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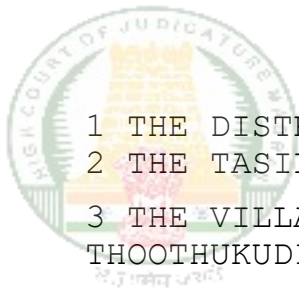
BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED : 02.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM  
and  
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P(MD)Nos.2769 to 2777, 4114 and 4154 of 2018  
and  
W.M.P.(MD)Nos.2926 to 2943 and 4274 of 2018

|                                                                                                           |                                                       |
|-----------------------------------------------------------------------------------------------------------|-------------------------------------------------------|
| N.JAYALAKSHMI                                                                                             | ... Petitioner in WP(MD). 2769/ 2018                  |
| R.JENCY                                                                                                   | ... Petitioner in WP(MD). 2770/ 2018                  |
| S.SANTHANAMARI                                                                                            | ... Petitioner in WP(MD). 2771/ 2018                  |
| S.ARUNACHALAM                                                                                             | ... Petitioner in WP(MD). 2772/ 2018                  |
| M.CHINNATHURAI                                                                                            | ... Petitioner in WP(MD). 2773/ 2018                  |
| V.BAGAVATHI                                                                                               | ... Petitioner in WP(MD). 2774/ 2018                  |
| N.THANGAM                                                                                                 | ... Petitioner in WP(MD). 2775/ 2018                  |
| M.RAGUNATHAN                                                                                              | ... Petitioner in WP(MD). 2776/ 2018                  |
| V.GOPAL ANNAMMAL                                                                                          | ... Petitioner in WP(MD). 2777/ 2018                  |
| 1 K.KALIMUTHU                                                                                             |                                                       |
| 2 ARUMUGAM                                                                                                |                                                       |
| 3 CHELLAIAH                                                                                               |                                                       |
| 4 KRITHIGA                                                                                                | ... Petitioners in WP(MD). 4114/ 2018                 |
| JOSEPH                                                                                                    | ... Petitioner in WP(MD). 4154/ 2018                  |
|                                                                                                           | VS                                                    |
| 1 THE DISTRICT COLLECTOR,                                                                                 | THOOTHUKUDI DISTRICT.                                 |
| 2 THE TAHSILDAR,                                                                                          | THOOTHUKUDI TALUK, THOOTHUKUDI DISTRICT.              |
| <a href="https://hcservices.ecourts.gov.in/hcservices/">https://hcservices.ecourts.gov.in/hcservices/</a> | ... 1 and 2 Respondents in WP(MD). 2769 to 2777/ 2018 |



- 1 THE DISTRICT COLLECTOR THOOTHUKUDI DISTRICT.
- 2 THE TASILDHAR THOOTHUKUDI TALUK, THOOTHUKUDI DISTRICT.
- 3 THE VILLAGE ADMINISTRATIVE OFFICER, MAPPILLAIYOORANI VILLAGE, THOOTHUKUDI TALUK, THOOTHUKUDI DISTRICT.

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... Respondents in WP(MD). 4114/ 2018

- 1 THE DISTRICT COLLECTOR, THOOTHUKUDI DISTRICT, THOOTHUKUDI.
- 2 THE DISTRICT REVENUE OFFICER THOOTHUKUDI DISTRICT, THOOTHUKUDI.
- 3 THE THASILDAR THOOTHUKUDI TALUK, THOOTHUKUDI DISTRICT. ... Respondents in WP(MD). 4154/ 2018

Prayer in WP(MD). 4114/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order of the 2nd respondent dated 31.01.2018.

Prayer in WP(MD). 4154/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Mandamus directing the 3rd respondent to conduct an enquiry on the basis of the petitioner s representation dated 12.02.2018

PRAYER IN WP(MD)Nos.2769 to 2777 of 2018: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the impugned order in order No.A3/13740/14 dated 31.01.2018 on the file of the 2<sup>nd</sup> respondent and quash the same and further directing the 1<sup>st</sup> respondent to grant patta to the petitioner in respect of the house property in Survey No.223/6, Mappillaiyoorani, Thoothukudi, Thoothukudi District.

For Petitioners : Mr.G.Prabhu Rajadurai  
in WP(MD)Nos.2769 to 2777 of 2018  
Mr.A.K.Manickam, in WP(MD)4114/2018  
Mr.M.Sankar, in WP(MD)4154/2018

For Respondents : Mr.V.R.Shanmuganathan  
Special Government Pleader  
in all W.P's

## COMMON ORDER

[Order of the Court was made by T.S.SIVAGNANAM, J.]

Heard the Mr.G.Prabhu Rajadurai, A.K.Manickam and M.Sankar learned counsel for the petitioners and Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents.



2. These Writ Petitions have been filed by the petitioners challenging the proceedings of the second respondent dated 31.01.2018 issued under Section 6 of the Tamil Nadu Land and Encroachment Act, 1905. We could have dismissed all these writ petitions on the ground of availability of an alternative remedy as against the impugned order before the first respondent. However, we found that the petitioners have not sent an effective objection to the notice issued under section 7 of the Act.

3. From the counter affidavit filed by the Tahsildar, it is seen that the land in Survey No.223/6, Mappillaiyoorani Village, has been classified in the village accounts as "Thoothukudi Nagaratchi Salavaithurai". Therefore, the question would be as to whether the petitioners can continue to remain in those lands or seek for patta.

4. The learned counsel for the petitioners vehemently contended that in all cases of encroachment, eviction is not required to be done by the authority and what is required to be done is to consider if there is a need for taking over the land and upon such satisfaction, action can be initiated for removal of encroachment.

5. It is further submitted that in the instant case, such assessment regarding need to take over the land, has not been done but the entire action has been taken on account of the writ petition filed by one Thoothukudi Circle Wahsermen Union in the year 2010 in W.P.(MD)No.473 of 2010, wherein they obtained a direction to the official respondents to remove the encroachments in Survey Nos.223/1, 223/3 and 223/6, Mappillaiyoorani Village, Thalamuthu Nagar, Tuticorin District and the writ petition was allowed by an order dated 07.12.2016 by issuing a positive direction to remove the encroachment. However, the revenue officials rightly did not immediately vacate the encroachers but issued notice under Section 7 of the Act.

6. The grievance of the petitioners is that the notice was issued by merely referring to the order in the writ petition and there is no specific finding that the land which has been encroached is required for the Government purpose. In our considered view, this submission cannot be applicable to the instant case on account of the stand taken in the counter affidavit, more particularly in paragraph 3 of the counter affidavit, where it has been stated that in the village accounts, the land has been classified as "Thoothukudi Nagaratchi Salavaithurai".

7. Be that as it may, we are satisfied that the petitioner can be granted one more opportunity as admittedly they have been residing there for nearly two decades. The learned counsel for the petitioners submitted that on the opposite side of the road, house site pattas have been granted to the persons, who are occupying



Government land and such benefit can also be extended to these petitioners, who have constructed houses and living for several years. Any person, who encroaches has no vested right over the land. More so, when the land is said to have been allotted to the Thoothukudi Nagaratchi Salavaithurai and the village accounts reflects the name of the said entity. In the light of the above discussion, we dispose of all the writ petitions with the following directions:-

The petitioners are directed to treat the impugned order issued under Section 6 of the Act, as a show cause notice and submit their objections to the second respondent on or before 23.03.2018 and on receipt of such objections, the second respondent shall fix a date for personal hearing. The petitioners or their authorised representatives shall be heard in person and if any documents are placed by them, the same shall be considered by the second respondent and the second respondent shall pass a speaking order giving reasons as to why the objections raised by the petitioners is feasible or not feasible of consideration. Such order shall be passed by the second respondent on or before 11.04.2018. Till then status quo which is prevailing as on date shall continue.

No costs. Consequently, W.M.P.(MD)Nos.2926 to 2943 and 4274 of 2018 are closed.

Sd/-

Assistant Registrar (Crl side)

/True copy/

Sub Assistant Registrar

To

- 1 THE DISTRICT COLLECTOR, THOOTHUKUDI DISTRICT,  
THOOTHUKUDI.
- 2 THE THASILDAR THOOTHUKUDI TALUK,  
THOOTHUKUDI DISTRICT.
- 3 THE DISTRICT REVENUE OFFICER THOOTHUKUDI DISTRICT,  
THOOTHUKUDI.
- 4 THE VILLAGE ADMINISTRATIVE OFFICER,  
MAPPILLAIYOORANI VILLAGE, THOOTHUKUDI TALUK,  
THOOTHUKUDI DISTRICT.

+1cc to Mr.M.SANKAR, Advocate, SR. 52625

+9cc to Mr.G.PRABHU RAJADURAI, Advocate, SR.52720

+1cc to Mr.A.K.MANICKAM, Advocate, SR. 52568

W.P(MD)No.2769 of 2018 etc., batch  
02.03.2018