

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2022

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. Nos.28599 to 28602 of 2010

and

MP Nos.2, 2, 2 and 2 of 2010

K.T. Selvaraj		Petitioner in W.P. No.28599 of 2010
M.DilsathBanu		Petitioner in W.P. No.28600 of 2010
K.ChennaKrishnan		Petitioner in W.P. No.28601 of 2010
K.Raja		Petitioner in W.P. No.28602 of 2010

Versus

1. The District Collector,
Dharmapuri District,
Dharmapuri.

2. The Tahsildar,
Harur Taluk,
Harur,
Dharmapuri District.

3. The Village President,
Theerthamalai Village,
Harur Taluk,
Dharmapuri District.

.... Respondents

Writ Petitions filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to his notice dated 08.12.2010, quash the same and issue consequential directions to the respondents to desist from interfering with the petitioner's peaceful possession and enjoyment of possession of the land to an extent of i) 900 sq. ft of land in Survey No.21/2 and 21/4; ii) 800 sq. ft. of land in Survey No.21/3 and 21/4; iii) 800 sq. ft. of land in Survey No.21/3 and 21/4 and iv) 800 sq. ft. of land in Survey No.21/3 and 21/4; Theerthamalai Revenue Village, Harur Taluk, Dharmapuri District respectively .

For Petitioners in all W.P.s : Mr.R. Thamarai Selvan

For Respondents in all W.P.s : Mr.G. Nanmaran,
Spl. Govt. Pleader for RR-1 & 2
Mr.A.Arumugam for R-3

COMMON ORDER

The petitioners have filed these writ petitions to quash the eviction notices dated 08.12.2010 issued by the second respondent and for a consequential direction to the respondents to desist from interfering with the petitioners' peaceful possession and enjoyment of the lands of an extent of (i) 900 sq. ft of lands in Survey Nos.21/2 and 21/4; (ii) 800 sq. ft. of lands in Survey Nos.21/3 and 21/4; (iii) 800 sq. ft. of lands in Survey Nos.21/3 and 21/4 and (iv) 800 sq. ft. of lands in Survey Nos.21/3 and 21/4, Theerthamalai Revenue Village, Harur Taluk, Dharmapuri District respectively.

2. Since the issue involved in all these writ petitions, is one and the same, these writ petitions are disposed of by this common order.

3. It is the case of the petitioners that the petitioners were in absolute possession and enjoyment of properties of an extent stated in the affidavits filed in support of these writ petitions. It is averred that all of a sudden, eviction notices under Section 6 of the Tamil Nadu Land Encroachment Act have been issued to them without issuing proper notice as laid down under Section 7 of the said Act. Challenging the same, these writ petitions have been filed.

4. Heard Mr.R. Thamarai Selvan, learned counsel for the petitioners, Mr.G. Nanmaran, learned Special Government Pleader appearing for the respondent Nos.1 and 2 and Mr.A.Arumugam, learned counsel for the respondent No.3, in all these Writ Petitions.

5. The learned counsel for the petitioners submitted that as per the procedures contemplated under the Tamil Nadu Land Encroachment Act, 1909, before issuance of eviction notices under Section 6 of the Act, which are impugned herein, show cause notices under Section 7 of the Act have not been issued. Hence, it is a clear violation of procedures laid down under the Act and thus the impugned notices, all dated 08.12.2010, issued by the 2nd respondent is unsustainable and accordingly he prays before this Court to set aside the said impugned notices and for an appropriate direction to the respondents.

6. Per contra, learned Special Government Pleader appearing for the respondents 1 and 2 drew the attention of this Court to the impugned eviction notices and submitted that the procedures contemplated under Sections 6 and 7 of the said Act were scrupulously followed by the respondents. It is his contention that prior to issuance of eviction notices, show cause notices under Section 7 of the Act were issued on 01.11.2010, but the same were not received by the petitioners and to that effect, an annexure was prepared by the respondents. He further submitted that, without disclosing the said fact, the petitioners herein

have filed these writ petitions, which is illegal and impermissible and thus, he prays for dismissal of these writ petitions.

7. This Court perused the materials placed on record. It is not in dispute that the impugned eviction notices were issued for eviction of the petitioners from the Government Poramboke lands. Even though, a contention has been raised by the learned Special Government Pleader appearing for the respondents 1 and 2 that due procedures stipulated under the said Act, were followed to evict the petitioners from the said Government Poramboke lands, no proper proof or record has been placed before this Court in support of his contention. In the absence of any reference or proof, issuing notices under Section 6 of the said Act straight away is not sustainable. Prior to issuance of Section 6 notice, the respondents must have followed the procedures i.e. issuance of Section 7 notice with proper acknowledgment etc. However, due to lack of procedural deviation, the impugned orders deserve to be set aside. Accordingly, the impugned eviction notices, all dated 08.12.2010 issued by the 2nd respondent, are hereby set aside.

8. Though there is laxity on the part of the respondents in obtaining acknowledgment while serving notices under Section 7 of the Act, the petitioners cannot take that as a right and thus, this Court is inclined to exercise its extraordinary jurisdiction to issue a direction to that effect to the petitioners. Thus, this Court issues a direction to the petitioners to treat the impugned notices under Section 6 of the Act as show cause notices and the petitioners are directed to appear before the 3rd respondent to file their objections / reply, within a period of two weeks from the date of receipt of a copy of this order. On receipt of reply / objections, if any, from the petitioners, the 3rd respondent shall pass appropriate orders on merits and in accordance with law in terms of Section 6 of the Tamil Nadu Land Encroachment Act, 1905, within a period of four weeks, thereafter.

9. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,
Dharmapuri District,
Dharmapuri.

2. The Tahsildar,
Harur Taluk,
Harur,
Dharmapuri District.

3. The Village President,
Theerthamalai Village,
Harur Taluk,
Dharmapuri District.

+1cc to Mr.R.Thamarai Selvan, Advocate, S.R.No.10711

+1cc to Mr.A.Arumugam, Advocate, S.R.No.10488

+1cc to Government Pleader, Sr.No.11594(08/03/2022)

W.P. Nos.28599 to 28602 of 2010

CP(CO)

CB(21/02/2022)