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WP Nos.5912 to 5917, 6095 to 6097, 9556 & 9557, 24715 & 24716 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition Nos. 5912, 5913, 5914, 5915, 5916, 5917, 6095,
6096, 6097, 9556, 9557, 24715 & 24716 of 2016

and

W.M.P. Nos. 5265 to 5276, 8597 & 8598, 5418 to 5424,
21106 to 21109 of 2016, 12232 & 12233 of 2017

W.P. Nos.5912 to 5917 of 2016 & 6095 to 6097 of 2016

S. Ilavarasu	.. Petitioner in WP No. 5912/2016
V. Mohan	.. Petitioner in W.P. No.5913/2016
Dr. R. Manickvasagam	.. Petitioner in W.P. No.5914/2016
Dr. Geeth Ragunath	.. Petitioner in W.P. No.5915/2016
S.P. Thangavel	.. Petitioner in W.P. No.5916/2016
V. Moorthi	.. Petitioner in W.P. No. 5917/2016
G. Seran	.. Petitioner in W.P. No. 6095/2016
S. Prabakaran	.. Petitioner in W.P. No. 6096/2016
M. Selvaraj	.. Petitioner in W.P. No. 6097/2016

Versus

1. The Revenue Divisional Officer
Attur, Salem District.

2. Tahsildar,
Attur Taluk

<https://www.mhc.tn.gov.in/>



WP Nos.5912 to 5917, 6095 to 6097, 9556 & 9557, 24715 & 24716 of 2016

Attur, Salem District

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3. The Commissioner

Attur Municipality

Attur, Salem District

W.P. No. 9556 & 9557 of 2016:-

.. Respondents in all the Petitions

1. Tmt.Suseela

2. Tmt. Saradha (died)

3. D. Ramu

4. R. Mythili

5. R. Nirmala Devi

6. V. Banupriye

...Petitioners in both the Petitions

(2nd petitioner in both the writ petitions died and her legal heirs were brought on record as Petitioners 3 to 6 vide order dated 08.02.2023 in CMP Nos. 34243 & 34244 of 2022 in WP Nos. 9556 & 9557 of 2016)

Versus

The Commissioner (in-charge),

Attur Municipality,

Attur, Salem District.

.. Respondent in both the petitions

WP Nos. 24715 & 24716 of 2016

S. Periasamy

.. Petitioner in W.P. No. 24715

Sivakami

.. Petitioner in W.P. No. 24716

Versus

1. The Commissioner

Attur Municipality

Attur – 636 102

Salem District

2. The Revenue Divisional Officer

Attur – 636 102

<https://www.mhc.tn.gov.in>



WP Nos.5912 to 5917, 6095 to 6097, 9556 & 9557, 24715 & 24716 of 2016

Salem District.

3. The Tahsildar

Attur Taluk

Attur – 636 102

the

Salem District

.. Respondents in both

Writ Petitions

W.P. Nos.5912 to 5917 of 2016 & 6095 to 6097 of 2016: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records pertaining to the orders passed by the 3rd respondent in Na.Ka.No.3828/2015/F1 dated 22.12.2015 respectively and quash the same.

WP Nos. 9556 & 9557 of 2016: Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records of the respondent in his notice in Na.Ka.No.3828/2015/F1 dated 22.12.2015 quash the same in respect of Block No.45, T.S.Nos.15/1 & 2, measuring 0.0062.5 sq.mtr & 0.009.5 sq.mtrs in Kamarajanar Road, Attur Town, Salem District, respectively.

24715 to 24716 of 2016:- Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned notice made in Na.Ka.No.3828/2015/F1 dated 22.12.2015 on the file of the first respondent herein – quash the same.

W.P.Nos.5912 to 5917 of 2016 & W.P.Nos.6095 to 6097 of 2016

For Petitioners : Mr. N.G.R. Prasad
for M/s.Row and Reddy
in all the Writ Petitions

For Respondents : Mr. A. Selvendran
Special Government Pleader
in all the Writ Petitions

WP Nos. 9556 & 9557 of 2016

For Petitioners : Mr. N.G.R. Prasad
for M/s.Row and Reddy for first Petitioner
Mr. M.S. Palanisamy for second Petitioner



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WP Nos.5912 to 5917, 6095 to 6097, 9556 & 9557, 24715 & 24716 of 2016

For Respondent : Mr. A. Selvendran
Special Government Pleader
in both the writ petitions

WP Nos. 24715 & 24716 of 2016

For Petitioners : Mr. T. Muruga Manickam, Senior Advocate
for Ms. Zeenath Begum
in both the writ petitions

For Respondents : Mr. A. Selvendran
Special Government Pleader
in both the writ petitions

COMMON ORDER

(Order of the Court was made by R.MAHADEVAN, J.)

The challenge made in these Writ Petitions is to the individual notices dated 22.12.2015 issued by the Commissioner, Attur Municipality invoking Section 182 (1) of the Tamil Nadu District Municipalities Act, 1920 and thereby calling upon the petitioners to remove the encroachments made by them in the lands mentioned therein.

2. In the affidavits filed in support of the respective writ petitions, it is stated by the petitioners that they are residing in the properties in question on their own right and they cannot be treated as encroachers of any public property. In the affidavits, reference has been made to the manner in which the properties were purchased by the petitioners, either through auction purchase



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or by means of registered sale deeds or on the basis of the Will executed by the predecessor. It is also contended that the petitioners have constructed buildings after obtaining planning permission from the competent authority and the buildings are in existence for several decades. Further, the properties of the petitioners have also been assessed to payment of property tax and tax is being paid in the name of the individual building owner. In the case of WP No. 5914 of 2016, it is stated that the petitioner had constructed a hospital consisting of two floors, after obtaining planning permission even on 19.03.1993. Therefore, it is submitted on behalf of the petitioners that the petitioners are in possession and enjoyment of their respective properties for decades together and those properties are their private properties. While so, the notices issued to the petitioners, by branding them as encroachers of a public property, are legally not sustainable and they are liable to be quashed.

3. The learned counsel for the respective petitioners in unison submitted that the petitioners are in occupation of lands and buildings for decades together and they are paying taxes and charges to the authorities concerned. To substantiate their claim, the learned counsel for the respective petitioners relied upon the sale deeds, building planning permission approved by the competent authorities, tax receipts, photographs and other revenue



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records. It is also submitted that various sale transactions had taken place and mutation of revenue records has been made long back. Reliance was also placed on G.O. No. 854, Revenue Department 1 (2), dated 30.12.2006 to contend that the persons, who have been in occupation of Government lands for a period of ten years, shall also be considered for issuance of Patta. While so, it is contended by the counsel for the petitioners that the impugned notices have been issued by the Commissioner, Attur Municipality without application of mind and therefore, they are liable to be quashed.

4. On the other hand, the learned Special Government Pleader appearing for the respondents submitted that what is challenged in these writ petitions is only show cause notices issued to regulate the water bodies and for removal of encroachments, if any. Such notices cannot be straight away termed as taking coercive steps against the petitioners. The petitioners are expected to file their respective replies, if not filed earlier. He has also assured that survey would be conducted in the disputed lands based on the revenue records with the assistance of the revenue officials in the presence of the affected parties/petitioners before taking a final decision. In such circumstances, the learned Special Government Pleader only prayed for issuing necessary direction in this regard, directing the petitioners to submit their



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explanation along with documentary evidence to substantiate their claim and on receipt of the same, the respondents will consider the same on merits.

5. Heard the learned counsel for the respective Petitioners and the learned Special Government Pleader appearing for the respondents.

6. Considering the above facts and circumstances of the case and the submissions made by the learned counsel for both sides, we find it appropriate to issue the following directions;

(i) The petitioners concerned shall file objections/replies along with documentary evidences, within a period of eight weeks from the date of receipt of a copy of this order and on receipt of the same, the said authority shall afford opportunity of hearing to all the parties concerned and consider the same on merits.

(ii) If the authorities concerned are not satisfied with the explanations or documents placed, they shall proceed to survey the lands based on the revenue records with the assistance of Taluk surveyors and other revenue authorities, in the presence of the petitioners.

(iii) After the completion of survey, if they find any encroachments, the same shall be removed by due process of law, within a period of four weeks



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thereafter

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7. With the above directions, these Writ Petitions are disposed of.
No costs. Consequently, all the connected Miscellaneous Petitions are closed.

[R.M.D., J] [M.S.Q., J]
08.02.2023

ay/rsh

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non-Speaking Order

To

1.The Revenue Divisional Officer,
Attur, Salem District.

2.The Tahsildar,
Attur Taluk,
Attur, Salem District.

3.The Commissioner,
Attur Municipality,
Attur, Salem District.



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R. MAHADEVAN, J
and
MOHAMMED SHAFFIQ, J

ay/rsh

W.P.Nos.5912 to 5917, 9556,
9557, 24715 & 24716 of 2016

Dated : 08.02.2023
(1/2)