly, the Writ Petitions are disposed of with the above observation. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

jv

To

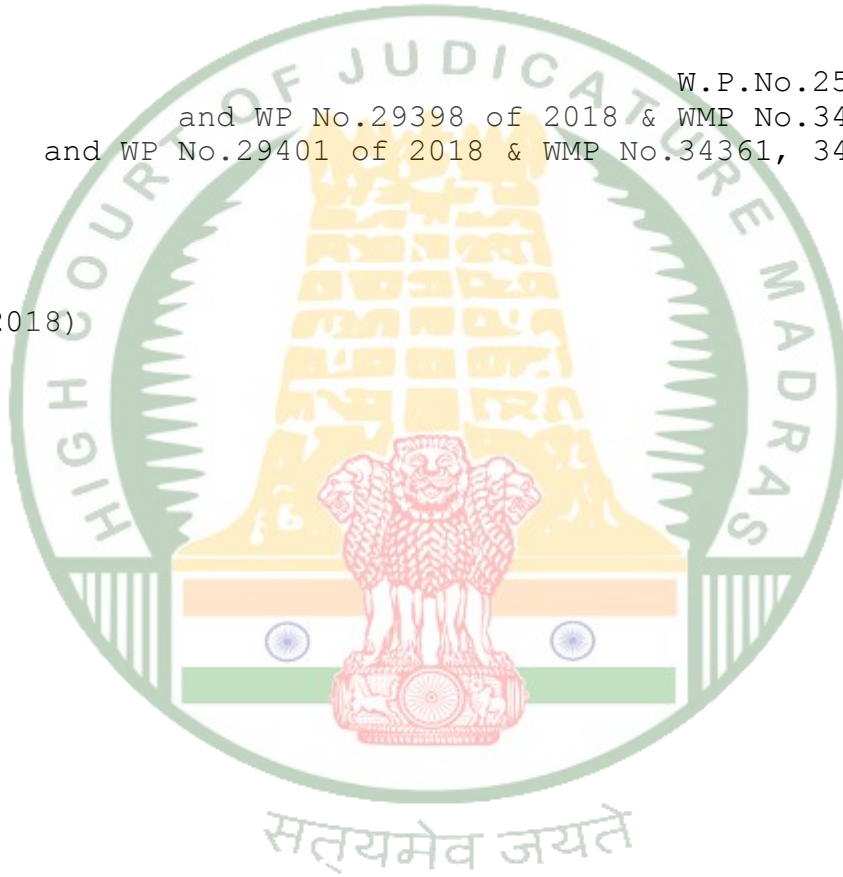
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5. Executive Engineer,
Public Works Department,
Buckingham Canal Division,
Secretariat, Chennai 600 009.

6. Assistant Executive Engineer,
Public Works Department,
Buckkingham Canal Division,
Secretariat, Chennai 600 009.

+2cc to Mr.N.Damodaran, Advocate, S.R.No. 76361 & 76078
+2cc to Mr.K.Sundararajan, Advocate, S.R.No. 76202 & 76203
+1cc to Mr.A.Charles Darwin Advocate, S.R.No. 76006
+1cc to Mr.L.Karthiga, Advocate, S.R.No. 75980
+1cc to the Government Pleader, S.R.No. 76795, 76794, 76797

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GN(14/12/2018)



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