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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.No. 23441 of 2021

W.M.P Nos.24707 & 24708 of 2021

1. M. Santhosh

2. M. Mothi

...Petitioners

Vs.

1. The Assistant Divisional Civil Engineer,
Highways Department,
Tamilnadu Salai Development Scheme II,
Tiruppur, Tiruppur District.

2. The Chairman, Tamil Nadu Generation and
Distribution Corporation Ltd., 144 Anna Salai,
Chennai 600 002.

(R2 suo motu impleaded vide order
of this Court dated
02.11.2021)

....Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records of the Respondent, the issuance of Final Notice dated 11.10.2021 issued received on 12.10.2021 under Section 28(2) (ii) of Tamil Nadu Highways Act.2001 stating the Petitioners are in illegal occupation of Government land at Periya Semur Village, Erode Taluk and District and vacate the aforesaid land and quash the same, as illegal and without jurisdiction.

For Petitioners	: Mr.G. Nagarajan
For Respondent	: Mr.K.V. Sajeew Kumar
	Government Counsel.

O R D E R

S.VAIDYANATHAN, J.,

AND

R.VIJAYAKUMAR, J.,

The Writ Petition has been filed against the impugned notice of the Respondent dated 11.10.2021 and quash the same.



2. Mr.K.V.Sajeevkumar, learned Government counsel takes notice for the Respondent. By consent of both sides, this Writ Petition is taken up and disposed of at the stage admission itself..

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3. It is the case of the Petitioners that the land comprised in R.S.No.30/9A,B, measuring an extent of 1002.25 sq.ft with the building Door.No.132, Periya Semur Village, Erode Taluk & District, was owned by the Petitioners herein by a registered settlement deed dated 13.05.2020 from their mother one M.Nalini. The Petitioners also applied for the patta transfer in their name vide application dated 28.09.2021 before the competent authority viz., Thasildar, Erode Taluk and the same is pending. While so, all of a sudden the First Respondent herein issued a notice dated 16.09.2021 to the Petitioners under Section 28(2) (ii) of Tamil Nadu Highways Act,2001 stating that the Petitioners are illegal occupation of Government lands and the Petitioners were asked to vacate the premises within a period of seven days, failing they will be constrained to remove the encroachment, for which the Petitioner sent a reply on 08.10.2021, which was duly acknowledged by Respondent. But, all of a sudden on 11.10.2021, the 1st Respondent issued the final notice with the same contents, with respect to notice dated 16.09.2021 and further stated that no reply was given by the Petitioner to the earlier notice dated 16.09.2021. Challenging the same, the Petitioner has filed this Writ Petition seeking for the aforesaid relief.

4.The learned counsel appearing for the petitioners submitted that the said notices did not contain survey number and extent of alleged encroachment and therefore they are against the principles of Natural Justice and hence requested to quash the same.

5. Mr.K.V.Sajeev Kumar, learned Government Counsel who took notice for the Respondent submitted that for the earlier notice issued on 16.09.2021 to the Petitioners herein, except Advocate Reply no documents have been enclosed by the Petitioners to substantiate that the lands belong to them and therefore the Authority is constrained to issue the final notice calling upon the Petitioners to remove the illegal encroachment.

4. Heard both sides. Perused the records.

5. Mere reply stating that the lands belong to the Petitioners is not suffice and that the same has to be supported by way of documents, for which, we are of the view that the



Jurisdictional Tahsildar, who is the competent authority to ascertain the encroachment is directed to ascertain and take decision on the alleged encroachment, by conducting survey, by using the drone technology, after affording opportunity of hearing to the petitioners as well as other persons concerned, within a period of three months from the date of receipt of a copy of this order. This Court makes it clear that if any encroachment is found to be made by the Petitioners, the electricity connection with respect to the Petitioners shall be disconnected in the light of the Judgment of the Division Bench in "P.Selvarajan Vs. The Commissioner of Municipal Administration, Chennai and others" (W.P.No. 21639 of 2017) decided on 13.02.2018, wherein the Division Bench observed as follows, in consonance with the order of the Supreme Court dated 05.01.2018, passed in Special Leave to Appeal (C) No. 33863 of 2017:

"3. Learned counsel appearing for the fourth respondent submitted that the fourth respondent has made an application for regularisation and that during the pendency of the proceedings, this Court, by order dated 11.09.2017, directed disconnection of electricity in respect of basement, second and third floors of the fourth respondent's premises, against which, the matter was taken up to the Supreme Court. The Supreme Court, in Petition for Special Leave to Appeal (C).No.26509 of 2017, by order dated 13.10.2017, did not interfere with the said order of this Court dated 11.09.2017, and permitted the fourth respondent herein to move the High Court. During the pendency of this Writ Petition, the fourth respondent herein has filed W.M.P.No.30495 of 2017 seeking direction to the TANGEDCO to restore the electricity connection to the building of the fourth respondent. This Court, by order dated 07.11.2017, rejected the restoration of electricity supply. Thereafter, once again the matter was taken up to the Supreme Court by the fourth respondent, and the Supreme Court, by order dated 05.01.2018 in Petition for Special Leave to Appeal (C) No.33863 of 2017, has dismissed the Special Leave Petition, by observing as follows:

"Heard learned counsel for the petitioner and perused the impugned order dated 07.11.2017 passed in WMP.No.30495/2017 passed by the Madras High Court.

We are not inclined to interfere in the impugned order and accordingly, the Special Leave Petition is dismissed.



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However, we direct the authority concerned before whom the application for regularisation under the DTCP Building Regularisation Scheme 2017 is pending to decide the matter in accordance with law within two months.

6. The First Bench of this Court (S.K.Kaul,C.J., and R.Mahadevan,J.) in Contempt Petition No.1769 of 2015 and Contempt Petition No.2166 of 2015 (Suo motu), took up a matter pertaining to demolition of the violated portions of a building and insisted that the unauthorised constructions are decimated. Relevant portion of the said order reads thus:

'4.We have also perused the report of the Commissioner, who is present in Court. We have impressed upon him the importance of ensuring that there is atleast no continuing unauthorised construction by issuing stop work notices immediately when such unauthorised construction is detected rather than waiting for comparison of the plans. We have also emphasised the importance of:

(a) Checking the buildings from the basement, ground floor onwards, so that the set backs are adhered to;

(b) Ensure that the on-going construction complies with the norms;

(c)The delinquent officers are brought to book not by mere censure, stoppage of increment, but by more severe consequences like compulsory retirement and dismissal from service. We say so, as despite, mammoth amount of unauthorised construction, we are informed that not a single person has suffered the punishment of dismissal from service or even compulsory retirement atleast for the last five years.

(d) Not to let any unnecessary interference with his work by the persons, who have nothing to do with his job and that he should be able to do his task without fear or favour, for which necessary Court protection is available.'

7. For carrying out the aforesaid exercise, this Court suo motu impleads 'The Chairman, Tamil Nadu Generation and Distribution Corporation Ltd., 144 Anna Salai, Chennai 600 002'



as 2nd Respondent in the Writ Petition.

8. The 2nd Respondent is directed to intimate the concerned jurisdictional authorities of the TANGEDCO, to disconnect the electricity connection of the Petitioners, if any encroachment is found to be made.

9. With the above observations and directions, this Writ Petition is disposed of. It is made clear that the Petitioners will have to co-operate with the enquiry and it shall be conducted on day-to-day basis, without adjourning the matter beyond five working days at any point of time. It is also made clear that till the decision is taken against the petitioners, their possession need not be disturbed. However, the Petitioners have no right to demand for continuation of electricity connection. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

arr/shk

To

1. The Assistant Divisional Civil Engineer,
Highways Department,
Tamilnadu Salai Development Scheme II,
Tiruppur, Tiruppur District.
2. The Chairman, Tamil Nadu Generation and
Distribution Corporation Ltd., 144 Anna Salai,
Chennai 600 002.
3. The Tahsildar
Periya Semur Village
Erode Taluk & District.

+1cc to Mr.G.Nagarajan, Advocate SR.No.57015
+1cc to the Government Pleader SR.No.57679

W.P.No. 23441 of 2021

GSM(CO)
GN(24/02/2022)