

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3.4.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.19761 of 2018

A.Radhakrishnan

Petitioner

Versus

- 1 The Commissioner of Land
Administration
Chepauk Chennai - 600005
- 2 The Commissioner of Survey &
Settlements
Chepauk Chennai - 600 005
- 3 The Commissioner
Hindu Religious & Charitable Endowments
Department
119 Nungambakkam High Road
Chennai - 600 034
- 4 The District Collector
Salem
- 5 The Taluk Executive Magistrate
Cum Tahsildar
Omalur Salem District
- 6 The Deputy Inspector General
of Police Salem Range Salem
- 7 The Assistant Director
District Survey Office Salem
- 8 The Assistant Director of Town
Panchayats Salem
- 9 The Deputy Superintendent of
Police Omalur Salem District

- 10 The Deputy Superintendent of
Police
Anti Land Grabbing Special Cell
Salem
- 11 The Superintending Engineer
Tamil Nadu Electricity Board
Mettur Salem District
- 12 The District Registrar (West)
Collectorate Campus Salem
- 13 The Joint Commissioner
Hindu Religious & Charitable Endowments
Department Salem - 636001
- 14 The Executive Officer
Arulmigu Elameeswarar Temple
Tharamangalam
Salem District
- 15 Tmt.Parvatham
- 16 Tmt.Janaki
- 17 Thiru.Palanisamy
- 18 Thiru.Tamilmani
- 19 Thiru.Thambi
- 20 Thiru.Thiruganasambandam
- 21 Kumaran Agro Center
Rep. by its owner
Arulmigu Elameeswarar Temple Campus,
Tharamangalam Salem District

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing respondents 4, 5, 6, 8, 13 & 14 to take appropriate action to remove the encroachments found in the S.F.Nos. 171/1, 2,4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 24, 34, 35 & 42 and S.F.Nos. 71/33, 7, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 36, 37, 38, 39,40,41 and 43 situated at Tharamangalam Village Omalur Taluk Salem District belonging to the 14th respondent temple and restore the same in favour of said temple by considering the report submitted by the 5th respondent dated 05.10.2015 as well as by considering the petitioner's representation dated 29.09.2015.

For petitioner : Mr.R.Marudhachalamurthy

For RR1, 2,4 to 10: Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

For RR3, 13 & 14 : Mr.M.Maharaja,
Special Government Pleader (HR&CE)

For R11 : Mr.S.K.Rameshwar

For R12 : Mr.T.M.Pappiah
Special Government Pleader

ORDER

(Order of the court was made by Dr.VINEET KOTHARI, J.)

The present writ petition has been filed by the petitioner, A.Radhakrishnan son of (Late) T.Arumuga Gounder, Chennai with the following prayer:-

"Writ of mandamus directing respondents 4, 5, 6, 8, 13 & 14 to take appropriate action to remove the encroachments found in the S.F.Nos. 171/1, 2, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 24, 34, 35 & 42 and S.F.Nos. 71/3, 7, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 36, 37, 38, 39, 40, 41 and 43 situated at Tharamangalam Village Omalur Taluk Salem District belonging to the 14th respondent temple and restore the same in favour of said temple by considering the report submitted by the 5th respondent dated 05.10.2015 as well as by considering the petitioner's representation dated 29.09.2015. "

2.Learned Special Government Pleader, Mr.P.S.Sivashanmugasundaram appearing for the State has brought to our notice that in pursuance of the order passed by a Division Bench of this court on 11.8.2014 in W.P.No.26732 of 2013 in U.A.Marappa Gounder vs. The District Collector, Erode and others, the Government of Tamil Nadu has issued G.O.(Ms) No.540 Revenue [LD6(2)] Department, dated 4.12.2014 constituting the Tier of Revenue Officials before whom the complaints of encroachments can be filed with further remedial arrangement.

3. The relevant portion of the order passed by the Division Bench dated 11.8.2014 in W.P.No.26732 of 2013 (supra) is extracted below for ready reference:-

"5. Before parting with the matter, we are constrained to observe that large part of the PIL arising before this Court are from allegations of encroachments on Government lands, water ways, public streets, unauthorised

constructions, etc. These are really matters for civil authorities and revenue authorities to take care of. The State Government must set forth a mechanism where aggrieved persons can complain and remedial action can be taken. Promptly, they are called upon to do so. We have thus requested the learned Government Pleader to enter appearance in this matter and to obtain instructions from the State Government, in what manner such an authority be set up, due publicity given to the authorities where aggrieved persons would be first required to make their representations and a remedial action and reasoned response be communicated within a period of 30 days from such complaint being made. Once such a mechanism is set up, there would be no occasion to entertain a PIL on the first instance in such matters as an administrative machinery would be available for remedying the position.

6. The learned Government Pleader requests for some time to file an affidavit to set forth such a mechanism in place. The needful be done within a period of two weeks.

7. The writ petition stands disposed of with the aforesaid directions. Consequently, connected miscellaneous petition is closed. No costs."

The said G.O.(Ms) No.540 Revenue [LD6(2)] Department, dated 4.12.2014 is also extracted hereunder:-

"ABSTRACT

Encroachment - Formation of Various Committees to dispose the grievances relating to the eviction of encroachment in Government land - Directions of High Court of Madras in W.P.No.26722/2013 & M.P.No.1/13- Implementation of orders of High Court of Madras - Orders-Issued.

Revenue [LD6(2)] Department

G.O. (Ms) .No.540

Dated: 04.12.2014

Thiruvalluvar Aandu 2045
Karthigai - 18

Read:

1. Orders of High Court of Madras in W.P.No.26722/13, dated 11.08.2014.
2. From the Additional Chief Secretary and Commissioner of Land Administration Letter No. T2/22408/2014, dated 05.09.2014.
3. Orders of High Court of Madras in W.P.No.26722/2013, dated 08.10.2014.

ORDER:

In reference first read above, the Hon'ble High Court, in its order dated 11.08.2014 in W.P.No.26722/13 & M.P.No. 1/13 filed by Thiru U.A. Marappa Gounder, has ordered as follows:-

The State Government must set forth a mechanism where aggrieved persons can complain and remedial action can be taken. Promptly, they are called upon to do so. We have thus, requested the learned Government Pleader to enter appearance in this matter and to obtain instructions from the State Government, in what manner such an authority be set up, due publicity given to the authorities where aggrieved persons would be first required to make their representations and a remedial action and reasoned response be communicated within a period of 30 days from such complaint being made. Once such a mechanism is set up, there would be no occasion to entertain a PIL, on the first instance in such matters as an administrative machinery would be available for remedying the position.

2. Based on the directions of the orders of the Hon'ble High Court of Madras, dated 08.10.2014, the Government have carefully examined the proposal of the Additional Chief Secretary and Commissioner of Land Administration in reference second read above and hereby, accord sanction for constitution of Redressal Committees for eviction of encroachment with the following procedures:-

(i) General Procedure: In general, as per Section 7 of Tamil Nadu Land Encroachment Act, 1905, before taking proceedings, the Collector or Tahsildar shall cause to serve on the person a notice calling upon him to show cause why he should not be evicted. Further as

per notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, any person unauthorizedly occupying any land may be summarily evicted by the Collector, Tahsildar, Deputy Tahsildar (or any other officers authorized by the State Government in this regard) by serving such notices in the manner prescribed under Section 25 of Tamil Nadu Revenue Recovery Act, 1864.

(ii)Original Petition to be filed at Taluk level:

* The petitioners seeking grievances for eviction of encroachment on Government land may file original petition before the respective Tahsildars.

* On receipt of such petition, the Tahsildar may cause inspection at least at the level of Deputy Tahsildar, to decide whether the Government land is being encroached or not. If convinced of the fact that the Government land is being encroached, he shall serve a "Show Cause Notice" to the encroacher under Section 7 of Tamil Nadu Land Encroachment Act, 1905. Subsequently, other procedure as laid down under the Tamil Nadu Land Encroachment Act should be followed within a stipulated time.

* A detailed written reply should be sent to the petitioner giving details of the action, if any, taken as per Tamil Nadu Land Encroachment Act, 1905 and the entire process shall be completed within 60 days from the date of receipt of petition.

(iii)Appellate Committee at Divisional level:

* This Committee shall admit only the Appeal Petitions on eviction of encroachment either on the ground of failure on the part of Tahsildar to give reply within 60 days or if the petitioner is not satisfied with the reply given or action taken by the Tahsildar.

* The Appellate Committee shall be constituted with the following officials:

- 1) Revenue Divisional Officer;
- 2) Deputy Superintendent of Police; and
- 3) Deputy Inspector of Survey.

* This Committee shall meet at least once in a

month and decide each and every case individually after giving an opportunity for the petitioner to be heard. The Committee shall also take up personal inspection, if required, along with Tahsildar and Surveyors, after giving advance intimation to the petitioner.

* A written communication should be sent to the petitioner conveying the decision of the above Appellate Committee within 30 days from the date of receipt of the Appeal Petition.

(iv) Review Committee at District Level:

* Any petitioner, who does not receive reply from the above Appellate Committee within the stipulated time or is not satisfied with the decision of the Appellate Committee, may file Review Petition before the Review Committee.

* The District Level Review Committee shall be constituted with the following officials:

- 1) District Revenue Officer;
- 2) Superintendent of Police; and
- 3) Assistant Director of Survey.

The District Level Review Committee shall meet at least once in a month and communicate its finding, within 30 days from the date of receipt of such petition, in a similar manner as described para 2 (iii).

(v) District Level Steering Committee:

* The details and nature of complaints received by the 'Divisional Level Review Committee' and 'District Level Review Committee' along with the gist of decisions taken, shall be presented before the existing 'District level Steering Committee on Encroachment' headed by District Collector already constituted vide G.O.Ms.No.105 Revenue Department dated 07.03.2001.

4. The Additional Chief Secretary and Commissioner of Land Administration is requested to issue necessary instructions to all District Collectors to constitute the above mentioned Redressal Committees immediately for eviction of encroachment. As per the directions of Hon'ble High Court of Madras dated 08.10.2014 in reference third read above, all the District Collectors are

instructed to give necessary publicity on constitution of Redressal Committees on eviction of encroachments utilizing the media, pamphlets and other means of communication to the common public from the District level office upto the Village level. The Additional Chief Secretary and Commissioner of Land Administration is also requested to monitor the working of the Committees strictly and continuously.

(BY ORDER OF THE GOVERNOR)

GAGANDEEP SINGH BEDI
SECRETARY TO GOVERNMENT"

6. Since the petitioner has, admittedly, not availed this alternative remedy as stated in G.O.Ms.No.540, we dispose of this writ petition with a liberty to the petitioner to avail his alternative remedy before the appropriate Committees constituted under G.O.(Ms) No.540 Revenue [LD6(2)] Department, dated 4.12.2014 and in such event, the Respondents are expected to pass orders in accordance with law. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssk.

To:

- 1 The Commissioner of Land
Administration
Chepauk Chennai - 600005
- 2 The Commissioner of Survey &
Settlements
Chepauk Chennai - 600 005
- 3 The Commissioner
Hindu Religious & Charitable Endowments
Department
119 Nungambakkam High Road
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Department Salem - 636001
- 14 The Executive Officer
Arulmigu Elameeswarar Temple
Tharamangalam
Salem District

+1 cc to M/s.Zeenath Begum, Advocate, S.R.No.32430

+1 cc to M/s.Anandhavalli, Advocate, S.R.No.32210

+1 cc to the Government Pleader, S.R.No.33500, 33448

+1 cc to the Spl.Government Pleader for HR &CE, S.R.No.32289

W.P.No.19761 of 2018

SPD(CO)
SSM(28/05/2019)