



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

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THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.33334 & 33335 of 2015 and
MP.Nos.1 & 1 of 2015

WP.No.33334 of 2015

Marisami Kurumans

... Petitioner

Vs

- 1.The Government of Tamilnadu,
Represented by its Secretary,
Housing & Urban Development Department,
Fort St.George, Chennai-9
- 2.The Government of Tamilnadu,
Represented by its Secretary,
Revenue Department,
Fort St.George, Chennai-9
- 3.The Government of Tamilnadu,
Represented by its Secretary,
Public Works Department,
Fort St.George, Chennai-9
- 4.The Collector,
Chennai City, Chennai 01
- 5.The Tahsildar,
Maylapore-Triplicane Taluk,
Chennai-28
- 6.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai-3

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the fifth respondent in B1/24145/1992 dated 05.10.2015 and quash the same and consequently direct the respondents to issue patta in favour of the petitioner in accordance with GO.Ms.No.34 Revenue Department



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dated 23.01.2008 or under any other relevant scheme, within a timeframe as may be fixed by this Court.

For Petitioner : Mr.V.Subramanian
For Respondents
For R1 to 5 : Mr.Richardson Wilson,
Government Advocate

For R6 : Mrs.Karthika Ashok,
Standing Counsel

WP.No.33335 of 2015

Selvi Kurumans

... Petitioner

Vs

- 1.The Government of Tamilnadu,
Represented by its Secretary,
Housing & Urban Development Department,
Fort St.George, Chennai-9
- 2.The Government of Tamilnadu,
Represented by its Secretary,
Revenue Department,
Fort St.George, Chennai-9
- 3.The Government of Tamilnadu,
Represented by its Secretary,
Public Works Department,
Fort St.George, Chennai-9
- 4.The Collector,
Chennai City, Chennai 01
- 5.The Tahsildar,
Maylapore-Triplicane Taluk,
Chennai-28
- 6.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai-3

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For Petitioner : Mr.V.Subramanian
For Respondents
For R1 to 5 : Mr.Richardson Wilson,
Government Advocate

For R6 : Mrs.Karthika Ashok,
Standing Counsel

COMMON ORDER

The writ petitions are filed to issue a Writ of Certiorarified Mandamus calling for the records of the fifth respondent in B1/24145/1992 dated 05.10.2015 and quash the same and consequently direct the respondents to issue patta in favour of the petitioner in accordance with GO.Ms.No.34 Revenue Department dated 23.01.2008 or under any other relevant scheme, within a timeframe as may be fixed by this Court.

2. The case of the petitioners is that both the writ petitioners are in possession and enjoyment of the land comprised in survey No.3890 part No.3 admeasuring 224 sq.ft. and 486 sq.ft. situated at RA Puram, Chennai. They have got ration card, electricity connection, voter ID, etc. in the above address. They constructed house and assessed property tax. Therefore, they applied for patta as per GO.Ms.No.34 Revenue LDI (2) Department dated 23.01.2008. The fourth respondent directed the fifth respondent to conduct field inspection and submit a report on the petition submitted by the petitioners. While pending their application, now the fifth respondent issued the impugned notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 to show cause for eviction.

3. The learned counsel for the petitioners would submit that both the petitioners are husband and wife and now the husband died i.e. the petitioner in WP.No.33334 of 2015. However, the petitioner in other writ petition in WP.No.33335 of 2015 is taking care of the entire property and she in possession and enjoyment of the same. He further submitted that both the petitioners are residing at the said address for the past 40 years and constructed residential portion and assessed property tax. They also obtained electricity service connection and ration card, etc. in their name in the above said address. When their applications are pending for issuance of patta, the fifth respondent herein issued show cause notice without any jurisdiction or power. The Tamilnadu Land Encroachment Act, 1905 says only the land in public roads, streets, lanes, paths, the bridges, ditches, dikes and fences on or beside the same are



applicable under the Land Encroachment Act. Even in the notice, they stated that the property is house plot, residential area and as such the Land Encroachment Act is not itself applicable to the case on hand. Further, the fifth respondent has no authority and has no jurisdiction to issue the impugned notice since the land belongs to the Corporation i.e. the sixth respondent herein.

4. The sixth respondent filed counter and revealed that in the subject property, no residential portion / activity is available in the premises. Though the premises is not fit for habitation or occupation, the petitioners have encroached and used the premises for very purpose of erecting the digital hoardings/banners and letting out for the shop. All the documents produced by the petitioners are not issued by the authorities concerned and all are manipulated documents. Further revealed that as per revenue records, the subject property belongs to the Corporation of Chennai and the petitioners have encroached the said property to put up shops illegally. Therefore, the claim of the petitioners for grant of patta is baseless.

5. Heard, Mr.V.Subramanian, the learned counsel for the petitioners, Mr.Richardson Wilson, Government Advocate appearing for the respondents 1 to 5, and Mrs.Karthika Ashok, Standing Counsel appearing for the sixth respondent.

6. Both the petitioners challenged the notice under Section 7 of the Land Encroachment Act thereby they were called upon to explain why they shall not be evicted from the subject land and they treated the petitioners as encroachers. Only after submission of explanation, the authority concerned has to pass orders under Section 6 of the said Act. If aggrieved by any order passed under Section 6 of the said Act, there shall be an appeal under Section 10 and there shall be a revision under Section 10A of the said Act. Therefore, the petitioners have to submit their explanation before the authority concerned and if any order is passed under Section 6 of the said Act, they can very well file appeal under Section 10 of the said Act. Therefore, this Court cannot go into the documents for verification of the genuineness of the documents produced by the petitioners herein.

7. Therefore, the petitioners are directed to appear before the fifth respondent with proper explanation and relevant documents for the show cause notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 within a period of two weeks from the date of receipt of copy of this order. On receipt of the same, the fifth respondent is directed to conduct enquiry and pass orders under Section 6 of the said Act. Till



the passing of order under Section 6 of the said Act, the petitioners shall not be evicted from their respective subject property.

8. With the above directions, both the writ petitions are disposed of. Consequently, connected miscellaneous petitions are closed. No order as to costs.

Sd/-
Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary,
Government of Tamilnadu,
Housing & Urban Development Department,
Fort St.George, Chennai-9

2.The Secretary,
Government of Tamilnadu,
Revenue Department,
Fort St.George, Chennai-9

3.The Secretary,
Government of Tamilnadu,
Public Works Department,
Fort St.George, Chennai-9

4.The Collector,
Chennai City, Chennai 01

5.The Tahsildar,
Maylapore-Triplicane Taluk,
Chennai-28

6.The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai-3

+1cc to Mr.V.Subramanian, Advocate SR.No.50272

+2ccs to Mrs.Karthika Ashok, Advocate SR.No.50454

W.P.Nos.33334 & 33335 of 2015

RVS (CO)
GMY (22/10/2021)