



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.07.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.26144 to 26147 of 2015 and
M.P.Nos.1 to 1 of 2015

G.Sivagami Ammal	... Petitioner in W.P.No.26144 of 2015
P.Nagarajan	... Petitioner in W.P.No.26145 of 2015
M.Mani	... Petitioner in W.P.No.26146 of 2015
S.Rukmani Devi	... Petitioner in W.P.No.26147 of 2015

Vs.

- 1.The Executive Engineer
Public Works Department,
Padappai, Kancheepuram District.
- 2.The Commissioner,
PALLAVAPURAM MUNICIPALITY
3rd Main Road, New Colony,
Chromepet, Chennai - 600 044. ... Respondents in all WPs.

Prayer in WP.No.26144/2015: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus forbearing the respondents from evicting the petitioner from the property owned by the petitioner being the vacant land measuring an extent of 36 cents in Survey No.302/8 and an extent of 28 cents in Survey No.304/20, totally measuring an extent of 64 cents in Patta No.2151 situated at No.155 Kilkattalai Village, Kancheepuram District within the Registration District of Chennai South and Registration Sub-District of Pallavaram unless by due process of law by issuing prior notice to the petitioner or by acquiring the lands of the petitioner.

Prayer in WP.No.26145/2015: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus forbearing the respondents from evicting the petitioner from the property owned by the petitioner being land and building measuring an extent of 0.08.0 Hc viz. 8828 sq.feet out of 37.5 cents comprised in Survey No.305/8A and 305/8C situated at Madipakkam-II, Kilkattalai Village, Alandur Taluk (previous Tambaram Taluk) Kancheepuram District, within the Registration District of Chennai South and Registration Sub-District of Pallavaram unless by due process of law by issuing prior notice to the petitioner or by acquiring the lands of the petitioner.



Prayer in WP.No.26146/2015: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus forbearing the respondents from evicting the petitioner from the property owned by the petitioner, being the vacant land in Old No.155, Keelkattalai Village (New No.97, Madippakkam Part-2), Tambaram Taluk, Kancheepuram District, measuring an extent of 29 cents in Survey No.305/19 in Patta No.2193, within the Registration District of Chennai South and Registration Sub-District of Pallavaram, unless by due process of law by issuing prior notice to the petitioner or by acquiring the lands of the petitioner.

Prayer in WP.No.26147/2015: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to restore the building or pay compensation for demolishing the superstructure without any notice, owned by the petitioner in Survey No.305/9 & 305/20, Plot No.6, bearing Patta No.5482, in Kilkattalai Village, Alandur Taluk, Kancheepuram District measuring an extent of 600 sq.ft., within the Registration District of Chennai South and Registration Sub-District of Pallavaram.

For Petitioners : Mr.N.Muralikumaran
for M/s.McGan Law Firm (in all WPs)

For Respondents : Ms.Akila Rajendran
Government Counsel (in all WPs)

COMMON ORDER

Since the issue raised in all the four writ petitions are one and the same, with the consent of the learned counsel appearing for both sides, all these writ petitions are heard together and are being disposed of by this common order.

2. In respect of the property mentioned in the respective prayer of each of the writ petitions, it is the claim of the respective petitioners that, they are the owners and they have been in possession and enjoyment of properties are concerned.

3. In this context, their apprehension is that, the respondents would come forward to evict the petitioners treating them as 'Encroachers' of the land which they seems to have been considered to be the Government lands.

4. However, whether the land in question in respect of all these four writ petitions are Government lands, for which, the respondents are entitled to get possession of the same from the petitioners or it is the private lands, for which, the respective petitioners are entitled to have their possession and



enjoyment of the lands are concerned, that issue cannot be gone into in these writ petitions.

5. Therefore, Mr.N.Muralikumaran, learned counsel appearing for the petitioners in all these writ petitions would submit that, if at all the respondents want to take any action under any law for the time being in force against the petitioners treating them as 'Encroachers', notices shall be given to each of the petitioners and after giving opportunity of being heard and after conducting an enquiry, then, needful can be done in accordance with law. Without resorting to such procedure under due process of law, behind the back of the petitioners, no such action shall be taken by the respondents, that is the only grievance of the petitioners which is espoused in all these four writ petitions. Therefore, in order to ensure the same, if the rights of the petitioners is considered by issuing prior notice, the petitioners would be satisfied, he contended.

6. I have heard Ms.Akila Rajendran, learned Government Counsel appearing for the respondents, who relied upon the following averments made in the counter affidavit.

"6.Regarding the averment stated in paragraph 3 (G), it is stated that this respondent has not taken any step to evict the encroachment of the petitioner in the impugned S.Nos. so far since any eviction could be done only under the due process of law vide Tamil Nadu Protection of Tank and Eviction of Encroachments Act and Rule, 2007. Hence, there is no cause of action till now to survey the land, identify the encroachments, nature of encroachments which are to be carried out by the Revenue Department and to furnish the same to this respondent in Form I and II of the Rules, ibid. Only upon the receipt the Form I and II from the Tahsildar, the Assistant Engineer can issue notice in Form III of the Rules, 2007 for eviction if the encroachment of the petitioner is confirmed. This respondent had not deployed any JCB and the alleged road formation was also not within the scope of this respondent's department. However, in the year 2015, the new encroachments by way of putting up commercial shops were immediately removed by the previous incumbent of Irrigation Section, Padappai with the assistance of Revenue authorities since the shops would obstruct the inlet points of the tank which is also a Government poromboke more specifically classified as Eiri Ulvoi and would block the draining of the surface flow from the upper catchments since the North East Monsoon was about to start in another couple of months during that time. Hence, due to the eviction of shops carried out in the tank inlet point



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(Eri Ulvoi) the petitioners have filed these writ petitions apprehending that their occupation by way of encroachment in the Government poromboke being the inlet points of the impugned tank would be evicted subsequently. But, in fact, this answering respondent has not taken any step so far to take eviction process since the injunction order is still in force vide orders dated 21.08.2015 and 08.09.015 in M.P.Nos.1 and 1 in the Writ Petitions herein."

7.By relying upon these averments, the learned Government Counsel would submit that, the land in question belongs to the Government and they wanted to retrieve the land from the petitioners.

8. In this context, it is admitted in the said para 6 of the counter affidavit, as quoted herein above, that, before taking any action to evict these petitioners, notices would be given and due process of law under Tamil Nadu Protection of Tank and Eviction of Encroachments Act and Rule, 2007 would be strictly followed.

9. Therefore, the learned Government Counsel submits that, insofar as the apprehension of the petitioners is concerned that, the respondents would suddenly evict the petitioners without due process of law, since has been met here and the said averments have been given by the respondents that, due process of law would be followed, recording the said submission, this writ petition can be disposed of, she contended.

10. The learned Government Counsel would also submit that, as on today, no action has been taken by the Revenue Authorities or the respondents against the petitioners in respect of the subject land. Therefore, if at all any future action they want to take against the petitioners due process of law would be strictly followed, as indicated in para 6 of the counter as referred to above.

11. I have considered the said rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

12. As has been stated by the learned counsel appearing for the petitioners their simple apprehension is that they would be evicted unlawfully. Whatever be the stand of the respondents with regard to the nature of the land as well as the right of the petitioners herein is concerned, that cannot be decided here and if the respondents come forward to say that, the land in question belongs to Government, therefore, they are entitled to dispossess the petitioners by way of lawful eviction, they can



do so by adopting the due process of law.

13. Since this course of action is an established procedure under law, the same has been accepted by the respondents also in the counter affidavit as stated above.

14. When that being so, recording the above said stand taken by the respondents that, due process of law would be strictly followed under the provisions of the Tamil Nadu Protection of Tank and Eviction of Encroachments Act and Rule, 2007 or under any other law for the time being in force, this Court feels that, these writ petitions can be disposed of.

15. In that view of the matter, these writ petitions are disposed of with the following orders:

That there shall be a direction to the respondents to resort to legal process either under Tamil Nadu Protection of Tank and Eviction of Encroachments Act and Rule, 2007 or any other law for the time being in force, if the respondents decided to evict the petitioners treating them as 'Encroachers' in that process, notice shall be given to each of the petitioners and after ensuring that the notices reached to the petitioners, after giving an opportunity of being heard and conducting a limited enquiry to that effect, needful action shall be undertaken by the respondents in accordance with law.

(ii) It is made clear that, if notices have not been given or notices are not served to the petitioners, without the notice being served, if any other preceptative action is taken by the respondents towards evicting the petitioners, that would be a ground for the petitioners to reagitate the issue and get the possession of the lands back to the petitioners, hence strict compliance of the provisions of the Act and Rule shall be followed by the respondents before taking the eviction process against the petitioners in respect of the subject land.

16. With these directions and observations, all these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar



Sgl

To

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1.The Executive Engineer
Public Works Department,
Padappai, Kancheepuram District.

2.The Commissioner,
PALLAVAPURAM MUNICIPALITY
3rd Main Road, New Colony,
Chromepet, Chennai - 600 044.

+1cc to M/s.McGan Law Firm, Advocate, S.R.No.36488

+1cc to the Government Pleader, S.R.No.36755

W.P.Nos.26144 to 26147 of 2015

GPL(CO)
SB(07/10/2021)