



W.P.Nos.15562 and 15568 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.05.2023

CORAM :

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.15562 and 15568 of 2023

W.P.No.15562 of 2023:

R.Krishnan

.. Petitioner

Vs

- 1.The Secretary to Government,
Revenue Department,
Fort St. George, Secretariat,
Chennai – 600 009.
- 2.The District Collector,
Office of the District Collector,
Chennai-600 001.
- 3.The Managing Director,
Tamilnadu Slum Clearance Board,
No.5, Kamarajar Salai,
Near Vivekanandha House,
Chennai-600 005.
- 4.The Tahsildar,
Perambur Taluk Office,
Chennai – 600 011.

.. Respondents



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W.P.No.15568 of 2023:

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.. Petitioner

Vs

- 1.The Secretary to Government,
Revenue Department,
Fort St. George, Secretariat,
Chennai – 600 009.
- 2.The District Collector,
Office of the District Collector,
Chennai-600 001.
- 3.The Chairman and Managing Director,
Chennai Metro Rail Limited,
CMRL Depot, Poonamallee High Road,
Koyambedu, Chennai-600 107.
- 4.The Tahsildar,
Perambur Taluk Office,
Chennai – 600 011.

.. Respondents

W.P.No.15562 of 2023 filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records pertaining to the impugned order passed by the fourth respondent under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 dated 5.4.2023 pertaining to the petitioner's property measuring around 17.8 Square Meters i.e. 191 Square Feet in Block No.32, S.No.3, Kodungaiyur Village, Perambur Thaluk, Chennai District bearing Door – 47, Kodungaiyur, Moolakadai, Chennai-600 118 and quash the same as illegal and arbitrary.



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W.P.No.15568 of 2023 filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records pertaining to the impugned order passed by the fourth respondent under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 dated 25.4.2023 pertaining to the petitioner's property measuring around 85.5 Square Meters i.e., 920 Square Feet in Block No.1, TS No.2, Erukkencherry Village, Perambur Thaluk, Chennai District bearing Door No.18/26, Satyavani Muthu Street, Erukencherry, Moolakadai, Chennai-600 118 and quash the same as illegal and arbitrary.

For the Petitioners : Mr.Adinarayana Rao

For the Respondents : Mrs.R.Anitha
Spl. Government Pleader
for respondents 1, 2 and 4
in both WPs

COMMON ORDER

(Order of the court was made by *C.V.KARTHIKEYAN, J.*)

These writ petitions have been filed in the nature of certiorari questioning the orders dated 5.4.2023 and 25.4.2023, respectively, issued under Section 6 of the Tamil Nadu Land Encroachment Act,



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1905 (for brevity, "*the Act of 1905*").
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2. Today when the writ petitions were taken up for hearing, drawing our attention to a common order dated 4.5.2023 passed in W.P.No.14516 of 2023 etc. batch [*D.Viswanathan v. The Secretary to Government, Revenue Department, Fort St. George, Secretariat, Chennai-9*], learned counsel for the petitioners submitted that, under identical circumstances, a Division Bench of this Court treated the orders issued under Section 6 of the Act of 1905, impugned therein, as notices issued under Section 7 of the Act of 1905 and directed the petitioners therein to submit their reply to the same within a period of fifteen days from the date of receipt of the copy of the order and thereafter the respondents were directed to pass orders duly complying with the principles of natural justice. In particular, learned counsel for the petitioners drew our attention to the following paragraphs of the common order passed by the Division Bench in the case of *D.Viswanathan*, supra:

"4. A reading of the above impugned notices indicates that they are only notices issued under the



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said Act. However, in it, it is concluded that the petitioners have encroached over the land. In case the impugned notices are concluded as orders passed, the petitioners have an alternate remedy before the second respondent – District Collector under Section 10 of the said Act.

5. We are of the view that though the impugned proceedings were titled as notice, they are in the nature of order under Section 6 of the said Act. There is a pre-determination that the petitioners are encroachers. The impugned proceedings cannot be construed as having passed under Section 6 of the said Act as the petitioners have not been given an opportunity to reply or give their representation and thus in violation of principles of natural justice.

6. Therefore, the impugned proceedings shall be treated as notices issued under Section 7 of the said Act to the respective petitioners. The petitioners are therefore directed to give their reply to the said notices within a period of fifteen days from the date of receipt of a copy of this order. The respondents shall thereafter pass order after following principles of natural justice.



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7. In case any adverse orders are passed, the petitioners can always file appeal before the second respondent – District Collector under Section 10 of the Act. If such appeals are filed, they shall be disposed of by the second respondent – District Collector. Pending such exercise, all coercive steps shall be kept in abeyance.”

3. Learned counsel for the petitioners submits that the petitioners herein are similarly placed and the same order may be passed in these writ petitions also. The said fact is not disputed by learned Special Government Pleader appearing on behalf of respondents 1, 2 and 4 in both the writ petitions.

4. Considering the aforesaid submissions and the order passed by the Division Bench in the case of *D.Viswanathan*, supra, in respect of similarly situated persons, we hereby direct that the orders impugned herein shall be treated as notices issued under Section 7 of the Act of 1905 to the respective petitioners. The petitioners are directed to submit their reply to the same within a



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period of fifteen days from the date of receipt of a copy of this order and the respondents shall thereafter pass appropriate orders in compliance with the principles of natural justice. In case any adverse order is passed, the petitioners are at liberty to file an appeal before the District Collector under Section 10 of the Act of 1905. If such appeals are filed, they shall be disposed of by the District Collector in accordance with law. Pending such exercise, no coercive action shall be taken by the respondents.

With the above direction, the writ petitions are disposed of. There will be no order as to costs. Consequently, W.M.P.Nos.15068 and 15073 of 2023 are closed.

(C.V.K., J.) (S.K.R., J.)
17.05.2023

Index : Yes/No
Neutral Citation : Yes/No
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C.V.KARTHIKEYAN, J.
AND
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