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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.10.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.P.NOS.20457 AND 20610 OF 2021

&

W.M.P.NOS.21728 AND 21871 OF 2021

W.P.NO.20457 OF 2021

Hemavathy Swastha

... Petitioner in
W.P.No.20457 of 2021

.Vs.

1. The District Collector
Chennai District,
Chennai.
2. The Tahsildar,
Guindy Taluk, GST Road,
Guindy, Chennai - 600 032.
3. The Assistant Commissioner of Police,
Guindy, Chennai - 600 032.
4. The Commissioner,
Corporation of Greater Chennai,
Rippon Building,
Chennai - 600 003.
5. The Chairman
The Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai - 600 005.

... Respondents in
W.P.No.20457 of 2021

W.P.NO.20610 OF 2021

M.S.V. Cool Bar,
Rep. by Proprietor,
M.Sivakumar.

... Petitioner in
W.P.No.20610 of 2021



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.Vs.

1. The District Collector,
Chennai District,
Chennai - 600 001.
2. The Tahsildar,
Guindy Taluk, GST Road,
Chennai - 600 032.
3. Sri Bhavani Muthukumariamman Tirukoil,
Rep. by its Executive Officer,
No.1, Race Course Road, Guindy,
Chennai - 600 032.

... Respondents in
W.P.No.20610 of 2021

PRAYER IN W.P.NO.20457 OF 2021:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondents 1 to 3 herein from demolishing the small shop measuring about 192 sq.ft., situated at No.1B, Bharathi Salai, Guindy, Chennai - 32, comprised in Town Survey No.3/1, Adyar Village without passing appropriate orders pursuant to the notice dated 02.09.2021 issued in No.A1/001/2021 under Section 7 of the Tamilnadu Land Encroachment Act, 1905.

PRAYER IN W.P.NO.20610 OF 2021:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records of the 2nd respondent in their letter dated 02.09.2021 in Lr.No.A1/001 issued under Section 7 of the Land Encroachment Act 3 of 1905, relating to the explanation notice to evict the petitioner shop situated at No.1/7F, Bharathi Street, Bharathi Nagar, Race Course Road, Guindy, Chennai - 600 032, wrongly mentioned as Door No.--, MSV Cool Bar, Guindy, Chennai - 32, measuring to an extent of 83 sq.ft and quash the same and consequently forbearing the 1st and 2nd respondent from in anyway interfering with the petitioner's peaceful possession and enjoyment of the above shop till the appropriate action is taken by the revenue authorities.

FOR W.P.NO.20457 OF 2021:-

For petitioner : Mr.R.Bharath Kumar

For respondents : Mrs.Akhila Rajendran
Government Advocate
For RR1 to 3



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Mr.R.Gopinath
Standing Counsel for R4

Ms.D.Latha
Standing Counsel for R5

FOR W.P.NO.20610 OF 2021:-

For petitioner : Mr.G.V.Sridaran

For respondents : Mrs.Akhila Rajendran
Government Advocate
For RR1 & 2

Mr.A.K.Sriram
For M/s.A.S.Kailasam Associates
For R3

COMMON ORDER

(Order of the Court was made by K.KALYANASUNDARAM, J.,)

The petitioner in W.P.No.20457 of 2021 is before this Court with a prayer to issue a writ of mandamus, forbearing the respondents 1 to 3 herein from demolishing the small shop measuring about 192 sq.ft., situated at No.1B, Bharathi Salai, Guindy, Chennai - 32, comprised in Town Survey No.3/1, Adyar Village without passing appropriate orders pursuant to the notice dated 02.09.2021 issued in No.A1/001/2021 under Section 7 of the Tamilnadu Land Encroachment Act, 1905.

2. W.P.No.20610 of 2021 is filed to quash the notice issued by the 2nd respondent in his letter dated 02.09.2021 in Lr.No.A1/001 under Section 7 of the Land Encroachment Act 3 of 1905, relating to the shop situated at No.1/7F, Bharathi Street, Bharathi Nagar, Race Course Road, Guindy, Chennai - 600 032, measuring to an extent of 83 sq.ft.

3. The issue involved in these writ petitions has already been dealt with by the Division Bench of this Court in W.P.No.21519 of 2021. The relevant paragraph is extracted hereunder:-

"5. On reading of the relief sought by the Petitioner, this Court of the view that it is



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highly premature for this Court to decide the issue. If there is an encroachment, it is incumbent upon the Respondent to proceed in accordance with law. Hence, this court is not inclined to grant any relief sought for by the petitioner at this stage. However, the petitioner shall give a reply to the Respondent, on receipt of the reply along with other documents, if any both from the Petitioner and the Temple, the same shall be compared and scrutinized with the document available with the Corporation. The area can also be measured by using the advanced technology like Drone. On enquiring, if it is found that there is no encroachment made by the Petitioner and order has already been passed under Section 6 of the Act, then the remedy lies to the Petitioner Under Section 10-A of the Act. Whereas if it is found otherwise, the initial step is to disconnect the water and electricity supplies forthwith, as held by the Divisions Bench of this Court in I.A. Sekar Vs. The Principal Secretary to Government, Chennai and others (W.P.No. 10821 of 2017) decided on 29.04.2019, by observing as follows: 39(iv).

iv) It is needless to state that in case of any encroachments on the Wetlands, the Eight Respondent shall immediately act upon and ensure that all encroachments are removed without showing any indulgence / sympathy to them, by showing the order of this Court. The initial step is to disconnect the Water Supply and Electricity supply by informing the Chairman, TNEB, Chennai and CMWSSB and any such other Authority supplying water and no Civil Court shall grant any interim order without invoking Order 18 Rule 18 of CPC (which provides for the legal leniency to the Court to personally inspect the property or thing in question and prepare a memorandum of such inspection, which can then be taken upon the records of the case matter) and the inspection needs to be videographed and photographed;"

4. In the considered view of this Court, the order referred above will squarely apply to the case on hand. In such view of the matter, these writ petitions are disposed of in the same



line. No costs. Consequently connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Chennai District, Chennai.
2. The Tahsildar,
Guindy Taluk, GST Road,
Guindy, Chennai - 600 032.
3. The Assistant Commissioner of Police,
Guindy, Chennai - 600 003.
4. The Commissioner,
Corporation of Greater Chennai,
Rippon Building,
Chennai - 600 003.
5. The Chairman,
The Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai - 600 005.

+1cc to Ms.D.Latha, Advocate, S.R.No.56605

+1cc to M/s.A.S.Kailasam Associates, Advocate, S.R.No.56091

+1cc to the Government Pleader, S.R.Nos.56680 & 56798

W.P.Nos.20457 and 20610 of 2021

KSM(CO)
PBS/30/11/2021