



W.P.(MD)No.16046 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.(MD)No.16046 of 2023

and

W.M.P.(MD)Nos.13447 & 13448 of 2023

Sathasivan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by Sub Collector (I/c.),
Padmanabhapuram, Kanyakumari District.

2.The Executive Engineer,
Public Works Department (WRO),
Kothaiyaru Basin Division,
Nagercoil, Kanyakumari District.

3.The Assistant Executive Engineer,
Public Works Department (WRO),
Kothaiyaru Basin Division,
Cheruppalaor, Kulasekaram Post,
Kanyakumari District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the



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impugned notice issued by the 1st respondent in proceedings No.A2/3613/2023, dated 05.06.2023 and quash the same as illegal and consequently, direct the 3rd respondent to follow the procedure laid down in Tamil Nadu Land Encroachment Act, 1905 as well as to consider the petitioner's objections, before issuing notice under Rule 6(1) of Tamil Nadu Land Encroachment Act, 1905.

For Petitioner : Mr.P.M.Vishnu Varthanan

For Respondents : Mr.J.Ashok,

Additional Government Pleader

ORDER

(Order of the Court was made by ***S.VAIDYANATHAN, J.***)

The petitioner has come forward with the prayer to quash the notice dated 05.06.2023 issued by the 1st respondent and consequently, to direct the 3rd respondent to follow the procedure laid down in Tamil Nadu Land Encroachment Act, 1905 as well as to consider the petitioner's objections, before issuing notice under Rule 6(1) of Tamil Nadu Land Encroachment Act, 1905.

2.A glance of the impugned notice dated 05.06.2023 would make it very clear that it is only asking the petitioner to appear for enquiry on 13.06.2023.



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3.Mr.J.Ashok, learned Additional Government Pleader, who took notice on behalf of the respondents, on instructions, submitted that the enquiry has not been completed and necessary survey would be conducted in the land in question, after issuing notice to the petitioner as well as any other interested parties.

4.We expect a survey to be conducted apart from taking photographs and video in the presence of parties. If required, police assistance can also be taken. If encroachment is found, no indulgence shall be shown to the encroachers. The dictum of the Hon'ble Apex Court as followed by this Court in W.P(MD)No. 15636 of 2023, dated 03.07.2023, needs to be adhered to. Relevant portion of the said order reads as follows:

“”6. The Authorities concerned can also utilize the advanced technology of drone survey in the presence of the respective parties in order to ascertain the exact portion of encroachment. It is needless to mention that if any encroachment is found to be made, the electricity connection with respect to the encroachment shall have to be disconnected and the eighth respondent shall issue suitable direction to the concerned Assistant Engineer to that effect, in the light of the Judgment of the Division Bench in the case of "P.Selvarajan Vs. The



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Commissioner of Municipal Administration, Chennai and others" (W.P.No. 21639 of 2017), decided on 13.02.2018, wherein the Division Bench observed as follows, in consonance with the order of the Supreme Court dated 05.01.2018 passed in a Petition for Special Leave to Appeal (C) No.33863 of 2017:

*“3. Learned counsel appearing for the fourth respondent submitted that the fourth respondent has made an application for regularisation and that during the pendency of the proceedings, this Court, by order dated 11.09.2017, directed disconnection of electricity in respect of basement, second and third floors of the fourth respondent's premises, against which, the matter was taken up to the Supreme Court. The Supreme Court, in Petition for Special Leave to Appeal (C).No.26509 of 2017, by order dated 13.10.2017, did not interfere with the said order of this Court dated 11.09.2017, and permitted the fourth respondent herein to move the High Court. During the pendency of this Writ Petition, the fourth respondent herein has filed W.M.P.No.30495 of 2017 seeking direction to the TANGEDCO to restore the electricity connection to the building of the fourth respondent. **This Court, by order dated 07.11.2017, rejected the restoration of electricity supply. Thereafter, once again the matter was taken up to***



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the Supreme Court by the fourth respondent, and the Supreme Court, by order dated 05.01.2018 in Petition for Special Leave to Appeal (C) No.33863 of 2017, has dismissed the Special Leave Petition, by observing as follows:

"Heard learned counsel for the petitioner and perused the impugned order dated 07.11.2017 passed in WMP.No.30495/2017 passed by the Madras High Court.

We are not inclined to interfere in the impugned order and accordingly, the Special Leave Petition is dismissed.

However, we direct the authority concerned before whom the application for regularisation under the DTCP Building Regularisation Scheme 2017 is pending to decide the matter in accordance with law within two months.

Pending application stands disposed of."

7. It is made clear that if there is any encroachment made, no indulgence shall be shown. The officials shall follow the dictums of this Court (S.K.Kaul,C.J., and R.Mahadevan,J.) in Contempt Petition No.1769 of 2015 and Contempt Petition No.2166 of 2015 (Suo motu) and in W.P. No. 28143 of 2021 dated 27.01.2022 (S.Vaidyanathan,J and D. Bharatha Chakravarthy,J.) in its letter and spirit. If the officials fail to remove the encroachment, disciplinary action shall be



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initiated and punishment for major misconduct shall be entered in the service records that will deprive them of further chances of promotion.”

5.We make it clear that we have not rendered any finding on the merits of the plea made by the petitioner and the aforesaid exercise shall be completed by the authority concerned within a period of three months from the date of receipt of a copy of this order.

6.With the above direction, this Writ Petition is disposed of. No Costs. Consequently, connected Miscellaneous Petitions are closed.

(S.V.N., J.) & (D.B.C., J.)

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

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