

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.NO.24794 OF 2019

Appasamy Associates,
rep. by its Managing Partner
P.S.N.Appasamy,
No.20, SBI Officers Colony 1st Street,
Arumbakkam, Chennai-600 105.

.. Petitioner

-vs-

1. The Commissioner of Land Administration,
Chepauk, Chennai-600 005.

2. The District Collector,
Villupuram District,
Collector Office Road,
Moovendar Nagar,
Villupuram-605 602.

3. The Tashildar,
Villupuram Taluk,
Collector Office Road,
Moovendar Nagar,
Villupuram-605 602.

4. The District Revenue Officer,
Villupuram,
Collector Office Road,
Moovendar Nagar,
Villupuram-605 602.

5. The Special Officer-cum-Block Development Officer,
(Village Panchayat)
Kandamangalam Panchayat Union,
Kandamangalam - 605 102
Villupuram District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records of the fifth respondent bearing Na.Ka.No.A2/151/2019 dated 26.07.2019 enclosing notice under Section 6 of the Act 1905 dated 26.07.2019 - signed on 07.08.2019 by the fifth respondent and to quash the same with further directions to the first respondent to consider and pass orders in the revision petition filed by the petitioner under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 as well as the feasibility of granting assignment of land in Survey No.60/1 situated in Aaliyur Village, Kandamangalam Panchayat Union, Villupuram Taluk and District after providing an opportunity of being heard to the petitioner.

For Petitioner : Mr.Haja Nazirudeen
Senior Counsel
for M/s.T.Ramasamy

For Respondents : Mr.S.N.Parthasarathi
Government Advocate

ORDER

(Order of the Court was made by M.Duraiswamy, J.)

The petitioner has filed the above writ petition to issue a Writ of Certiorarified Mandamus to call for the records of the fifth respondent dated 26.07.2019, enclosing notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 dated 26.07.2019 signed on 07.08.2019 by the fifth respondent and to quash the same with further direction to the first respondent to consider and pass orders in the revision petition filed under Section 10 of the Act as well as the feasibility of granting assignment of land in Survey No.60/1 situated in Aaliyur Village, Kandamangalam Panchayat Union, Villupuram Taluk and District.

2. On an earlier occasion, the petitioner was issued notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 dated 12.01.2018, which was challenged by the petitioner in W.P.No.4682 of 2018 before this Court and a Division Bench of this Court, by an order dated 05.03.2018, disposed of the writ petition, giving liberty to the petitioner to raise all legal pleas before the Appellate Authority, who shall take note of the same and advert to the same at the time of passing the final orders in question. The Appellate Authority viz., the second respondent, the District Collector, Villupuram, by an order dated 10.5.2019, set aside the notice dated 12.01.2018 issued

under Section 6 of the Act and remitted the matter back to respondent No.5 for deciding the matter afresh. Thereafter, respondent No.5 issued another notice under Section 6 of the Act dated 07.08.2019, which was duly served on the petitioner, which is under challenge in this writ petition.

3. The learned Senior Counsel for the petitioner submitted that as against the order dated 10.5.2019 passed by the second respondent, the District Collector, Villupuram, the petitioner has preferred a Revision Petition on 21.6.2019 under Section 10A of the Tamil Nadu Land Encroachment Act, 1905 before the first respondent along with petition for stay under Section 10B of the Act. It is also submitted that the petitioner has sent a representation to the first respondent on 14.8.2019 seeking to expedite the hearing of the stay petition in the Revision Petition.

4. In this writ petition, the petitioner challenges the proceedings dated 26.7.2019 issued by the fifth respondent, recommending initiation of proceedings under Section 6 of the Act. Admittedly, the petitioner has not challenged the notice dated 07.08.2019 issued under Section 6 of the Act so far. Only during the course of the argument, the learned Senior Counsel for the petitioner has questioned the correctness of the notice issued under Section 6 of the Act dated 07.08.2019. When the petitioner has got remedy by way of an appeal as against the notice issued under Section 6 of the Act, the writ petition filed by them cannot be entertained. Since the petitioner has not obtained any interim orders before the Revisional Authority in the Revision Petition filed by them under Section 10A of the Act, the fifth respondent has issued the impugned notice under Section 6 of the Act. Therefore, we are of the considered view that the petitioner's remedy is only by way of appeal under Section 10A of the Tamil Nadu Land Encroachment Act, 1905 as against the notice issued under Section 6 of the Act dated 07.08.2019.

5. In these circumstances, we are not inclined to entertain the writ petition and the writ petition is disposed of accordingly. However, it is open to the petitioner to challenge the impugned notice dated 07.08.2019 issued under Section 6 of the Act before the Appellate Authority under Section 10 of the Act. Further, the Revisional Authority is directed to dispose of the Revision Petition filed by the petitioner as expeditiously as possible and we also further direct the first respondent to dispose of the stay petition filed by the petitioner under Section 10B of the Act in the Revision Petition, within a period

of ten days from the date of receipt of a copy of this order.
No costs. Consequently, W.M.P.No.24426 of 2019 of 2019 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:

1. The Commissioner of Land Administration,
Chepauk, Chennai-600 005.
2. The District Collector,
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3. The Tashildar,
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5. The Special Officer-cum-Block Development Officer,
(Village Panchayat)
Kandamangalam Panchayat Union,
Kandamangalam - 605 102
Villupuram District.

+1cc to M/s.T.Ramasamy, Advocate, S.R.No.71794
+1cc to the Government Pleader, S.R.No.72687

W.P.No.24794 of 2019

VBA (CO)
CS/27/09/2019