



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2018

CORAM:

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

W.P.(MD) Nos.5133 to 5138 of 2018

and

W.M.P.(MD) Nos.5115 to 5126 of 2018

Annammal	... Petitioner in W.P(MD)No.5133/2018
Subramanian	... Petitioner in W.P(MD)No.5134/2018
Kannan	... Petitioner in W.P(MD)No.5135/2018
Sebastiammal	... Petitioner in W.P(MD)No.5136/2018
Indira	... Petitioner in W.P(MD)No.5137/2018
Krishnakumar	... Petitioner in W.P(MD)No.5138/2018

-vs-

1. The Tahsildar,
Srirangam Taluk,
Trichy District.

2. The Revenue Inspector,
Manikandam Part,
Srirangam Taluk,
Trichy.

... Respondents in all
petitions

Common Prayer: Petitions filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records pertaining to the impugned notices issued by the 2nd respondent dated 03.03.2018 and quash the same.

For Petitioners	: Mr.B.Jameel Arasu (in all Wps)
For Respondents	: Mr.V.R.Shanmuganathan, Spl.G.P. (in all Wps)

O R D E R

(Order of the Court was made by T.S.SIVAGNANAM, J.)

Heard Mr.B.Jameel Arasu, learned counsel for the petitioners and Mr.V.R.Shanmuganathan, learned Special Government Pleader accepted notice on behalf of the respondents.



2. In the light of the glaring errors which are apparent on the face of the impugned notices, we have taken up the writ petitions for disposal.

3. The petitioners are termed as encroachers of government land and action was requested to be initiated to vacate them from the government land. Since the revenue officials did not initiate any action, third party filed a writ petition before this Court in W.P. (MD) No.14894 of 2017, which was disposed of by order dated 06.09.2017, directing the authorities to take action. However, the copy of the said order has not been enclosed in the typed set of papers. Pursuant to the said direction, it appears that the respondents initiated action by issuing notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and since no objections were filed, an order under Section 6 of the Act came to be passed.

4. One of the petitioners in these batch of cases viz., Sebastiammal filed W.P. (MD) No.162 of 2018 directing the respondents not to evict her from the property in question. The said writ petition was disposed of by order dated 05.01.2018, directing the authorities to consider the objection given by the said petitioner dated 16.11.2016 and proceed further in accordance with law, after affording an opportunity of personal hearing. Subsequently, the petitioners have given a representation on 30.01.2018. According to the learned counsel for the petitioner, this representation is the objection given by the petitioner from being evicted from the property in question, claiming that the property is their ancestral property.

5. We have perused the said representation dated 31.01.2018 and we find that the representation is bereft of particulars and no document has been annexed to the representation to establish the claim of the petitioners that the property in question is their ancestral property. All that they have stated is that they are in possession of the property for over 60 years undertaking cultivation and the family is depending on the income from the said property and requested the authority to enquire into the matter and grant sufficient time to them.

6. Once again, one of the petitioner viz., Annammal filed W.P. (MD) No.2198 of 2018, praying for a direction upon the respondents not to evict her from the property in question. The said writ petition was disposed of by an order dated 02.02.2018 with certain specific and pointed directions. At this stage, we refer to the operative portion of the order, which reads as follows:

"6. The petitioner already gave her objections through representation dated 30.01.2018. Without considering the said representation, the respondents cannot evict the petitioner from the said property. Therefore, the third respondent is directed to consider the petitioner's objection within a period

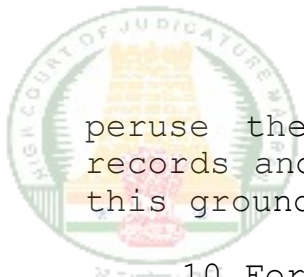


of four weeks from the date of receipt of a copy of this order and after giving an opportunity of hearing to the petitioner pass appropriate orders on merits and in accordance with law within a period of four weeks thereafter. During the time of hearing, the petitioner is at liberty to produce all the documents which are in her favour and the respondents shall also refer the original revenue records and pass appropriate orders. Till such order is passed and the copy of the same is served upon the petitioner, the petitioner shall not be disturbed."

7. With the above direction, the writ petition stood disposed of. Therefore, the competent authority, who is entitled to take action for removal of the encroachment depending upon the classification of the land, is required to consider the objection given by the petitioner dated 30.01.2018, within a period of four weeks from the date of receipt of a copy of the order and after affording an opportunity of hearing, appropriate orders were directed to be passed in accordance with law, within a period of four weeks thereafter. Further, the Court observed that during the personal hearing, the petitioner is at liberty to produce all documents, which are in her favour and the respondents were directed to refer the original revenue records and pass orders. Till such order is passed and the copy is served on the petitioner, they were directed not to be disturbed. Unfortunately, the respondents, who are parties to the earlier writ petition did not understand the scope and purport of the direction issued. But, mechanically, the second respondent has issued the impugned notices.

8. We find from the impugned notices that there is no reference to any statutory provision under which action is being initiated. As the respondents claim that the land is a government poramboke land, then action can be taken for eviction of any encroacher by invoking the provisions of Tamil Nadu Land Encroachment Act, 1905. If the classification is otherwise, then, there are separate enactments which govern those lands and the procedure under those enactments have to be followed. As none of these procedures having been followed, we are inclined to interfere with the impugned notices.

9. It cannot be disputed by the respondents that the second respondent has no jurisdiction to issue the impugned notices. Even if proceedings have to be initiated under the provisions of the Tamil Nadu Land Encroachment Act, 1905, it is the Tahsildar of the concerned area, who has to initiate action. We would not solely blame the second respondent for having initiated action. Because, there was a direction in the earlier writ petition to him to take action in accordance with law. Even assuming the second respondent has scrupulously followed the direction, he could not have taken action without issuing show cause notice, hear the objections of the petitioner/encroachers, afford an opportunity of personal hearing,



peruse the documents that they may produce, verify the revenue records and then only orders could have been passed. Therefore, on this ground also, the impugned notices are flawed.

10. For the above reasons, these writ petitions are allowed and the Tahsildar viz., the first respondent is directed to issue show cause notice under Section 7 of the Tamil Nadu Land Encroachment Act, afford sufficient time to the petitioners to submit their objections and after affording opportunity of personal hearing and after considering the objections and the documents, if any that may be produced by the petitioners, verify the revenue records and pass order under Section 6 of the Act. The order to be passed under Section 6 of the Act should be a speaking order and not in the statutory format alone. The above exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. Till then, status-quo, which is prevailing in respect of the land in question shall be maintained.

11. With the above observation and directions, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Tahsildar,
Srirangam Taluk,
Trichy District.

2. The Revenue Inspector,
Manikandam Part,
Srirangam Taluk,
Trichy.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 54600

+ 6 CC TO Mr. B. JAMEEL ARASU, ADVOCATE IN SR No. 54440 to 54445

ARUL

TE/SKN-RSK/SAR-1 : 26/03/2018 : 4P/10C