



W.P.No. 6077 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2023

CORAM

THE HON'BLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MRS. JUSTICE R. KALAIMATHI

W.P. No. 6077 of 2023

&

W.M.P. No. 6116 of 2023

1. Asokan
2. Thiripurasundari ..Petitioners

Vs.

1. The State of Tamil Nadu,
rep. by its Principal Secretary to Govt.,
Revenue Department,
Secretariat, St. George Fort,
Chennai – 600 009.
2. The Commissioner of Land Administration,
Chepauk, Chennai – 600 005.
3. The District Collector,
Kancheepuram District,
Kancheepuram.



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4. The District Revenue Officer,
Kancheepuram District,
Kancheepuram.

5. The Tahsildar,
Sriperumbudur Taluk,
Kancheepuram District.

6. The Revenue Inspector,
Kolapakkam Division,
Kundrathur Taluk,
Kancheepuram District.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus forbearing the respondents and their subordinates from disturbing possession of the petitioners in any manner in S.No. 119 to an extent of 0.20.0 hectares situated at Sriperumbudur Taluk, Kancheepuram District and consequently direct the respondents to consider the grant of assignment to the petitioners based on the recommendations made by the 2nd respondent in Na.Ka.F1/4388/96 dated 09.12.1996 and the 3rd respondent in Na.Ka.No.Aa2/9338/04 dated 24.10.2008 respectively.

For Petitioners :: Mr.K. Balu

For Respondents :: Mr.P. Muthukumar
State Government Pleader
assisted by
Mr.P. Balathandayutham,
Special Govt. Pleader



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ORDER

S. VAIDYANATHAN,J.

AND

R. KALAIMATHI,J.

The present writ petition is filed for issue of a Writ of Mandamus forbearing the respondents and their subordinates from disturbing possession of the petitioners in any manner in S.No. 119 to an extent of 0.20.0 hectares situated at Sriperumbudur Taluk, Kancheepuram District and consequently direct the respondents to consider the grant of assignment to the petitioners based on the recommendations made by the 2nd respondent in Na.Ka.F1/4388/96 dated 09.12.1996 and the 3rd respondent in Na.Ka.No.Aa2/9338/04 dated 24.10.2008 respectively.

2. The petitioners would submit that they have been in possession and enjoyment of the property comprised in S.No. 119 measuring to an extent of 0.20 hectares , which is classified as Kalam poramboke situated at Iyyappanthangal Village, Sriperumbudur Taluk, Kancheepuram District for the past so many years and that the application made by the petitioners for assignment of the said land, inspite of recommendations made by



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respondents 2 to 4 for assignment of the land in their favour, is pending consideration before the 1st respondent. While so, a notice dated 20.01.2023 under Section 7 of the Land Encroachment Act, 1905 has been issued by the 6th respondent to the petitioners to show cause as to why action should not be taken to evict them under Section 6 of the said Act. Aggrieved by the said notice, the petitioners are before this Court by way of this writ petition.

3. Mr.K. Balu, learned counsel for the petitioners would submit that recommendation had been made as early as on 09.12.1996 by the 2nd respondent vide proceedings Na.Ka.F1/4388/96 for assignment of the land in question in favour of the petitioners and the 3rd respondent vide proceedings in Na.Ka.No.Aa2/9338/04 dated 24.10.2008 had also made a similar recommendation. Further, the learned counsel would submit that the petitioners are entitled to get assignment based on the recommendations as per the Revenue Standing Orders and that they are also ready to pay the cost for assignment.

4. On the other hand, Mr.P. Muthukumar, learned State Government Pleader appearing for the respondents would submit that



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recommendations made would not entitle the petitioners to claim the encroached place. Now that the petitioners have submitted their reply to the show cause notice on 30.01.2023, the learned State Government Pleader would submit that the 6th respondent is willing to pass orders within a period of one week after hearing the petitioners in person.

5. Considering the submission made by the learned State Government Pleader, the 6th respondent is directed to consider and pass appropriate orders pursuant to the reply dated 30.01.2023 submitted by the petitioners to the show cause notice dated 20.01.2023 within a period of one week from the date of receipt of a copy of this order. While passing orders, the propositions laid down in the following judgments shall be strictly taken into account by the authorities concerned and a decision shall be taken after affording an opportunity to all the parties, who are likely to be affected including the complainant:

- (i) **Priyanka Estates International Pvt. Ltd. v. State of Assam**, reported in **(2010) 2 SCC 27**, wherein the Supreme Court declined the appellant's prayer for directing the respondents to regularize the illegal construction and observed as follows:



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“It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.”

(ii) **Shanti Sports Club v. Union of India** reported in **(2009) 15 SCC 705**, wherein the Supreme Court has held as under:

"This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc.

Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the



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illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

(iii) Contempt Petition No.1769 of 2015 and Contempt Petition No.2166 of 2015 (Suo motu), wherein First Bench of this Court 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 at least 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;



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(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."

6. The writ petition is disposed of accordingly. No costs.

Connected W.M.P. is closed.

nv

(S.V.N.J.) (R.K.M.J.)
02.03.2023

To

1. Principal Secretary to Govt.,
Revenue Department,
Secretariat, St. George Fort,
Chennai – 600 009.
2. The Commissioner of Land Administration,
Chepauk, Chennai – 600 005.
3. The District Collector,
Kancheepuram District,
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