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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.05.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)Nos.11048 to 11057 and 11142 to 11145 of 2018
and
W.M.P.(MD)No.10131 to 10140 of 2018
in
W.P.(MD)Nos.11048 to 11057 of 2018
and
W.M.P.(MD)Nos.10194 to 10197 of 2018
in
W.P.(MD)Nos. 11142 to 11145 of 2018

T.AMARAVATHI	...PETITIONER IN WP(MD)NO. 11048/2018
M.RAJESWARI	...PETITIONER IN WP(MD)NO. 11049/2018
K.DHARMARAJAN	...PETITIONER IN WP(MD)NO. 11050/2018
S.CHANDRASEKARAN	...PETITIONER IN WP(MD)NO. 11051/2018
R.HARIRAM @ HARIRAMA PALANI	...PETITIONER IN WP(MD)NO.11052/2018
K.NAGARAJAN	...PETITIONER IN WP(MD)NO. 11053/2018
M.MURUGANANDHAM	...PETITIONER IN WP(MD)NO. 11054/2018
G.PANJAVARNAM	...PETITIONER IN WP(MD)NO. 11055/2018
D.VALLI	...PETITIONER IN WP(MD)NO. 11056/2018
M.NEELAMEGASAMY	...PETITIONER IN WP(MD)NO. 11057/2018
M.THECHINAMOORTHY	...PETITIONER IN WP(MD)NO. 11142/2018
V.KALAIARASI	...PETITIONER IN WP(MD)NO. 11143/2018
SREE KAMATCHI BUILDERS, REP BY.ITS PROPRIETOR, SENTHILKUMAR	...PETITIONER IN WP(MD)NO. 11144/2018
M.ANGUCHAMY	...PETITIONER IN WP(MD)NO. 11145/2018

Vs.

1.THE DISTRICT COLLECTOR,
DISTRICT COLLECTOR'S OFFICE,
RAMNAD, RAMNAD DISTRICT.

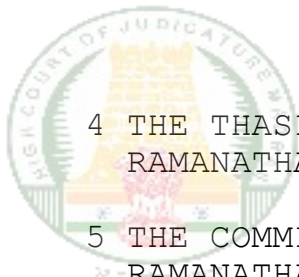
2.THE TAHSILDAR,
TALUK OFFICE,
RAMNAD, RAMNAD DISTRICT.

...RESPONDENTS IN WP(MD)Nos.11048 TO 11057/2018

1 THE DISTRICT COLLECTOR, RAMANATHAPURAM.

2 THE DISTRICT REVENUE DIVISIONAL OFFICER,
RAMANATHAPURAM DISTRICT, RAMANATHAPURAM.

3 THE REVENUE DIVISIONAL OFFICER,
RAMANATHAPURAM DISTRICT, RAMANATHAPURAM.



4 THE THASILDAR, RAMANATHAPURAM DISTRICT,
RAMANATHAPURAM.

5 THE COMMISSIONER,
RAMANATHAPURAM MUNICIPALITY, RAMANATHAPURAM.

6 THE THIRAPATHAI AMMAN TEMPLE VELLIPATTINAM,
RAMANATHAPURAM REP BY ITS MANAGING TRUSTEE.

...RESPONDENTS IN WP(MD)Nos.11142 TO 11145/2018

PRAYER IN WP(MD)No.11048 of 2018: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the second respondent proceedings made in Na.Ka.B9/148/2017 circular dated 04.05.2018 as well as consequential order dated 05.05.2018 made in Na.K.aB9/148/2017 Notice under Section 6 of the Land Encroachment Act, 1905, quash the same, and further direct the second respondent to consider the petitioner's explanation dated 04.11.2017.

Prayer in WP(MD)Nos.11049, 11050 and 11055 of 2018 :

Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to 2nd respondent proceedings made in Na.Ka.B9 / 148 / 2017 circular dated 04/05/2018 as well as consequential order dated 05/05/2018 made in Na.Ka.B9 / 148 / 2017 Notice under Section 6 of Land Encroachment Act, 1905, quash the same, and further direct the 2nd respondent to consider the petitioners explanation dated 06/11/2017.

Prayer in WP(MD)Nos. 11051 to 11054, 11056 and 11057 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to 2nd respondent proceedings made in Na.Ka.B9 / 148 / 2017 circular dated 04/05/2018 as well as consequential order dated 05/05/2018 made in Na.Ka.B9 / 148 / 2017 Notice under Section 6 of Land Encroachment Act, 1905, quash the same, and further direct the 2nd respondent to consider the petitioners explanation dated 04/11/2017.

Prayer in WP(MD)Nos.11142 to 11145 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Certiorarified Mandamus calling for the records relating to impugned order in Na.Ka.No.B9/148/2017 dated 08.05.2018 passed by the 4th respondent and quash the same as illegal and consequently direct the respondents to proceed further in accordance with law after affording opportunity to the petitioner and pass such further or other orders.

For Petitioner : Mr.R.Sundar in
(WP(MD)Nos.11048 to 11057/2018)

For Petitioner : Mr.B.Vinoth Balan in
(WP(MD)Nos.11142 to 11145/2018)



For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader in
(WP(MD)Nos. 11048 to 11057/2018)

For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader in
1 to 4 in (WP(MD)Nos. 11142 to 11145/2018)

For Respondent No.5: Mr.A.Kannan in
(WP(MD)Nos. 11142 to 11145/2018)

COMMON ORDER

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

This common order will govern all these Writ Petitions.

2. Mrs.J.Padmavathi Devi, learned Special Government Pleader accepts notice on behalf of the official respondents i.e., both the respondents.

3. Entire proceedings pertain to alleged encroachment and removal of the same under the Tamil Nadu Land Encroachment Act, 1905 [hereinafter referred to as 'said Act' for the sake of the convenience and clarity].

4. One K.Jeganathan had filed a Writ Petition in this Court being W.P.(MD)No.6589 of 2017 alleging encroachment in various survey numbers, which are set out in the prayers in the respective Writ Petitions.

5. The aforesaid Writ Petition W.P.(MD)No.6589 of 2017 came to be disposed of by this Court vide order dated 14.07.2017, wherein and whereby, a Division Bench of this Court had directed the jurisdictional Tahsildar and Commissioner of the concerned Municipality to consider a representation submitted by the petitioner (K.Jeganathan) on merits and initiate action in accordance with law after issuing notice to the private respondents therein i.e., respondents 6 to 26 therein, many of whom, are writ petitioners before us. A time frame was also fixed. Paragraph Nos.2 and 3 of the said order read as follows:

"2.We direct the respondents 4 and 5 to consider the representation submitted by the petitioner dated 22.09.2015, on merits and as per law, after issuing notice to the respondents 6 to 26 and other encroaches, if any. Such exercise shall be completed within a period of four months from the date of receipt of a copy of this order.

3.The Writ Petition is disposed of with the above direction. No costs. Consequently, the connected Miscellaneous Petition is closed."



6. Thereafter, a notice under Section 7 of the said Act being notice dated 11.10.2017 was issued. To be noted, the writ petitioners before us are noticees in those notices under Section 7 of the said Act.

7. It is not in dispute that the noticees submitted their explanation dated 06.11.2017, in response to the aforesaid notices under Section 7 of the said Act.

8. Post submission of explanation by the noticees, petitioner in the aforesaid writ petition being W.P.(MD)No.6589 of 2017, i.e., K.Jeganathan filed a contempt petition in Cont.P.(MD)No.630 of 2018, inter alia alleging inaction on the part of the respondents.

9. We are informed that the contempt petition is pending.

10. Immediately, after filing of the contempt petition, a notice was issued. The notice does not bear any date, but, has been signed on 03.05.2018 and the same has been issued by the jurisdictional Tahsildar, who is respondent No.2 before us.

11. Thereafter, the jurisdictional Tahsildar, i.e., respondent No.2 before us has also issued a notice / order under Section 6 of said Act.

12. The writ petitioners have laid these writ petitions complaining that the aforesaid notices, particularly, the notices under Section 6 of said Act have been issued without considering the detailed explanation submitted by them on 06.11.2017.

13. To be noted, by the notice / order issued under Section 6 of said Act, writ petitioners have been directed to remove the constructions put up by them as well as their personal belongings. Notice goes on to say that if they fail to do so by 22.05.2018, they shall be removed.

14. It is the submission of the writ petitioners that Section 6 notice / order has been issued without considering their explanation and the same is untenable. In support of such submission, learned counsel pressed into service an order dated 01.02.2018 made by a Division Bench of this Court in W.P.No.1934 of 2018. Paragraph Nos.9 to 12 of the said order are relevant and we deem it appropriate to extract the same and the same reads as follows:

"9. In the instant case, in the notice dated 21.12.2017 issued under Section 7 of the Tamilnadu Land Encroachment Act to the Petitioner, he had submitted his objections / return objections / representation on 09.01.2018 addressed to the Block Development Officer (Village Panchayat), Kandamangalam Panchayat Union, Kandamangalam that was not considered or taken into account by the Respondent at the time of



passing the impugned order, as such, this Court, left with no other option except to interfere with the Impugned Order of Eviction Notice dated 12.01.2018 passed by the Respondent and sets aside the same, consequently, the Writ Petition succeeds.

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10. In fine, the Writ Petition is allowed leaving the parties to bear their own costs. Consequently, the Miscellaneous Petitions are closed. Since this Court sets aside the impugned notice dated 12.01.2018 issued by the Respondent, the said Authority is directed to issue a fresh notice to the Petitioner by adhering to the necessary ingredients of Tamilnadu Land Encroachment Act, 1905 and at the time of issuance of fresh notice and later while passing final orders, the Respondent is to take into account of the earlier written objections of the Petitioner dated 09.01.2018 and to pass a reasoned speaking order with qualitative and quantitative details after adhering to the 'Principles of Natural Justice' and also by issuing notice to the complainant, if any, and other authorities, of course, in the manner known to Law and in accordance with Law. It is open to the Petitioner to raise all factual / legal aspects / issues involved in the subject matter before the Respondent, who shall advert to the same and to answer the same by meeting out each and every points raised by the Petitioner. It cannot be gainsaid that the Respondent is to pass a final orders in question (based on issuance of fresh show cause notice to the Petitioner] untrammelled and uninfluenced with any of the observations made by this Court in the Writ Petition.

11. Before parting with the case, it is pertinent to point out that in the instant case where the notices issued under Sections 6 and 7 of Tamilnadu Land Encroachment Act, 1905 are challenged on the ground that without considering the Petitioner's representation, on receipt of notice under Section 7 of Tamilnadu Land Encroachment Act, orders are passed straight away by the concerned Authority under Section 6 of the Act. However, there is no reply given by the Petitioner to the Impugned Notice dated 12.01.2018 issued under Section 6 of the Act, 1905. In Law, the Petitioner is required to submit a reply, given a personal hearing and thereafter, referring to the objections / documents filed if any, the authority concerned shall pass reasoned orders on merits. Besides the above, no Writ Petition will be ordinarily entertained assailing the Notice under Section 7 of the Tamilnadu Land Encroachment Act, as the Petitioner



(as an aggrieved person) has a valid and legal right to offer his objections before the concerned Authority, who is required to pass an order under Section 6 of the Act.

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12. Further, the Registry is directed to mark a copy of this order to the Principal Secretary to Government, Housing and Urban Development Department, Chennai and in turn, the said authority is directed to communicate this order to all the Authorities, who are empowered to deal / dispose of the Petitions filed under the relevant Provision(s) of the Tamilnadu Land Encroachment Act, 1905 and to follow the procedure laid down in this order while passing final orders, of course, after affording opportunity to the complainant, if any and others, who are likely to be affected / evicted and pass final orders, as per ingredients of under Section 6 of the Act, 1905.

Apart from that, although Section 10 of the Tamilnadu Land Encroachment Act, 1905 provides for 'Filing of an Appeal', this Court is of the considered view that in the present case, there is a flagrant violation of 'Principles of Natural justice', and as such, this Court is empowered to set aside the impugned notice / order dated 12.01.2018. It cannot be gainsaid that if orders are passed in detail, viz., in a qualitative and quantitative manner, then, the affected party can prefer an effective and efficacious remedy of an Appeal (which can be availed by him) as envisaged under the Tamilnadu Land Encroachment Act, 1905(Act III of 1905)."

15. Faced with the above situation, learned Special Government Pleader, who has accepted notice on behalf of respondents could not dispute that there is nothing in the impugned notice/order under Section 6 of the said Act to show that the explanation given by the writ petitioners in response to the notice under Section 7 of the Act has been considered.

16. To be noted, the notice/order under Section 6 of the Act does not make a whisper about the explanation given by the writ petitioners, much less does it say that the explanation has been considered. However, in the light of the order that we propose to pass, we are not expressing any opinion on the merits of the matter.

17. There is no dispute or disagreement before us that a statutory appeal remedy is available to the writ petitioners under Section 10 of the said Act. There is also a provision under the said Act for the writ petitioners to seek interim order (stay), pending decision in the appeal under Section 10 of the said Act.

18. The writ petitioners state that they shall file such a statutory appeal assailing the impugned order being order signed on

