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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.02.2021

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.Nos.2620, 2622, 2626 & 2630/2021
and

WMP.Nos.2943, 2945, 2948 & 2951/2021

Udhayakumari	..	Petitioner in WP.No.2620/2021
Mathurambal	..	Petitioner in WP.No.2622/2021
B.Indira	..	Petitioner in WP.No.2626/2021
Katharmydeen	..	Petitioner in WP.No.2630/2021

Versus

1.District Collector
Collector Office Road
Moonvedar Nagar
Villupuram 605 602.

2.The Commissioner
Tindivanam Municipality
Hospital Road,
Tindivanam-604 001.

3.Tahsildar
Taluk Office, Tindivanam East
Tindivanam 604 001.

.. Respondents
in all Writ Petitions

Common Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus calling for the records of the 2nd respondent made in Na.Ka.No.3473/2020/F1 dated 14.12.2020 and quash the same as illegal, arbitrary and non-est in law and consequently forbear the respondents from interfering with the petitioners' peaceful possession of the properties comprised in



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S.No.25/8, TS.No.3, Avaraipakkam Village, Ward C, Block No.1, Tindivanam Municipality.

For Petitioners in
all Petitions : Mr.B.Vijay
For R1& R3 in
all Writ Petitions : Mr.S.Kamalesh Kannan
Government Advocate
For R2 in all
Writ Petitions : Mr.P.Srinivas
Standing counsel

COMMON ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J. through
Physical Hearing]

- (1) By consent, all the writ petitions are taken up together and are disposed of by this common order, since the issue to be adjudicated and decided is one and the same.
- (2) Mr.S.Kamalesh Kannan, learned Government Advocate accepts notice on behalf of respondents 1 and 3 and Mr.P.Srinivas, learned Standing counsel accepts notice on behalf of the 2nd respondent.
- (3) The petitioners claim to be in absolute possession and enjoyment of the landed property comprised in S.No.25/8, TS.No.3, situate at Avaraipakkam Village, Ward 'C' Block No.1, Tindivanam, for several decades and all of them had put up small huts / semi permanent / permanent superstructures to maintain their families and are eking out their livelihood as agricultural coolies / menials.
- (4) The petitioners would further state that representations have also been given to the Local Body for grant of pattas in respect of the lands in their possession and a positive recommendation has also been made by the Local Body to the Government and however, the Government is yet to take a call in that regard.
- (5) The learned counsel for the petitioners would submit that during August 2005, an attempt has been made to take possession of the lands without recourse to law and in this regard, civil suits, praying for declaration and permanent injunction, have been filed on the file of the Court of District Munsif, Dindigul and the same are pending without the benefit of any interim orders. He would submit that despite the fact that the land has been classified as 'Government Poramboke Track [பாறை]



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as per the Revenue Records, the 2nd respondent / Municipality has issued the impugned Notices under Section 182 of the Tamil Nadu District Municipalities Act, 1920 and drawn the attention of this Court to paragraphs No.17, 27 and 38 of the decision rendered by a Full Bench of this Court reported in 2005 [2] CTC 741 [Ramaraju V. The State of Tamil Nadu rep.by its Secretary to Government, Revenue Department, Fort St George, Chennai and Others] and would submit that in the light of the ratio laid down in the said judgment, the 2nd respondent lacks jurisdiction to issue the impugned Notices and prays for interference.

(6) The Court heard the submissions of Mr.S.Kamalesh Kannan, learned Government Advocate appearing for respondents 1 and 3 and Mr.P.Srinivas, learned Standing counsel appearing for the 2nd respondent, who on instructions would submit that though the land has been classified as Government Poramboke as per the Revenue Records, once the user is for pathway/road, it vests with the Municipality and as such, the 2nd respondent is having jurisdiction and competence to issue the impugned Notices and admittedly, all the petitioners are rank encroachers and they also put up unauthorised semi permanent / permanent constructions and since due process of law is being followed, they are not expected to make any grievance in that regard and prays for dismissal of these writ petitions with exemplary cost.

(7) This Court has carefully considered the rival submissions and also perused the materials placed before it.

(8) A perusal of the typed set of documents would *prima facie* disclose that the land in question has been classified as Government Poramboke Track [புரம்புகை]. The Full Bench of this Court, in the above cited decision, in paragraphs No.17 and 27, has observed as follows:-

'17. Under Section 182[2], if the removal is effected in respect of any projection, encroachment before the expiry of the permission or the license or where such projection, encroachment or obstruction is existed for a period sufficient under the law of limitation to give any person prescriptive title thereto, the municipal council is required to make reasonable notice to every person who suffers damage by the removal or alteration of the same. It is obvious that if no compensation is offered in respect of action coming within the purview of Section 182[2] or if the compensation offered is not reasonable, the aggrieved party would be



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entitled to seek for payment of reasonable compensation before the appropriate Civil Courts. However, such person cannot seek for any injunction regarding the removal of the projection, encroachment or obstruction on the footing that compensation has not been paid or compensation paid is not reasonable. At the stage of Section 182, he is only entitled to a notice as envisaged under section 182[1] so that he himself can remove the projection, encroachment or obstruction. If however he does not do so in spite of notice, it is the duty of the municipality to do so.

.....

27. Next comes the question relating to removal of encroachments on lands which do not form part of the road or roadside land or street margins. So far as the Municipalities are concerned, apart from the streets and roads which vest in the municipality, there may be exists certain other lands which are not part of the road or street, but which vest in the Municipality. In respect of such land encroached upon by an encroacher, it is obvious that the municipality is required to follow the provisions contained in Public Premises Eviction Act or other appropriate law to recover possession from the person in possession in accordance with law,. However, the Municipality is not expected to take the law into its own hand and forcibly evict the trespasser by misconstruing the observation made in the order of the Division Bench. Rule of law is required to be followed. The definition clause under Section 2[e][ii] of the Tamil Nadu Public Premises [Eviction of Unauthorised Occupants] Act, 1975 takes within its seep any land or building belonging to the Municipality. It is therefore, obvious that recourse can be had to the provisions contained in the aforesaid Act. Where, however, there is bona fide and serious dispute to the entitlement, of the municipality, the summary procedure contemplated under the Tamil Nadu Public Premises [Eviction of Unauthorised Occupants] Act, 1975 may not be applicable and the Municipality would be required to recover possession through a Civil Courts.''



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(9) In the light of the said observation, streets and roads vest with the Municipality and the learned counsel for the petitioners sought to distinguish the same by submitting that streets and roads vest with Municipality and not the track. However, this Court is of the considered view that such a kind of interpretation cannot be given for the reason that even the tracks [பாதை] are also maintained by the Municipality and if the analogy proposed by the petitioners is accepted, then the Local Body may shirk out their responsibility to maintain the track [பாதை].

(10) In the light of the above facts and circumstances, this Court permits the petitioners to submit individual representations to the 2nd respondent with all relevant and authenticated documents for substantiation of their respective claim within a period of four weeks from the date of receipt of a copy of this order / uploading of the order in the website, including the objection as to the invocation of Section 182 of the Tamil Nadu District Municipalities Act, 1920, and upon receipt of the same, the 2nd respondent is directed to consider the said representations on merits and in accordance with law and preferably take up the plea as to the jurisdiction to issue such notices and pass appropriate orders within a further period of six weeks thereafter and communicate the decision taken, to the petitioners and till such time, the 2nd respondent shall defer further decision in terms of the impugned Notices. It is made clear that the petitioners, till the disposal of the representations by the 2nd respondent, shall not create any third party rights in respect of the lands and superstructures in question.

(11) The writ petitions stand disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(C.O.)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector, Collector Office Road
Moonvedar Nagar, Villupuram 605 602.
2. The Commissioner, Tindivanam Municipality
Hospital Road, Tindivanam-604 001.
3. The Tahsildar, Taluk Office, Tindivanam East, Tindivanam 604 001.

+4cc to M/s.B.Vijay, Advocate SR.NOs.11224 to 11227

+1cc to The Government Pleader SR.NO..11160

AKM/30.03.21/5P- 9C/

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