

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.12.2018

PRONOUNCED ON :04.01.2019

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL
And

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

W.P.No.11470 of 2017 and
W.M.P.Nos.12454 & 12455 of 2017
and W.M.P.No.21552 of 2018

- 1.S.Selvi
- 2.A.Mala
- 3.M.Chellammal
- 4.D.Indra
- 5.P.Mari
- 6.V.Mari
- 7.M.Mariyammal
- 8.Karpagam
- 9.Maithili
- 10.Kanniyappan
- 11.Kanniyamma
- 12.N.Mariyammal
- 13.Bujjima
- 14.Vela
- 15.Selvi
- 16.Mageshwari
- 17.Anand
- 18.K.Chinnarasu
- 19.Sarasu
- 20.Amudha
- 21.Lakshmi
- 22.Amul
- 23.Seetha
- 24.P.Mariyammal
- 25.Kanniyamma
- 26.Kannika
- 27.Magalakshmi
- 28.Devi
- 29.Nagammal
- 30.Balakrishnan
- 31.Kasthuri
- 32.Periyaponnu
- 33.Elumalai

34.Meena
35.Suganraj
36.Sekar
37.Krishnan

.. Petitioners

Vs.

- 1.The District Collector,
O/o. The District Collector,
No.66, Rajaji Salai,
Chennai - 600 001.
- 2.The Tahsildar,
The Taluk Office,
No.113, Institute of Road Transport
Training Centre Complex,
V.V. Koil Street,
Tharamani 100 Feet Road
Velacherry, Chennai - 600 113.
- 3.The Tamil Nadu Housing Board,
represented by its Chairman,
Nandanam, Chennai.
- 4.The District Collector,
Kancheepuram District.
- 5.The Director of School Education,
Chennai.

[RR 3 to 5 are suo motu impleaded as
per order dated 01.05.2017]

6.K.S.M.Aminath Saharifa
7.S.S.O.Sarathu Jailani
8.Sithi Basheera
9.Zulaiha Banu

.. Respondents

[RR 6 to 9 are impleaded as per
order dated 06.06.2018]

Prayer : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 2nd Respondent in connection with the proceeding dated 13.04.2017 and quash the same.

For Petitioner : Mr.V.Prakash, Senior Counsel
For M/s.M.Ezhilarasi

For RR 1, 2, 4 & 5 : Mrs.Narmatha Sampath
Additional Advocate General
Asst by Mr.T.M.Pappiah
Special Government pleader

For 3rd Respondent : Mr.V.Anandhamurthy

For RR 6 to 9 : Mr.S.Sundaresan

ORDER

M.VENUGOPAL, J.

Heard both sides.

2.Summary Facts:

2.1.According to the Petitioners, they belong to the 'Irular Tribe' and were originally residence of Thiruvallur Nagar, Thiruvannamiyur, Chennai - 600 041. After Tsunami, they were relocated to Irular Colony, 4th Cross Street, Besant Nagar, Chennai as a rehabilitation measure and are residents for past 13 years.

2.2.The stand of the Petitioners is that they are the original Allottees of the aforesaid land belonging to the Tamil Nadu Housing Board. Further, the 2nd Respondent/Tahsildar, Velacherry had made a recommendation to the 1st Respondent/District Collector, Chennai for relocating 37 Irular families to a place near Crematorium/ Cremation ground whereby 2 plots of land which is vacant without use and the said recommendation is pending with the 1st Respondent from the year 2006. While that be the fact situation, the 2nd Respondent/Tahsildar, Velachery by aiding with the private builder has issued an impugned notice dated 13.04.2017 for evicting them in compliance of the order passed by this Court in W.P.No.29497 of 2008 dated 30.08.2013. Hence, the Petitioners have filed the present Writ Petition.

3.Contentions of the Petitioners:

3.1.The Learned Senior Counsel for the Petitioners contends that the impugned notice dated 13.04.2017 was issued by the 2nd Respondent/Tahsildar, Velachery and in fact, the Petitioners were not arrayed as parties in W.P.No.29497 of 2008 dated 30.08.2013.

3.2.The Learned Senior Counsel for the Petitioner submits that the 2nd Respondent/Tahsildar, Velacherry had ignored the order passed by this Court in Review Application No.108 of 2015 dated 20.07.2015 whereby a clear finding was rendered to the effect that there was no encroachment in the land which is the subject matter of W.P.No.29497 of 2008.

3.3.The Learned Senior Counsel for the Petitioners comes out with a plea that the Petitioners are residing in the Petition land for 13 years and their children are attending the nearby Schools and their source of Livelihood is nearby their residences.

3.4.The Learned Senior Counsel for the Petitioners projects an argument that the impugned notice dated 13.04.2017 was issued by the 2nd Respondent without application of mind and that the Petitioners were not issued with prior notices before the issuance of the impugned notice dated 13.04.2017.

3.5.The Learned Senior Counsel for the Petitioners emphatically takes a stand that the Petitioners are not on the road land; that the Tamil Nadu Housing Board had not issued the notice; that the Tamil Nadu Housing Board's property was given to the Chennai Greater Corporation as 'Gift' for formation of a road and that it is for the Chennai Corporation to take action under the City Municipal Corporation Act, 1990.

3.6.The Learned Senior Counsel for the Petitioners proceeds to point out that if the Petitioners are not 'Encroachers' and when the land is vested with the Chennai Corporation, then, the Tahsildar has no role to play, therefore, the impugned notice dated 13.04.2017 is an illegal one.

3.7.The Learned Senior Counsel for the Petitioners submits that when once the rehabilitation measure is pending and that when the Tamil Nadu Housing Board had not issued the impugned notice dated 13.04.2017 and when the Petitioners are there from the year 2004 in Block T.S.No.11 of the Urur Village, Besant Nagar and when they were accepted because of 'Tsunami', then, without termination of their Lease/Licence, they cannot be evicted in Law.

3.8.The Learned Senior Counsel for the Petitioners contends that even assuming without admitting that the 2nd Respondent/Tahsildar, Velacherry has jurisdiction and has role to play, the Petitioners were not issued with prior notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and also that, orders were not passed under Section 6 of the Act.

3.9.The Learned Senior Counsel for the Petitioners refers to the order of the Learned Single Judge in W.P.No.29497 of 2008

[between K.S.M.Aminath Sharifa and 3 others V. The Executive Engineer, Zone - X, Corporation of Chennai, Chennai - 600 020 and 4 others] wherein at paragraphs 2, 4, 5 and 6, it is observed as follows:

"2. The case of the petitioners is that they have purchased the plot nos.E170/1, E170/2, E170/3 and E170/4, situated at 4th Cross Street, Urur Village, Besant Nagar, Chennai, from the original allottees of the Tamil Nadu Housing Board and thereafter, they have also obtained pattas in their names. Whiles, in order to develop the above mentioned properties into a residential complex, they sought a permission from the third respondent / CMDA, but the same is pending. During the pendency of the application for permission, the third respondent also requested the Commissioner, Corporation of Chennai, to inform the status of the road and also the width of the 4th cross street, abutting the site for taking further action regarding the approval of plan submitted by the petitioners for construction. Thereafter, third respondent-CMDA had also sent a letter dated 15.10.2007 rejecting the permission for construction on the ground that the proposed site for residential complex is adjacent to a road, which is not a public road. Subsequent to that, the petitioner had sent a detailed representation dated 18.04.2008 to the second respondent / the Executive Engineer, Tamil nadu Housing Board, Chennai, requesting to hand over the layout road, as the same was approved by the third respondent - CMDA. On receipt of the representation, the second respondent / Tamilnadu Housing Board had sent a letter dated 22.04.2008, marking a copy to the petitioner, stating that the road abutting the plots may be taken over by the Corporation of Chennai / first respondent herein and the same has to be declared as public road.

4. Learned counsel appearing for the second respondent / the Tamil nadu Housing Board stated that a gift deed dated 05.03.2004 was entered between the Tamil Nadu Housing Board and the Corporation of Chennai, mentioning the schedule of property, namely, T.S.No.52, Block No.16 of Urur Village and

Survey No.155-part, Thiruvannamiyur Village, admeasuring 31.30 acres, and to that effect, he has also produced a copy of the gift deed. He further submitted that by way of gift deed, when the land in question has already been gifted to the Corporation of Chennai, it is the bounden duty on the Corporation of Chennai, Madras / first respondent herein to declare the road in question as public road.

5. The first respondent / Corporation of Chennai has also filed their counter, wherein, at paragraph 4, it is held thus:

"4. the Corporation of Chennai is prepared to take over the layout roads and open space reservation land without any encroachments pre-existing. After taking over from the second respondent herein, the road and open space reservation area will be developed as per Rules. Hence, the Corporation can form the road and declare as public, only after the second respondent handed over the layout roads and O.S.R. Land as per the guidelines. This above fact was intimated to the petitioner vide letter No.Z.O.X.C. No.7363/2008, dated 15.10.2008."

6. In view of the fact that the land in question has already been gifted to the Corporation and the Corporation also has taken over the layout and open space reservation area, as per the above extracted portion, the issue of removal of encroachment would take time cannot be accepted. That apart, the plots purchased by the petitioners originally belonged to Tamil Nadu Housing Board and due to this, the petitioners, with a fond hope that there is no difficulty in starting construction, have decided to jointly develop the above said properties into a residential complex and thereby, they have also applied for sanction of plan to CMDA. Moreover, the second respondent, in his letter dated 22.04.2008, categorically sated that the road abutting the plots may be taken over by the Corporation of Chennai and thereafter, the same has to be declared as public roads. When the layout road has already been surrendered by way of gift deed to the Corporation of Chennai, it is the

bounden duty of the second respondent to take up the road as public road. Therefore, rejection of the petitioners' request for grant of approval for construction in the above said site is unjustified. As a matter of fact, when the gift deed for the road has already been prepared and sent to the Corporation for execution, the respondents cannot insist upon the donor to handover the land free of encroachment. Admittedly, since some of the encroachers are unlawfully residing in the land belonging to the Corporation, they should be removed by the Corporation of Chennai forthwith."

3.10. The Learned Senior Counsel for the Petitioners refers to the Common Order in Contempt Petition No.1156 of 2014 and Review Application No.108 of 2015 in W.P.No.29497 of 2008 wherein at paragraphs 2 to 4, it is observed as under:

"2. The grievance of the petitioner in the contempt petition is, the order passed by this Court in W.P.No.29497 of 2008, dated 30.08.2013, giving a direction to the Executive Engineer, Corporation of Chennai / first respondent therein to remove the encroachment with the assistance of the Revenue Authorities has not been complied with, therefore, the respondents should be punished for non-compliance of the order passed by this Court as stated above.

3. On the other hand, the grievance of the review applicant is that the Corporation of Chennai is not in a position to take over the land, because, no valid gift deed has been executed in favour of the Corporation of Chennai by the writ petitioners, therefore, unless the encroachers are evicted on the property gifted by the writ petitioners, the Corporation of Chennai may not be in a position to take over the property.

4. Be that as it may, when the matter was taken up, learned Special Government Pleader appearing for the respondents 2 and 3 in Contempt Petition No.1156 of 2014, placed on record a communication dated 11.07.2010 addressed to him by the Tahsildar, Velachery. Relevant portion of

the said communication is extracted hereunder:

"The above survey field was inspected by me along with the Assistant Director of Survey and Land Records, Deputy Inspector of Survey and Taluk Deputy Surveyor of this office. In this connection, it is stated that the Road abutting the petitioner's plot is not encroached and kept open with compound wall and gate on the eastern side with easy access to the petitioner's vacant plots. Hence, the Corporation can form the road and declare as public road as per the lay out given by Tamil Nadu Housing Board."

A mere reading of the above said communication shows that the road abutting the petitioner's plot is not encroached and kept open with compound wall and gate on the eastern side with easy access to the petitioner's vacant plots, therefore, the Corporation of Chennai can form the road and declare it as public road as per the lay out given by the Tamil Nadu Housing Board. In view of such communication, learned counsel for the review applicant fairly submitted that in view of such stand taken by the Tahsildar, Velachery, a suitable direction may be issued to the respondents to comply with the order of this Court."

3.11.The Learned Senior Counsel for the Petitioners puts forward a plea that source of livelihood for the Petitioners is that they work as 'Domestic Maids' and 'Fishing' etc. and that the 'Right to Life' includes right to the means of livelihood which make it possible for a person to live, as per decision of the Hon'ble Supreme Court in Olga Tellis V. Bombay Municipal Corporation reported in 1985 (3) SCC 545.

3.12.The Petitioners had filed an Additional Counter stating that they do not have Ration cards and they need to be issued Ration Cards and assign Ration Shop from where they can draw rations. Further, they require a police out post to protect the Law abiding Citizens residing in their area, because of the reason that crime rate in the said area is very high.

3.13.The Learned Senior Counsel for the Petitioners relies on the Status Report of the Executive Engineer and Administrative Officer of the 3rd Respondent/Tamil Nadu Housing

Board wherein at paragraphs 2 to 4, it is observed as follows:

"2.It is respectfully submitted that the Tamil Nadu Housing Board has acquired an extent of 420 acres of lands in Thiruvannamiyur, Urur and Kalikundram Villages and implemented South Madras Neighbourhood Scheme. The Tamil Nadu Housing Board has developed plots and flats in the above said scheme and allotted to the Public.

3.It is humbly submitted that a part of land comprised in Town Survey No.10 part, Block No.38 and Town Survey No.4 part, Block 48 to an extent of 1.36 acres were kept vacant by the Tamil Nadu Housing Board for Future Development. In the said Future Development land, the Tamil Nadu Housing Board has prepared a part layout comprised of 4 residential plots, 1 Public purpose plot, 1 commercial plot and a Park. The said Part layout was approved by the Chennai Metropolitan Development Authority vide PPD/LO (TNHB) No.1/2000, dated 04.02.2000. Subsequently, some minor changes were made in the above said layout and the same was approved by the Chennai Metropolitan Development Authority vide PPD/LO (TNHB) No.2/2006, dated 13.01.2006.

4.It is respectfully further submitted that the land earmarked as Park in the above said part layout was situated adjacent to Besant Nagar Crematorium, hence the Tahsildar, Mylapore-Triplicane Taluk has considered that the Park site is also a part of Crematorium and provided accommodation to the Irular families those who are suffered by the Tsunami during the year 2007."

3.14.The Learned Senior Counsel for the Petitioners refers to the Article on 'The Spatial Reproduction of Urban Poverty - Labour and Livelihoods in a Slum Resettlement Colony' of Karen Coelho, T.Venkat, R.Chandrika [published in English Daily 'The Hindu' dated 04.05.2017 - the Resettled - A - Story-of-Struggle-on-the-fringes]. Also, the Learned Senior Counsel for the Petitioners refers to the Report on the Public Hearing on Impact of Recent Floods on Slum & Pavement Dwellers in Chennai City on 31.12.2015 wherein the following Recommendations were made:

"1.Forced evictions of slum dwellers living on river banks must be stopped forthwith and the government must organize a Public Hearing on rehabilitation. As far as possible, where

the risk of flooding is not severe, slum dwellers must be housed in the same locations or alternatively, on land within a two-kilometer radius of their existing settlements. Tenure security must be provided through patta to house sites that are equipped with all basic services such as water, sanitation, electricity, street lights and storm water drains, and support with housing finance through cooperatives must also be provided.

2.The Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 must be implemented in letter and spirit as in the first few decades of its existence. The Tamil Nadu Slum Clearance Board must undertake declaration of slums once in five years, protect declared slums from eviction, and undertake in situ development of slums, through participatory processes.

3.Surplus lands acquired under the Land Ceiling Act should be used for housing the homeless in the city. Information on all types of common lands, panchami, annadhinam, bhoodaan and surplus lands acquired under land ceiling laws and other lands reserved for the uplift of the depressed classes all over Tamil Nadu, along with cadastral maps clearly identifying these lands, and measures initiated to retrieve such lands under encroachment by the more privileged sections of society should be placed in the public domain.

4.A public enquiry on the maintenance of tanks, lakes and other water bodies, streams, rivers, canals and drains and the related causes of the recent floods, must be held immediately. The effective mandate and resources for the same must be restored forthwith to the local communities, so that they can be rehabilitated and their abuse prevented.

5.Legislation declaring all buildings and infrastructural projects that have been constructed in the midst of or on the fringes of all water-related commons, including marsh lands and other wet lands, as public safety risks, must be passed immediately. These must include all such buildings constructed after the First Master Plan for the Chennai

Metropolitan Area was notified in 1976, whether they belong to State/Central Governments, industrial or business houses, educational or health institutions and commercial and entertainment companies. Provisions for dismantling these constructions and clearing the water commons encroached upon within a definite time frame, not exceeding three years, must be made.

6. Concrete embankments should be constructed along the boundaries of waterways in the city, and the water courses themselves must be periodically dredged and kept free of obstructions. Untreated sewage should not be allowed to pollute these waterways and simple methods for treatment of sewage inflows at the street/pumping station level should be adopted before letting the effluents out into them.

7. The shortage of night shelters for pavement dwellers should be addressed immediately in accordance with the Supreme Court Order, since they have suffered much hardship due to this deficiency.

8. A survey of street vendors in Chennai city must be conducted, and provision of space and license to vend issued as per the Central Act and State Rules must be implemented immediately.

9. Livelihood assistance must be provided to street vendors who have lost their goods in the floods, and to home-based micro-enterprise affected by the floods. Non-employment allowance must be provided to construction workers whose livelihoods are affected on account of the increase in price of building materials and stoppage of construction work during the floods.

10. Slum relocation projects in Perumbakkam, Semmencherry, Ezhil Nagar and Kannagi Nagar must be declared unfit for human habitation and dismantled within the next three years. Allottees must be resettled in housing layouts for the EWS within a two-kilometer radius of their original settlements in the city, as peripheral resettlement projects are located in marsh lands and wetlands that are naturally floodprone; have been designed and constructed in blatant violation of fire safety standards prescribed by the National

Building Code 2005; and lacking in sufficient lighting, ventilation and basic services such as water as mandated by the NBC. Last but not least, these are ghettos of the poor that legitimize a new untouchability and push them further into poverty and crime instead of aiding their recovery.

11.The state government must take immediate steps to set up a State-level Disaster Management Authority with district level nodes, and conduct trainings in disaster prevention and response for all its staff, so that the lessons of the recent floods are not lost."

4.Official Respondents' Submissions:

4.1.In response, the Learned Additional Advocate General for Respondents 1, 2, 4 & 5 submits that when the Tsunami struck Chennai on 26.12.2004, the dwellers of Thiruvannamiyur Fishermen Kuppam migrated to the place at Thiruvallur Nagar First Street, Thiruvannamiyur, Chennai (near Nagathammankoil) and the said place was owned by the Tamil Nadu Housing Board and that the Executive Engineer and Administrative Officer, Besant Nagar Division, Tamil Nadu Housing Board, Chennai had addressed a letter dated 03.01.2006 to the Tahsildar, Mylapore-Triplicane Taluk, Chennai informing that the land in S.No.215, Thiruvannamiyur Village measuring an extent of 16 grounds belonging to the Tamil Nadu Housing Board.

4.2.The Learned Additional Advocate General for Respondents 1, 2, 4 & 5 brings it to the notice of this Court that as per the Plan drawn for Thiruvannamiyur Urban Extension Scheme, the said land is allotted for the purpose of Community Hall and that the land earmarked for the purpose of 'Community Hall' was converted as dwelling area with the permission of Chennai Metropolitan Development Authority and nine plots were drawn and the orders of the Government were obtained for allotment. As a matter of fact, the Encroachers on the subject land were removed by the 3rd Respondent/Tamil Nadu Housing Board on numerous occasions. However, the encroachments were made again and again with a request to provide alternate site to them.

4.3.The Learned Additional Advocate General for Respondents 1, 2, 4 & 5 refers to the Letter of Tahsildar, Mylapore-Triplicane Taluk, Chennai dated 13.02.2006 whereby it was informed that the land in which the migrated dwellers residing is in Block 66, T.S.No.2, measuring an extent of 00.33.00 Hectare or 82 Cents Thiruvannamiyur Village, classified as 'Ryotwarimanai' owned by the Tamil Nadu Housing Board. Further, it is represented on behalf of the Respondents 1, 2, 4

& 5 that the Tahsildar had recommended to relocate the dwellers of the aforesaid land to Block 40, T.S.No.5 (Old S.No.12 part), measuring an extent of 0.43.40.0 Hectare, classified as 'Government Poramboke-Burial Ground' in Urur Village and in the said land, about 2 grounds of land is lying vacant and the remaining area is being used as 'Burial Ground'.

4.4.The Learned Additional Advocate General for Respondents 1, 2, 4 & 5 brings it to the notice of this Court that 37 families were rehabilitated from Block 66, T.S.No.2, Thiruvannamiyur Village, owned by the Tamil Nadu Housing Board to Block 38, T.S.No.11, measuring an extent of 2 grounds - 90 sq.ft. Government Poramboke, Urur Village on 01.03.2006, on temporary basis and a report was sent to the 1st Respondent/District Collector, Chennai by the Tahsildar, Mylapore-Triplicane Taluk, Chennai - 600 028 in Reference Letter No.B1/29150/2005, dated 01.03.2006. That apart, it is projected on the side of the Respondents 1, 2, 4 & 5 that the Executive Engineer and Administrative Officer, Besant Division, Tamil Nadu Housing Board in Letter No.HS.17061/1995 dated 22.04.2008 had informed that a part of the land in which the Irulars had encroached is reserved for 'Park' in the approved layout of Chennai Metropolitan Authority dated 03.01.2006. Furthermore, because of the Encroachers abutting the subject land reserved for Park, the same could not be handed over to the Chennai Corporation.

4.5.The Learned Additional Advocate General for Respondents 1, 2, 4 & 5 submits that since as per approved plan, the land meant for road and park were to be handed over and then the Scheme drawn could be implemented, it was requested to evict the Encroachers in the subject land and that the Purchasers of the plots drawn in Block 38, T.S.No.10/6, Urur Village from the Tamil Nadu Housing Board are the Petitioners in W.P.No.29497 of 2008 [viz., K.S.M.Amintha Sharifa, S.S.O.Sarathu Jailani, Sithi Basheera and Zulaiha Banu] and in the said Writ Petition, a prayer was sought to remove the encroachment with the assistance of the Revenue Authorities by the Executive Engineer, Corporation of Chennai within a period of three months and that the Contempt Petition No.3013 of 2016 was filed by them in Contempt Petition No.1156 of 2014 in W.P.No.29497 of 2008 impleading Nakeeran, Executive Engineer, Zonal Office - X, Corporation of Chennai, Sundaravalli, I.A.S., Collector, Chennai District and Arivudainambi, Tahsildar, Velachery Taluk Office, Chennai as Respondents.

4.6.At this stage, it is represented on behalf of the Respondents 1, 2, 4 & 5 that based on the recommendations made by Tahsildar, Velachery Taluk in letter dated 27.02.2017 the District Collector, Chennai has requested the Principal

Secretary/Managing Director, Tamil Nadu Slum Clearance Board, Chennai through letter dated 28.02.2017 to take appropriate action in regard to the allotment of tenements by the Slum Clearance Board to the 21 families and that the Managing Director of the 3rd Respondent/Tamil Nadu Housing Board had ordered for the allotment of tenements constructed under the Scheme of JNNURM in Ezhil Nagar, Okkiyamduraipakkam to the 21 families as per proceedings dated 09.03.2017.

4.7.The Learned Additional Advocate General for Respondents 1, 2, 4 & 5 contends that since the concerned persons were reluctant to receive the notices informing them about the movement from the present dwelling place to Ezhil Nagar, Okkiyamduraipakkam scheduled on 02.05.2017, the said notices were affixed on 17.04.2017 and the dwellers were provided 14 days time to make preparation for their movement from the present position to the place chosen for rehabilitation. Under these circumstances, one S.Selvi and 36 others as Petitioners filed the present Writ Petition before this Court seeking a relief to quash the notice dated 13.04.2017 and this Court on 01.05.2017 had passed orders of Status Quo as on date to be maintained and had suo motu impleaded the Chairman, Tamil Nadu Housing Board, Chennai; District Collector, Kancheepuram; and the Director of School Education, Chennai as Respondents 3 to 5.

4.8.The Learned Additional Advocate General for Respondents 1, 2, 4 & 5 submits that the Writ Petitioners were not actually residing at 4th Cross Street, Irular Colony, Besant Nagar, Chennai and that when door to door enumeration of the dwellers of the 4th Cross Street, Irular Colony was conducted and when the adult family members were photographed, if really, the Petitioners were actually residing in the aforestated Street, then, they could have made a representation in this regard.

4.9.The Learned Additional Advocate General for Respondents 1, 2, 4 & 5 contends that the eviction of the families from the place of 4th Cross Street, Irular Colony, Besant Nagar, Chennai is being carried out pursuant to the orders passed by this Court in W.P.No.29497 of 2008 etc. and further that, the real persons who were evicted during Tsunami on 26.12.2004 at the Fishermen Habitant in Thiruvannamiyur Village, were shifted to Block No.66, T.S.No.2, extent 00.33.00 Hectare or 82 Cents in Thiruvannamiyur Village, classified as 'Ryotwarimanai' owned by the 3rd Respondent/ Tamil Nadu Housing Board. Later, they were shifted to the land in Block 38, T.S.No.11, Urur Village and inasmuch as the Inmates of the land in Block 38, T.S.No.11, Urur Village are not the 'Encroachers', they were permitted to live in the subject land temporarily and as such, the invocation of the Tamil Nadu Land Encroachment Act, 1905 is not required.

4.10.The Learned Additional Advocate General for Respondents 1, 2, 4 & 5 proceeds to add that if the concerned families had resettled at Ezhil Nagar, Okkiyamduraipakkam as

planned on 02.05.2017, then, their Wards might have got admitted in the Schools, Colleges nearer to the place of Ezhil Nagar.

4.11.Lastly, it is the plea of the Learned Additional Advocate General for Respondents 1, 2, 4 & 5 that the actual dwellers of the land in Block 38, T.S.No.11, Urur Village were provided with 'Built Tenements' and as such, the Petitioners are not entitled to the relief sought for by the Petitioners.

5.Contentions of the 3rd Respondent:

5.1.The Learned Standing Counsel for the 3rd Respondent/ Tamil Nadu Housing Board contends that in the Contempt Petition No.1156 of 2014 and Review Application No.108 of 2015, this Court on 20.07.2015 had observed to the effect that 'the road abutting the Petitioners' plot was not encroached and kept open with compound wall and gate on eastern side with easy access to the Petitioners' vacant plots', but it had not mentioned about the encroachments made by the 37 Irular families in the area earmarked as 'Park Site' and therefore, the 2nd Respondent/ Tahsildar, Velacherry Taluk had issued the impugned notice dated 13.04.2017 to the 37 Irular families requiring them to evict from the land earmarked as Park site in the Part layout and unless the encroachment made in the Park site is removed and Irular families are relocated to any other place, the Park site cannot be handed over to the Local Body by the Tamil Nadu Housing Board. Furthermore, only after handing over of the Park Site to the Local Body, the allottees of the four residential plots (Petitioners in W.P.No.29497/2008) can obtain Planning Permission from the Chennai Metropolitan Development Authority as per the direction issued by this Court dated 20.07.2015 in Contempt Petition No.1156 of 2014 and Review Application No.108 of 2015.

6.Submission of the Respondents 6 to 9:

6.1.Countering the submissions of the Learned Senior Counsel for the Petitioners, the Learned Counsel for the Respondents 6 to 9 submits that the property in question originally belonged to the Tamil Nadu Housing Board and that the layout was formed by the Board after acquiring property and was sold to numerous persons. As a matter of fact, the Petitioners/Purchasers had purchased the Plot No.E-170/1, E-170/2, E-170/3 and E-170/4, 4th Cross Street, Urur Village, Besant Nagar, Chennai from the original Allottee of the Tamil Nadu Housing Board and after the mutation of Revenue Records, had obtained the Patta in their names.

6.2.In this connection, the Learned Counsel for the Respondents 6 to 9 points out that the 6th Respondent had decided to jointly develop the property in residential complex and applied for Plan sanction and approval of construction in the

site before the Chennai Metropolitan Development Authority after duly reconstituting all the four plots into one. That apart, the aforesaid plots were situated in the approved layout formed by the Tamil Nadu Housing Board in PRO - LO (TNHB) 1/2000, which was approved by the CMDA through letter dated 04.02.2000.

6.3.The Learned Counsel for the Respondents 6 to 9 takes a plea that the Chennai Metropolitan Development Authority had addressed a communication dated 15.10.2007 rejecting the Planning Permission for construction by mentioning that the adjacent road is not a Public Road and that the 6th Respondent after causing an enquiry came to know that the property was gifted by the Tamil Nadu Housing Board to the Corporation of Chennai, but the Corporation of Chennai had not declared it as a Public Road. Therefore, the Respondents 6 to 9 herein filed W.P.No.29497 of 2008 as Petitioners against the Executive Engineer, Zone X, Corporation of Chennai, Adayar, Chennai - 600 020 and four others and this Court on 30.08.2013 had directed the Executive Engineer, Corporation of Chennai/1st Respondent therein to remove the encroachment with the assistance of the Revenue Authorities/ Respondents 4 and 5 within a period of three months from the date of receipt of copy of this order and after the removal of the encroachment, the application submitted by the petitioners for grant of planning permission may be considered in accordance with Law etc.

6.4.The Learned Counsel for the Respondents 6 to 9 strenuously points out that soon after receipt of the order dated 30.08.2013 passed in W.P.No.29497 of 2008, a letter dated 22.10.2013 was addressed to the Corporation CMDA, Housing Board, Collector of Chennai and Tahsildar, Mylapore-Triplicane to implement the order of this Court dated 30.08.2013.

6.5.While summing up, the Learned Counsel for the Respondents 6 to 9 contends that the Respondents are unable to develop the property in spite of the earlier orders passed by this Court in their favour and as such, prays for dismissal of the Writ Petition with exemplary costs.

Analysis:

7.In the instant case, the Petitioners claim that they are no means of survival if they are relocated to Ezhil Nagar, Okkiyamduraipakkam and that since they were residing in the petition land for 13 years and their children were attending the nearby Schools and their source of livelihood is also nearby their residence, they cannot be relocated as if they are 'Chattels'. Therefore, they take a stand that the impugned notice dated 13.04.2017 pasted on their 'Dwelling Walls' is liable to be quashed.

8.The 3rd Respondent/Tamil Nadu Housing Board had acquired an extent of 420 Acres of land in Thiruvanniyur, Urur and Kilkundram Villages and implemented the South Madras Neighbourhood Scheme. Later a layout was approved by the Director of Town and Country Planning as per letter dated 05.05.1971. In fact, in the South Madras Neighbourhood Scheme, Indira Nagar, Sastri Nagar and Besant Nagar were part of it. The 3rd Respondent/Tamil Nadu Housing Board had developed plots and flats in the aforesaid Scheme and allotted the same to the Members of the Public. For future development, a part of land measuring an extent of 1.36 acres in T.S.No.10 Part, Block No.38 and Town Survey No.4 Part, Block 48 was kept vacant by the 3rd Respondent/Tamil Nadu Housing Board. The 3rd Respondent/Housing Board prepared a part layout comprised of four residential plots, 1 Public purpose plot, 1 commercial plot and a Park and the said part layout was approved by the Chennai Metropolitan Development Authority on 04.02.2000. After some minor changes, the said layout was approved by the Chennai Metropolitan Development Authority on 13.01.2006. The land earmarked as 'Park' in the aforesaid layout was situated next to Besant Nagar Crematorium.

9.It transpires that the Tahsildar, Mylapore-Triplicane Taluk, Chennai - 600 028 had addressed a letter dated 13.02.2006 to the 1st Respondent/District Collector, Chennai inter alia stating that the land in which the migrated the dwellers was residing in Block No.66, T.S.No.2 measuring an extent of 00.33.00 Hectare or 82 Cents Thiruvanniyur Village, was classified as 'Ryotwarimanai' owned by the 3rd Respondent/Tamil Nadu Housing Board. In reality, the Tahsildar, Mylapore-Triplicane Taluk, through his letter dated 13.02.2006 addressed to the 1st Respondent/District Collector, Chennai, had made a recommendation to relocate the 37 Irular families, who were residing in Survey No.2 Block No.66 of Thiruvanniyur Village, who were to be evicted by the Tamil Nadu Housing Board, to the alternate places at Urur Village, Town Survey No.5, Block No.40 classified as 'Burial Ground' measuring an approximate extent of 2 grounds, lying vacant. The remaining one portion at Besant Nagar is utilised as 'Burial Ground'. Also that, the Tahsildar, Mylapore-Triplicane Taluk, Chennai had addressed a communication to the 1st Respondent/District Collector, Chennai dated 01.03.2006 stating that the 37 Irular families were rehabilitated in Block No.38 T.S.No.11 measuring an extent of 2 grounds and 90 sq.ft. Government Poramboke, Urur Village on morning of 01.03.2006 on a 'Transitory Basis'.

10.It is not in dispute that the Petitioners were allotted with four residential plots in the part Layout by the 3rd Respondent/Tamil Nadu Housing Board and Sale Deeds were issued in their favour.

11. In this connection, it may not be out of place for this Court to make a pertinent mention that the Executive Engineer and Administrative Officer of the 3rd Respondent/Tamil Nadu Housing Board had addressed a letter to the Assistant Commissioner of Chennai Corporation, Zone - X, Adayar, Chennai - 600 020 stating a part of the land in which the Irulars had encroached is reserved for Park in the approved layout for the Chennai Metropolitan Development Authority dated 03.01.2006 etc. Because of the fact that the Irular families were in occupation of the subject land, the land reserved for Park was not handed over to the Chennai Corporation. For the implementation of the Scheme drawn, in terms of the approved plan, the land specified for road and park are to be handed over.

12. When the Respondents 6 to 9 filed Contempt Petition No.1156 of 2014 and Review Application No.108 of 2015 [filed by the Executive Engineer, Zone - X, Chennai] before this Court, the Learned Single Judge, while passing the Common Order on 30.08.2013, at paragraph 4, had referred to the communication dated 11.07.2010 addressed to the Learned Special Government Pleader appearing for Respondents 2 and 3 therein, by the Tahsildar, Mylapore-Triplicane Taluk and observed that '.... A mere reading of the above said communication shows that the road abutting the Petitioners' plot is not encroached and kept open with compound wall and gate on the eastern side with easy access to the petitioner's vacant plots, therefore, the Corporation of Chennai can form the road and declare it as public road as per the layout given by the Tamil Nadu Housing Board etc.'

13. The Learned Senior Counsel for the Petitioners refers to the above observation made by the Learned Single Judge in Contempt Petition No.1156 of 2014 and Review Application No.108 of 2015 to the effect '... A mere reading of the above said communication public road as per the layout etc.' and strenuously contends that the High Court had recorded that there was no encroachments on the road and that when the Petitioners are not on the Road Land, the issuance of impugned notice dated 13.04.2017 by the 2nd Respondent/Tahsildar, Velacherry cannot stand a scrutiny in the eye of Law.

14. In this regard, this Court aptly points out that the observation of the Learned Single Judge at para 4 in Contempt Petition No.1156 of 2014 and the Review Application No.108 of 2015 arose out of reading of the Internal Communication dated 11.07.2018 addressed to the Learned Special Government Pleader for Respondents 2 and 3 (in Contempt Petition) by the Tahsildar, Velacherry which will not heighten the case of the present Petitioners, because of the reason that the Respondents 6 to 9 had filed W.P.No.29497 of 2008 as Petitioners before this Court

whereby a consequential direction was prayed for in directing the 2nd Respondent/Executive Engineer of the Tamil Nadu Housing Board, Chennai to implement the Approved Layout in the manner known to Law and thereupon the 3rd Respondent/Member Secretary, Chennai Metropolitan Development Authority, Chennai to approve the Planning Permission for the proposed construction of residential building at Plot Nos.E.170/1,2,3 & 4 at the 4th Cross Street, Besant Nagar in T.S.Nos.10/2,3,4 & 5,4/2, Plot Nos.38 & 40 of Urur Village, in which, this Court on 30.08.2013 at paragraph 7 had directed the 1st Respondent/Executive Engineer, Zone-X, Corporation of Chennai, Adyar, Chennai - 600 020 to remove the encroachment with the assistance of Revenue Authorities/Respondents 4 and 5 [Collector, Chennai District and Tahsildar, Mylapore - Triplicane Taluk, Chennai] within a period of three months from the date of receipt of copy of this order etc.

15.Furthermore, this Court pertinently points out that in the Common Order dated 20.07.2015 in Contempt Petition No.1156 of 2014 and Review Application No.108 of 2015 is conspicuously silent in regard to the occupation of 37 Irular families in the area marked as Park site. As on date the said 37 families are residing in the land marked for Park Site by the 2nd Respondent/Tahsildar, Mylapore - Triplicane Taluk, and the order passed by this Court in W.P.No.29497 of 2008 dated 30.08.2013 is to be complied with in true letter and spirit as regards the removal of encroachment with the assistance of Revenue Authorities. Only if the occupiers of the Park Site are evicted, the said Occupiers can be relocated to any other place and because of the continued occupation of the said Irular families the Park Site could not be handed over by the 3rd Respondent/Tamil Nadu Housing Board, Chennai.

16.The crystalline fact is that only after handing over of the Park to the Local Body, the allottees of the four residential plots viz., the Respondents 6 to 9 (Petitioners in W.P.No.29497/2008) can obtain Planning Permission from the Chennai Metropolitan Development Authority in accordance with the direction issued by this Court dated 20.07.2015 in Contempt Petition No.1156 of 2014, as opined by this Court.

17.Besides the above, this Court relevantly points out that the eviction of occupiers/families from the plots of 4th Cross Street, Irular Colony, Besant Nagar, Chennai is quite in consonance with the orders passed by this Court in W.P.No.29497 of 2008 dated 30.08.2013, as referred to in the impugned notice dated 13.04.2017 issued by the 2nd Respondent/Tahsildar, Velacherry.

18.In so far as the stand taken by the Petitioners that

they are residents for the past 13 years at 4th Cross Street, Irular Colony, Besant Nagar, Chennai - 90 they had not produced any proof of their enumeration and photos of the inmates. Because of the fact that when the Managing Director of the Tamil Nadu Slum Clearance Board had ordered for the allotment of tenements constructed under JNNURM Scheme at Ezhil Nagar, Okkiyamduraipakkam to the 21 families as per proceedings dated 09.03.2017 and that when the concerned persons had refused to receive the individual notices relating to their movement from their present dwelling place to Ezhil Nagar, Okkiyamduraipakkam, which was scheduled on 02.05.2017, the notices in question affixed on 17.04.2017 and further they were granted 14 days time to move from the place of 'Rehabilitation'.

19. Dealing with the aspect of the Occupiers/Inmates of the land in Block No.38 T.S.No.11, Urur Village is concerned, since they were permitted to reside in the subject land transitorily, they cannot claim as a matter of right to continue to occupy the same since the permission in Law is revocable by the Grantor. Further, in a License no interest is created in any estate or interest in the property to which it pertains to.

20. Be it noted, that there is a close proximity between Homo Sapien's Life and his means of Livelihood which is an integral part of the 'Right to Life'. Admittedly, no person can live without means of 'Livelihood' which in turn cannot be deprived of so easily. Any action to be taken by a Public Authority must be a fair, reasonable one and must fulfil the requirements of Fair Play and Justice. To put it succinctly, the action of an Authority ought to be within the parameters of Law by providing an opportunity of being heard as regards the proposed action to be taken in a given case. A personal hearing may be given either collectively or individually as the case may be. The Authority proposing to take necessary action must be alive to the human element and compassion arising out of a particular situation because of the fact that the involuntary acts of occupation/encroachments made by the concerned persons do arise out of compulsion resting on circumstances beyond their control and out of sheer haplessness.

21. It is to be pointed out that a Judgment not inter parties is admissible in evidence in particular circumstances and in certain circumstances, if the existence of such Judgment is a 'Relevant Fact' or 'Fact in Issue'. Furthermore, it cannot be forgotten that earlier Judgments are sometimes admissible even against strangers as per decision Gopi Sundari V. Kherod, AIR 1925 Calcutta 194.

22. Moreover, an Order/Judgment is admissible when its existence is a 'Fact in Issue' or when it is 'Relevant' as per

the 'Rules of Relevancy' enshrined in other Sections of the Indian Evidence Act, 1872 viz., Sections 8, 11, 13, 54 Explanation (2) and C. In terms of Section 43 read with Sections 11 and 13 of the Indian Evidence Act, 1872, Judgments not inter parties can be utilised for certain restricted purposes and taken into consideration along with the other facts and circumstances of a given case.

23. An earlier Order/Judgment is exhibited to establish a statement amounting to admission made by a particular party is quite relevant under Section 35 of the Indian Evidence Act. After all the production of an earlier order will unerringly point out that there was an order. The crucial aspect that crops up for one's rumination under Section 43 of the Indian Evidence Act is that 'Is the existence of an order passed by the Competent Court is a 'Fact in Issue' or it is relevant under some other provisions of the Indian Evidence Act, 1872?.

24. As far as the present case is concerned, since the Petitioners were permitted to reside transitorily in the subject land, they cannot stake a claim for any interest in the property since the grant of permission/license is revocable one at the Will of the Grantor. As permissive Occupiers, the Petitioners put on impugned notice dated 13.04.2017 before requiring them to vacate from their present position to a different place and as such, the impugned notice is free from any flaw. As a matter of fact, the present Petitioners are not left in the lurch and according to the official Respondents, they are provided with 'Built Tenements' for their Habitation. Furthermore, only when the encroachment made in the Park Site is removed and the Irular families are relocated, the Park Site is to be handed over to the Local Body by the Tamil Nadu Housing Board. Later, the Allottees of the four residential plots viz., Respondents 6 to 9 are to obtain necessary Planning Permission from CMDA as per the direction issued by this Court in Contempt Petition No.1156 of 2014 and Review Application No.108 of 2015 dated 20.07.2015. Looking at from any angle, the impugned notice dated 13.04.2017 does not suffer from material irregularities or patent illegalities in the eye of Law. Consequently, the Writ Petition fails.

Conclusion:

25. In the result, the Writ Petition is dismissed. Before parting with the case, this Court points out that in the place of 'Rehabilitation', the Authorities concerned shall take necessary steps for establishment of a 'Police Out Post' to instil fear and to protect the residents and in preventing the occurrence of crimes and to tackle them effectively. Also that, the Authorities concerned shall take steps for providing 'Sufficient Lighting' so as to enable the residents to move freely during evening and night time. If more primary Schools with toilets and Teachers [than the existing one(s)] are

required in the 'Rehabilitation' place, then, the concerned Authorities of the State Government shall look into this aspect, by assessing the prevailing situation, because of the reason that the Petitioners' Children are not to be deprived or denied of their 'Right to Education' in the present day Life. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

Sgl
To

- 1.The District Collector,
O/o. The District Collector,
No.66, Rajaji Salai,
Chennai - 600 001.
- 2.The Tahsildar,
The Taluk Office,
No.113, Institute of Road Transport
Training Centre Complex,
V.V. Koil Street,
Tharamani 100 Feet Road
Velacherry, Chennai - 600 113.
- 3.The Tamil Nadu Housing Board,
represented by its Chairman,
Nandanam, Chennai.
- 4.The District Collector,
Kancheepuram District.
- 5.The Director of School Education,
Chennai.

+2cc to Mr.S.Sundaresan, Advocate SR.No.720,755

+1cc to Mr.K.Sudalaikannu, Advocate SR.No.1110

+1cc to Government Pleader SR.No.1496

W.P.No.11470 of 2017

JP (CO)
GMY (08/01/2019)