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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:22.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P(MD)Nos. 11714 to 11717 of 2018

and

W.M.P. (MD) .Nos.10648 to 10653 of 2018

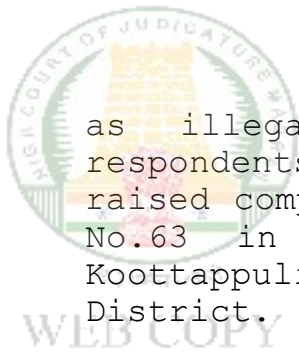
Robi	... Petitioner in W.P.(MD) .No.11714/2018
L.Inpentra	... Petitioner in W.P.(MD) .No.11715/2018
Julian	... Petitioner in W.P.(MD) .No.11716/2018
Shyney	... Petitioner in W.P.(MD) .No.11717/2018

Vs.

- 1.The District Collector,
Tirunelveli District,
Tirunelveli.
- 2.The Revenue Divisional Officer,
Cheranmahadevi,
Tirunelveli District.
- 3.The Tahsildar,
Radhapuram Taluk,
Radhapuram, Tirunelveli District.
- 4.Malar ... Respondents in all W.Ps

Prayer in W.P.(MD).No.11714 of 2018: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the third respondent in his proceedings bearing in ka.No.B8/11178/2018, dated 24.04.2018 and quash the same as illegal and unconstitutional, consequently directing the respondents 1 to 3 to issue patta for the extent of 0.00.40 hectares where the petitioner raised compound wall which attached with petitioner's house in Plot No.180 in survey Nos.360, 361, 379, 380 at Tsunami colony, Koottappuli, Levinchipuram Village, Radhapuram Taluk, Tirunelveli District.

Prayer in W.P.(MD).No.11715 of 2018: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the third respondent in his proceedings bearing in ka.No.B8/11178/2018, dated 24.04.2018 and quash the same



as illegal and unconstitutional, consequently directing the respondents 1 to 3 to issue patta for the place where the petitioner raised compound wall which attached with petitioner's house in Plot No.63 in survey Nos.360, 361, 379, 380 at Tsunami colony, Koottappuli, Levinchipuram Village, Radhapuram Taluk, Tirunelveli District.

Prayer in W.P.(MD).No.11716 of 2018: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the third respondent in his proceedings bearing in ka.No.B8/11178/2018, dated 24.04.2018 and quash the same as illegal and unconstitutional, consequently directing the respondents 1 to 3 to issue patta for the extent of 0.01.12 hectares attached with petitioner's house in Plot No.2, which comprised in survey Nos.360, 361, 379, 380 at Tsunami colony, Koottappuli, Levinchipuram Village, Radhapuram Taluk, Tirunelveli District.

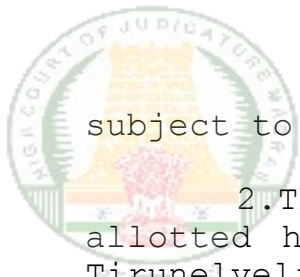
Prayer in W.P.(MD).No.11717 of 2018: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records passed by the third respondent in his proceedings bearing in ka.No.B8/11178/2018, dated 24.04.2018 and quash the same as illegal and unconstitutional, consequently directing the respondents 1 to 3 to issue patta for the extent of 0.00.37 hectares which attached with petitioner's house in Plot No.160, in survey Nos.360, 361, 379, 380 at Tsunami colony, Koottappuli, Levinchipuram Village, Radhapuram Taluk, Tirunelveli District.

For Petitioners : Mr.T.Sundaravadanam for
Mr.S.Balamurugan
For Respondents : Mr.Ayiram K.Selvakumar
Additional Government Pleader
for RR-1 to 3
(in all W.Ps)

COMMON ORDER

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

Heard the submissions of Mr.T.Sundaravadanam, learned counsel appearing for the petitioners, who would submit that large number of people residing in the coastal areas were affected, due to a sudden natural calamity caused by 'Tsunami' in the year 2004, which included the residents of Koottapuli, situated in Levinchipuram Village, Radhapuram Taluk, Tirunelveli District. The Government, in order to alleviate the sufferings and grievances undergone by the people, who got affected due to the natural calamity and each disaster, thought fit to allot three cents of land to each of the eligible candidates, including the petitioners, comprised in Survey Nos.360, 361, 379 and 380. The Government, on their own expenses put up constructions and handed over the same to the beneficiaries,



subject to certain conditions.

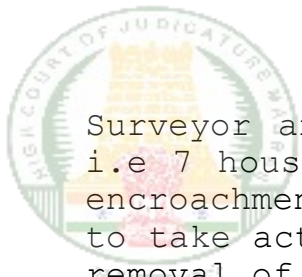
2.The petitioners claim that they are residing in the allotted houses at Tsunami Colony, Koottappuli, Radhapuram Taluk, Tirunelveli District and the grievance expressed by the petitioners is that the place in which, house sites were allotted and superstructures were put up is far away from the nearest town area locality and the said place is continuously infested with venomous snakes and anti-social elements and in order to protect the property and person, the petitioners and others put up a compound wall and now, the respondents are initiating action under the provisions of the Tamil Nadu Land Encroachment Act, 1905 as if the compound wall is put up on an encroached land.

3.The learned counsel appearing for the petitioners would further submit that the fourth respondent herein, namely, Mrs.Malar, who is inimical to the petitioners, filed a writ petition in W.P.(MD)No.5345 of 2015 for removal of encroachment and it came to be disposed on 19.10.2016, by directing the concerned official respondent to follow the due process of law and carry out the eviction process.

4.The learned counsel appearing for the petitioners would also submit that the third respondent has straight away issued notices under Sections 6 and 7 of the Tamil Nadu Land Encroachment Act, 1905 within a short span of time and taking into consideration of the fact that the construction of the compound wall is no way causing hindrance to the other residents, it can be termed only as an 'unobjectionable encroachment' and hence, he prays for appropriate orders.

5.The learned counsel appearing for the petitioners would forcefully contend that admittedly, the petitioners are hailing from poor economic background and also belonging to lowest strata of the society and in order to alleviate their grievances, the Government has extended their benevolence by allotting the house sites and also putting up superstructures and in order to protect the person and property, compound wall has been put up and even assuming for the sake of convenience that the compound wall was constructed in public land, it could be termed as 'unobjectionable encroachment and the concerned authority may show some leniency in the matter taking into consideration the difficulties of the petitioners and similarly placed persons by regulating the encroachment and hence, prays for appropriate orders.

6.Per contra, Mr.Aayiram K.Selvakumar, learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that the Tahsildar, Radhapuram has taken into consideration the order dated 19.10.2016 passed in W.P.(MD)No.5345 of 2015 filed by Mrs.Malar and conducted a survey through the Taluk Headquarters



Surveyor and found that plot Nos.2, 3, 63, 159, 160, 177 and 180, i.e 7 houses are under occupation and in respect of plot No.3, the encroachment is more than 3 cents and accordingly, took a decision to take action for removal of encroachment and as such, he prays for removal of encroachment.

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7.This Court has carefully considered the rival submissions and also perused the materials placed on record.

8.It *Prima facie* appears that the third respondent, namely, Tahsildar, Radhapuram Taluk, Radhapuram issued notices to the petitioners alleging that there are encroachments in public land in the form of compound wall and being an official exercising statutory powers, he is expected to follow the due process of law. Of course, it is also open to the petitioners to submit their representations to the third respondent, justifying their act and as and when the said representations are submitted, the third respondent shall also take into consideration the order passed by this Court in **W.P. (MD) No.7695 of 2018, dated 17.07.2018 [R.Dayana Vs. The District Collector, Tirunelveli District, Tirunelveli and three others]** and take a decision by following the due process of law and complete the exercise as expeditiously as possible, preferably within a period of 12 weeks from the date of receipt of a copy of this order and communicate the decision taken to the respective petitioner.

9.In the result, these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

das/vs

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,Tirunelveli District,Tirunelveli.

2.The Revenue Divisional Officer,

Cheranmahadevi,Tirunelveli District.

3.The Tahsildar,Radhapuram Taluk,Radhapuram, Tirunelveli District.

W.P (MD) Nos.11714 to 11717 of 2018

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