



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD) Nos. 9230, 9221, 9222, 9224, 9227,
9233, 9240, 9242 and 9244 of 2020
and W.M.P. (MD) Nos. 8416, 8407, 8409, 8411, 8414,
8419, 8421, 8423, 8424 of 2020
(Through Video conferencing)

W.P. (MD) No. 9230 of 2020:

Rajesh	... Petitioner in WP (MD). 9230/ 2020
Susana Amali	... Petitioner in WP (MD). 9221/ 2020
Abdul Rahuman	... Petitioner in WP (MD). 9222/ 2020
Amirtha Gowri	... Petitioner in WP (MD). 9224/ 2020
Chandra Mohan	... Petitioner in WP (MD). 9227/ 2020
Shanthi	... Petitioner in WP (MD). 9233/ 2020
M.Balamurugan	... Petitioner in WP (MD). 9240/ 2020
Nagalakshmi	... Petitioner in WP (MD). 9242/ 2020
Sekar	... Petitioner in WP (MD). 9244/ 2020

-Vs-

1.The District Collector,
Trichy District,
Trichy.

2.The Commissioner,
Trichy Corporation,
Trichy.



3.The Assistant Commissioner,
Trichy Corporation,
Ponmalai Division,
Trichy.

4.The Tahsildar,
Trichy West,
Trichy.

... Respondents (in all Cases)

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying this Court Peased to issue a Writ of Certiorarified Mandamus or any other appropriate Writ or Order or Direction in the nature of Writ calling for the records relating to the Eviction Notice issued by the 3rd respondent in N.F1/115/2020 dated 15.07.2020 and quash the same and consequently, direct the 1st and 4th respondent to grant patta in favour of the petitioner based on the representation dated 04.11.2019.

For Petitioner : Mr.C.Vakeeswaran
(In all W.Ps)

For Respondents : Mr.K.P.Krishnadoss,
(In all W.Ps) Special Govt. Pleader for R1 & R4

Mr.N.S.Karthikeyan,
Standing Counsel for R2 & R3

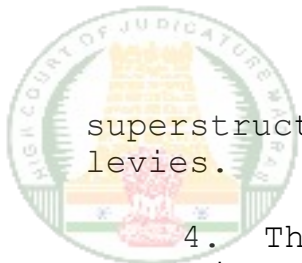
COMMON ORDER

[Order of the Court was made by **M.SATHYANARAYANAN, J.,**]

By consent, all these writ petitions are taken up for hearing and disposed of by this common order.

2. Mr.K.P.Krishnadoss, learned Special Government Pleader accepts notice on behalf of respondents 1 and 4. Mr.N.S.Karthikeyan, learned Standing Counsel accepts notice on behalf of respondents 2 and 3.

3. The learned counsel appearing for the petitioners would submit that after the demise of the predecessors of the petitioners, the petitioners are in possession and enjoyment of specific measurement of the landed property in Old survey No.399/1, T.S.No.1/1, Block No.9, Ward No.44, Old Post Office Road, Ponmalai Division, Tiruchirappalli Corporation, for more than 70 years and as of now, 14 families are residing and are in possession of the

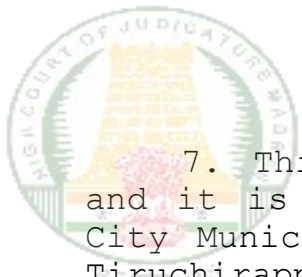


superstructure and their properties are also subjected to statutory levies.

4. The primordial submission made by the learned counsel appearing for the petitioners is that the respondent-Tiruchirappalli Municipal Corporation, made positive recommendations on 29.09.1989 and 27.12.1990, recommending for the issuance of house sites patta and despite that, no progress has been disposed of and in this regard, the predecessors of the petitioners and some of them had also filed W.P.Nos.20364, 20229, 20625, 20634 to 20636 of 1994 praying for appropriate orders and all the writ petitions came to be disposed of for consideration of the said recommendations.

5. It is the further submission of the learned counsel appearing for the petitioners that the predecessors of the petitioners and others, apprehending dispossession without recourse to due process of law, had also filed a civil suit in O.S.No.694 of 1996 on the file of the Court of I Additional District Munsif, Tiruchirappalli, against the Collector of Tiruchirappalli and the Tiruchirappalli Municipal Corporation, praying for the relief of permanent injunction, restraining them from interfering with the peaceful possession and enjoyment over the suit properties and pendency of the suit, they also had the benefit of interim order. Unfortunately, the said suit came to be dismissed for default and the application for condonation of delay in filing the application for restoration of the suit also came to be dismissed and challenging the same, a Civil Revision Petition under Article 227 of the Constitution of India has been filed on the file of this Court and it is yet to be numbered and taking advantage of the said situation, the respondent Corporation has issued individual impugned notices by invoking Section 258 of Coimbatore City Municipal Corporation Act, 1981, which is equally applicable to the Tiruchirappalli City Municipal Corporation, 1994 and in the light of the fact that the petitioners are economically backward and in the event of eviction and dispossession, virtually they would come to the street and further taking into consideration the present pandemic situation due to COVID-19, this Court may pass appropriate orders to protect their interest.

6. The learned Standing Counsel appearing for respondents 2 and 3, on instructions, would submit that on an earlier occasion also the said suit came to be dismissed for default and restored and even as per their own case of the petitioners, they are rank encroachers and they cannot make any complaint in this regard and due process of law has been followed for evicting them and accordingly, the impugned notices have been issued and further contend that unless they satisfied to Sub-Section (2) of Section 258 of Tiruchirappalli Municipal Corporation Act, 1994, they have not expected to make any grievance and prays for dismissal of this writ petition with costs.



7. This Court has carefully considered the rival submissions and it is also relevant to extract Section 258 of the Coimbatore City Municipal Corporation Act, 1981, which is also applicable to Tiruchirappalli City Municipal Corporation Act, 1994.

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'258. Removal of encroachments.

(1) The Commissioner may, by notice, require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction (other than a door, gate, bar or ground-floor window) situated against or in front of such premises and in or over any street or any public place the control of which is vested in the Corporation.

(2) If the owner or occupier of the premises proves that any such projection encroachment or obstruction has existed for a period sufficient under the law of limitation to give him a prescriptive title or where such period is less than thirty years, for a period of thirty years or that it was erected with the consent of any Municipal Authority duly empowered in that behalf, and the period if any, for which the consent is valid has not expired the Corporation shall make compensation to every person who suffers damage by the removal or alteration of the same.'

8. A perusal of the typed set of documents would disclose that a civil suit in O.S.No.694 of 1996 had been filed against the Tiruchirappalli Municipal Corporation as well as the Collector of Tiruchirappalli, praying for permanent injunction restraining the defendants, their men, agents and servants from interfering with the plaintiffs peaceful possession and enjoyment of their respective suit properties in Trichy District, Trichy Town, Cantonment, Anaikatti Maidan, Ward J Block 9, T.S.No.1/1 and from the submission of the learned counsel appearing for the petitioners, it appears that they had the benefit of an order of ad-interim injunction and on account of the dismissal of the suit for default, the said interim order came to be vacated. The petition for condonation of delay in filing the application to restore the suit also came to be dismissed and though it is submitted that a Civil Revision Petition has been filed challenging the said order, it is yet to be numbered.

9. It is also the submission of the learned counsel appearing for the petitioner that since the properties and the respective possession of the properties are subjected to statutory levies, they got a right to retain their possession.



10. A Full Bench of this Court in **Ramaraju Vs. State of Tamil Nadu, Represented by its Secretary to Government, Revenue Department, Fort St. George, Chennai and others** reported in **2005(2) CTC 741** had considered the said issue also and in sub-paragraph 3 of paragraph No.38 held that "payment of property tax, provisions of water connection or electricity by themselves cannot be construed as conferring any independent right, if the encroachment is otherwise unauthorised."

11. In the light of sub-Section (2) of Section 258 of the Tiruchirappalli City Municipal Corporation Act, 1994, it is for the individual writ petitioners to satisfy the respondent corporation in the form of individual representations with 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 respondent Corporation shall give a disposal to the said individual representations in the light of the said statutory provisions within a further period of three weeks thereafter and till such time, shall defer further decision in terms of the impugned notices and communicate the decision taken, in this regard, to the individual writ petitioners. It is made clear that till the disposal of the said representations to be given, the petitioners shall not create any third party rights in respect of the land and superstructure in question.

12. These writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Deputy Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector
Trichy District

Trichy.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Commissioner
Trichy Corporation
Trichy.

3.The Assistant Commissioner
Trichy Corporation
Ponmalai Division
Trichy.

4.The Tahsildar
Trichy West
Trichy.

+1 CC to M/s.Special Govt.Pleader (SR-14190[F] dated 17/08/2020)

+9 CC to M/s.C. VAKEESWARAN, Advocate (SR-14137 to 14145[F] dated 14/08/2020)

Order made in
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and W.M.P. (MD) Nos. 8416, 8407, 8409, 8411, 8414,
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vsm
SDS (25.08.2020) 6P-15C