

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2021

:CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE A.A. NAKKIRAN

W.P.No.21519 of 2021

W.M.P.No.22737 of 2021

D. Sivagami

Petitioner

Vs.

1. The District Collector,
Chennai District.

2. The Thasildar,
Guindy Taluk, Chennai – 600 032.

3. The Commissioner
Corporation of Chennai,
Rippon Buildings, Chennai – 600 003.

4. The Commissioner
Hindu Religious and Charitable Endowments Department,
Nungambakkam, Chennai- 600 034.

5. Arulmigu Sri Bhavani Muthumariamman Thirukoil,
Rep by its Executive Officer,
No.1, Race Course Road,
Guindy, Chennai – 600 001.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for records relating to the proceedings dated .09.2021 made in A1/001/2021 issued by the 2nd Respondent herein

under Section 7 of the Tamilnadu Act III of 1905, quash the same and consequently forbearing the Respondents herein from interfering with the peaceful possession and enjoyment of the Petitioner Mobile sales and service shop, Sri Ganesh Tele Links, Situated at No.1/7A, Bharathi Nagar, Race Course Road, Guindy, Chennai – 600 032.

For Petitioner : Mr.S. Senthilnathan

For Respondents : Ms.R. Gopinathan (R3)
State Counsel
Ms. Akila Rajendiran for R1 & R2
Government Advocate.

ORDER

(Order of this Court was made by S.VAIDYANATHAN, J)

This Writ Petition has been filed challenging the proceedings dated .09.2021 made in A1/001/2021 issued by the 2nd Respondent herein under Section 7 of the Tamilnadu Act III of 1905, and consequently forbear the Respondents herein from interfering with the peaceful possession and enjoyment of the Petitioner's Mobile sales and service shop, by name, Sri Ganesh Tele Links, Situated at No.1/7A, Bharathi Nagar, Race Course Road, Guindy, Chennai – 600 032.

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2. According to the Petitioner, he is running a Mobile Service and Sales shop, by name and style of M/s.Ganesh Tele Links and he was a lessee under Arulmigu Sri Bhavani Muthumariamman Thirukoil for the past 30 years and that there is a rental agreement between the Temple and the Writ Petitioner. Whilso, the Second

Respondent/Tahsildar issued a notice dated .09.2021 to the petitioner under Section 7 of the Tamil Nadu Encroachment Act, 1905, stating that he is in occupation of the Poromoke Land and the petitioner also appeared for personal hearing on 09.09.2021, stating that the land in which the shop is situated, belongs to Temple. The second respondent inspite of giving suitable explanation, has been threatening to demolish the shop stating that the petitioner is an encroacher.

3. It is further stated that the Writ Petitioner also filed a Civil Suit in O.S.No.34 of 2020, before the City Civil Court at Chennai for permanent injunction, restraining the Corporation from disturbing his peaceful possession of the shop and the same is pending. As the Writ Petitioner is under the threat of eviction, he has filed this Writ Petition, seeking for the aforesaid relief.

4. Heard both sides. Perused the records.

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

6. With the above observation and direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.N,J.,] [A.A.N,J.,]
06.10.2021

Index: Yes / No

Speaking order /Non speaking order
arr

Note: Issue order copy on 26.10.2021

To

1. The District Collector,
Chennai District.
2. The Thasildar,
Guindy Taluk, Chennai – 600 032.
3. The Commissioner
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**S.VAIDYANATHAN,J.,
and
A.A.NAKKIRAN,J.,**

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