



WEB COPY



W.P.No.25857 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2022

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.25857 of 2022

1.Madhu Balan
2.Vikram

.. Petitioners

Vs

1.The Commissioner,
Commissionerate of Town Panchayat,
7th and 8th Floor,
Municipal Administration Building,
MRC Nagar, Chennai-28.

2.The District Collector,
Salem.

3.The District Revenue Officer,
Salem.

4.The Assistant Director,
Town Panchayat, Salem.

5.The Revenue Divisional Officer,
Mettur, Salem.



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6.The Tahsildar,
Omalur, Salem District.

7.The Executive Officer,
Omalur Selection Grade Town Panchayat,
Omalur, Salem District.

8.P.Raman

9.Muthu

10.Palaniammal

11.Suresh

12.Kaveriammal

13.Balakrishnan

14.Marimuthu

15.Govindan

16.Mariappan

17.Periyasamy

18.Marayee

19.Chinnathayee

20.Ramesh

21.Shanthi

22.P.Subramani

23.Sivagami

24.Pavadai

.. Respondents

(Respondent Nos.8 to 24 impleaded as per
the order dated 25.11.2022 in WMP.No.30706 of 2022)

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the respondents to remove the encroachment in S.No.181/1A to the extent of 0.45.5 Hec, S.No.181/8A to the extent of 0.04.0 Hec, S.No.181/8B to the extent of 0.01.5 Hec at Omalur Town, Salem District by considering the representation dated 30.06.2022.



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For the Petitioners : Mr.T.Ganesan

For the Respondents : Mr.T.Ravindran
Addl. Advocate General
assisted by
Mr.A.Selvendran
Spl. Government Pleader
for respondent Nos.1 to 6

: Mr.M.Alagu Gaoutham
Government Advocate
for respondent No.7

: Mr.B.Kumarasamy
for respondent Nos.8 to 24

ORDER

(Order of the court was made by D.KRISHNAKUMAR,J.)

This writ petition has been filed by the petitioners seeking issuance of a writ of mandamus directing the official respondents to remove the encroachments made in S.No.181/1A to an extent of 0.45.5 Hectares; in S.No.181/8A to an extent of 0.04.0 Hectares and in S.No.181/8B to an extent of 1.01.5 Hectares in Omalur Town, Salem District by considering the representation of the petitioners dated 30.6.2022.



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2. The allegation of the petitioners is that the lands in S.No.181/1A measuring an extent of 0.45.0 Hectares; in S.No.181/1A measuring an extent of 0.04.0 Hectares; and, in S.No.181/8B measuring an extent of 0.01.5 in Omalur Town are earmarked as a park and there was a cart track in it for public use. The government records reveal that the said lands are earmarked for use as park. However, the private respondents have encroached upon the said lands, put up construction and are residing there. In this regard, on 30.06.2022, the petitioners submitted a representation to the official respondents to remove the encroachments and construct a park for public welfare. Though the 6th respondent through his letter dated 8.7.2022 directed the 7th respondent to take steps to remove the encroachments and construct a park, no action was taken so far. Hence, the petitioner has filed the present writ petition.

3. Learned Government Advocate appearing for the seventh respondent submitted that notices under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 have been served on the encroachers on 13.10.2022 and further action will be taken for removal of encroachments after issuance of further notice under Section 6 of the



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Act to the encroachers.

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4. At this juncture, learned counsel appearing for the private respondents submitted that as against the notices issued under Section 7 of the Act, the private respondents have filed appeals under Section 10 of the Act before the District Collector and, therefore, the writ petition is not maintainable and the same is liable to be dismissed.

5. When notices under Section 7 of the Act have been served upon the encroachers, namely respondents 8 to 24, it is for them to submit their objection/explanation and after considering the objection/explanation submitted by respondents 8 to 24, notices under Section 6 of the Act will be passed by the authority concerned. Further, there is a statutory remedy of appeal under Section 10 of the Act, if a person is aggrieved by the notice under Section 6 of the Act. Therefore, it is abundantly clear that there is an effective alternative remedy available to respondents 8 to 24 against the notices issued under Section 7 of the Act.



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6. At this stage, learned counsel for respondents 8 to 24 seeks two weeks' time to file objection/explanation to the notices issued under Section 7 of the Act.

7. Considering the facts and circumstances of the case, we are of the view that it would be appropriate to direct respondents 8 to 24 to submit their objection/explanations to the notices issued under Section 7 of the Act within a period of two weeks from the date of receipt of a copy of this order and thereafter, the authority concerned shall proceed in accordance with law, if the aforesaid respondents 8 to 24 are found to be encroachers. The petitioner is also at liberty to submit his representation within two weeks from the date of receipt of a copy of this order. In any event, the entire exercise shall be completed within a period of six weeks from the date of objection/explanation.

8. Inasmuch as action for removal of the encroachments has been initiated by the respondent authorities by issuance of notices under Section 7 of the Act and the petitioner as well as respondents 8 to 24 are relegated to the authority concerned to substantiate their



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respective plea based on documents, if any, no further direction need be issued in this writ petition.

With the above observation and direction, the writ petition is disposed of. There will be no order as to costs. Consequently, W.M.P.No.24929 of 2022 is closed. W.M.P.No.24926 of 2022 filed to permit the petitioners to file a single writ petition is ordered, as they have paid separate sets of court-fee.

(D.K.K., J.) (K.R., J.)
25.11.2022

Index : Yes/No
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AND
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