

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2020

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.P.No.15073 of 2020

and

W.M.P.No.18789 of 2020

1.D.Varalakshmi
2.S.Ganesan
3.N.Prakash
4.J.Ravi
5.S.Ibrahima
6.C.Vedavalli
7.Meiyyappan
8.H.Sofia
9.A.Jabruth
10.Jabindasri & Thameem Ansari. A.
11.R.Vasanthi
12.T.Dhanammal
13.J.Velu
14.T.Velusamy
15.M.Natrajan
16.N.Sadasivam
17.Chithirapandian
18.A.Anandhan
19.Amanullah Manzil Faizalkhan
20.Joseph Durairaj
21.Arulmigu Shri Sathi Vinayagar,
Represented by its Trustee : A.K.S.Sarvanan,
No.67, P.P.Nagar, 4th Street,
Razzack Garden Main Road,
Arumbakkam, Chennai - 600 106.

22.Anwar
23.Nirmala

... Petitioners

Vs.

1.The Tamil Nadu Housing Board,
Represented by its Managing Director,
No.331, Anna Salai,
Nandanam, Chennai - 600 035.

2.The District Collector,
Office of Collectorate,
Chennai District,
Rajaji Salai Road,
Chennai - 600 001.

3.The Thasildar,
Amijikarai Taluk,
Chennai District,
Chennai - 600 030.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records in the Impugned Notice dated 24.9.2020 bearing Na.Ka.No.1/5932/2015 issued by the 3rd Respondent and quash and direct the 3rd respondent not to evict the petitioners.

For Petitioners : Mr.Meikandan
for Mr.D.Vedhachelam

For R1 : Mr.Baskar
Standing Counsel

For R2 and R3 : Mr.Kumaresh Babu,
Additional Advocate General
assisted by Mr.M.Elumalai,
Additional Government Pleader

ORDER

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

The petitioners are the residents of P.P.Nagar, 4th Street, Razzack Garden Main Road, Arumbakkam, Chennai - 600 106, and according to them, each of them is in possession of certain extent of land on which they have put up superstructures which are also subject to statutory levies and they have been in possession for very many decades. However, to their shock and surprise, the 3rd respondent had issued show cause notice dated 24.09.2020 under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, asking them to show cause as to why eviction should not be carried out and challenging the legality of the same, the present writ petition has been filed.

2.Mr.Meikandan, learned counsel appearing for the petitioners, has invited the attention of this Court to the typed set of papers as well as the additional typed set of

papers, and would submit that the forefathers of the petitioners and the petitioners continue to remain in possession of the lands in question for very many decades and they have also put up superstructures which are also subject to statutory levies and they have been issued with Family Ration Card, Aadhar Card, etc. In the light of the fact that they are in long possession and enjoyment of the site and superstructures in question, it is not open to the 3rd respondent to straightaway issue impugned notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and he would further add that the impugned notice came to be issued without following due process of law and without proper application of mind. It is also pointed out by the learned counsel appearing for the petitioners that, in the light of the fact that monsoon is on, as well as the prevalence of Covid-19 pandemic, if the petitioners are suddenly evicted without resorting to due process of law, they will be put to extreme difficulty, hardship and inconvenience and it would violate the very right to life and personal liberty enshrined and guaranteed under Article 21 of the Constitution of India, and prays for appropriate orders.

3.Per contra, Mr.M.Elumalai, learned Additional Government Pleader, appearing for the respondents 2 and 3 would submit that the owner of the land admeasuring an extent of 15 grounds and 810 sq.ft. comprised in T.S.No.107/3, Block No.21, Arumbakkam Village, Chennai, filed W.P.No.10782 of 2001 praying for re-conveyance of the acquired land under Section 48-B of the Land Acquisition Act, 1894, and it came to be dismissed on 08.06.2001 and aggrieved by the same, filed an appeal in W.A.No.1324 of 2001 and the First Bench of this Court, vide order dated 10.09.2001, has dismissed the said writ appeal and has directed the concerned official respondents to take appropriate action to evict the encroachers within a period of six months from the date of receipt of a copy of the order, failing which, the land owner, namely, Padmalakshmi Ammal will be at liberty to approach this Court for appropriate relief and since it has not been carried out, she has filed W.P.No.34863 of 2018 and the same is pending. It is the further submission of the learned Additional Government Pleader that, due process of law has been followed while issuing notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, which will be followed by notice under Section 6 of the said Act, and since the petitioners are having an effective alternative remedy in the form of appeal before the statutory appellate authority, the writ petition per se is not maintainable and prays for dismissal of the writ petition.

4.This Court has carefully considered the rival submissions and perused the materials placed.

5.It is relevant to extract Sections 10 and 10-B of the Tamil Nadu Land Encroachment Act, 1905 :

"10. Appeal.- An appeal shall lie (a) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar under this Act, and to such officer as may be specified by the State Government in this behalf (herein after referred to as the appellate authority) from any decision or order passed by an authorised officer under this Act and different appellate authorities may be specified for different classes of cases; and

(b) to the District Collector from any decision or order of a Collector passed otherwise than on appeal, and

(c) to the Commissioner of Land Administration) from any decision or order of a District Collector passed otherwise than on appeal.

...

10-B : Stay pending decision in appeal or revision : Pending the disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, the Appellate Authority the [Commissioner of Land Administration] or the State Government, as the case may be, may by order, and subject to the conditions as may be specified therein, stay the execution of the decision or order appealed against or sought to be revised."

6.Though the petitioners pray for a larger relief, in the light of the fact that the petitioners are having an effective alternative remedy, it is open to the petitioners to invoke the alternative appellate remedy by filing individual appeals under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, along with petition for stay under Section 10-B of the said Act, to the Collector of Chennai District, enclosing the relevant and authenticated documents, within a period of two weeks from the date of receipt of a copy of this order, and upon receipt of the same, the appellate authority, viz., the Collector of Chennai District, or delegated appellate authority, shall consider the interim prayer for stay at the first instance and give a disposal within a further period of two weeks, and till such time, the 3rd respondent shall defer any further decision in terms of the impugned notices. The petitioners, till the disposal of the petition for stay, shall not create any third party right in respect of the land and superstructures in question. It is also open to the appellate authority to give disposal to the statutory appeal as expeditiously as possible.

This writ petition is disposed of accordingly. No costs.
Consequently, connected miscellaneous petition is closed.

sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

mkn

To

1.The Managing Director,
Tamil Nadu Housing Board,
No.331, Anna Salai,
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2.The District Collector,
Office of Collectorate,
Chennai District,
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Chennai - 600 001.

3.The Thasildar,
Amijikarai Taluk,
Chennai District,
Chennai - 600 030.

+1 CC to Mr.V.VEDACHALAM, Advocate on payment of necessary
charges SR.NO.35962

+1 CC to The GOVERNMENT PLEADER SR.NO.36063

W.P.No.15073 of 2020

MKD(CO)
NS-19/12/2020

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