



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2018

CORAM:

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

W.P(MD)Nos.23949 to 23963 and 24065 of 2017

and

W.M.P. (MD)Nos.20100 to 20129, 20208 and 20209 of 2017

P.Muppidathi	..	Petitioner in WP(MD).No.23949 of 2017
E.Muthaiya	..	Petitioner in WP(MD).No.23950 of 2017
S.Mariappan @ Mari	..	Petitioner in WP(MD).No.23951 of 2017
M.Mariammal	..	Petitioner in WP(MD).No.23952 of 2017
T.Govinda Thevar	..	Petitioner in WP(MD).No.23953 of 2017
R.Ramaiya	..	Petitioner in WP(MD).No.23954 of 2017
P.Velu Pandithar	..	Petitioner in WP(MD).No.23955 of 2017
S.Paramasivam	..	Petitioner in WP(MD).No.23956 of 2017
M.Balagan	..	Petitioner in WP(MD).No.23957 of 2017
R.Mariappan	..	Petitioner in WP(MD).No.23958 of 2017
V.Raja Gopalan	..	Petitioner in WP(MD).No.23959 of 2017
M.Mariappan	..	Petitioner in WP(MD).No.23960 of 2017
M.Gomupandithar	..	Petitioner in WP(MD).No.23961 of 2017
M.Subbiah	..	Petitioner in WP(MD).No.23962 of 2017
M.Chellappa	..	Petitioner in WP(MD).No.23963 of 2017
P.Shanmugaiya Pandian..	..	Petitioner in WP(MD).No.24065 of 2017



1. The District Collector,
Tirunelveli District,
Tirunelveli.

2. The Tahsildar,
Tenkasi Taluk,
Tirunelveli District.

3. The Executive Officer,
Sundarapandiyapuram Town Panchayat,
Tenkasi Taluk, Tirunelveli District.

4.M.Mari

.. Respondents in all cases

COMMON PRAYER: Writ Petitions are 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 impugned order of eviction passed by the third respondent herein in his proceedings in Na.Ka.No.79/2017 dated 28.11.2017 as far as the petitioner and quash the same as illegal and violation of provisions of Tamil Nadu Land Encroachment Act, 1905 and further direct the respondents 1 to 3 herein not to dispossess the petitioner herein except under due process of law.

For Petitioner : Mr.V.Meenakshisundaram

For R1 and R3 : Mr.S.Dhayalan
Government Advocate
(in all writ petitions)

COMMON ORDER

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

Heard Mr.V.Meenakshisundaram, learned counsel, appearing for the petitioner and Mr.S.Dhayalan, learned Government Advocate, appearing for the respondents.

2.These petitions have been filed challenging the notice of eviction issued by the third respondent dated 28.11.2017. The impugned notice is consequent upon an order passed by this Court in W.P.(MD)No.15253 of 2017 dated 06.09.2017. The said petition was filed by one Mr.Mari, seeking for a direction to the respondents 1 to 3 herein to remove the encroachments and unauthorized construction put up near the primary health centre situated in Survey No.909 at Sundarapandiayapuram Village, Tenkasi Taluk, Tirunelveli District by considering his representation dated 02.05.2017.



3.The petitioner in W.P.(MD)No.23949 of 2017 was impleaded as fourth respondent in the said writ petition. However, it appears that the writ petition was disposed of at the admission stage itself. Consequently, no notice was received by Muppidathi.

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4.In this batch of cases there are 16 petitioners, one of whom notice has been served pursuant to an order passed in the said writ petitions by order dated 06.09.2017. Unfortunately, the third respondent did not receive the notice issued by this Court in the said writ petition. The Court directed the Tahsildar to take follow up action for clearing encroachments in question and he was directed to follow due process of law and complete the entire exercise within three months from the date of receipt of a copy of that order. However, the impugned notice issued by the third respondent is not consonance with the direction issued by this Court.

5.That apart, in W.P.(MD)No.23949 of 2017 this Court did not issue any positive direction to vacate the encroachments but directed to follow due process of law. This would mean that the competent authority should initiate action by following the proper procedure under the relevant statute, which govern the nature of encroachment depending upon the classification of land. Therefore, by straight away issuing the impugned notice, which infact is an eviction order, is contrary to the direction issued in the earlier writ petition. Therefore, we are constrained to interfere with the impugned notice.

6.Accordingly, these Writ Petitions are allowed and the impugned order is set aside and the second respondent Tahsildar is directed to issue show cause notice clearly indicating as to what is the nature of the encroachment etc.,. Prior to issuance of notice, the Tahsildar shall conduct local inspection of the area and ascertain the full facts and based on the facts notice should be issued. The petitioners should be granted minimum period of 15 days to file their objections after which an opportunity of personal hearing should be granted to the petitioners or their authorized representative and thereafter, a speaking order be passed on merits and in accordance with law. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar



To

1. The District Collector,
Tirunelveli District,
Tirunelveli.

2. The Tahsildar,
Tenkasi Taluk,
Tirunelveli District.

3. The Executive Officer,
Sundarapandiyapuram Town Panchayat,
Tenkasi Taluk, Tirunelveli District.

+ 1 cc TO Mr.D.Nallathambi , Advocate in SR No. 52695

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AE/JC/SAR4/10.04.2018/4P/5C

ORDER MADE IN
W.P(MD)No. 23949 of 2017 and etc batch
02.03.2018