



W.P.Nos.30310 and 30311 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2024

CORAM :

THE HON'BLE MR. JUSTICE P.B.BALAJI

AND

THE HON'BLE MR. JUSTICE G.ARUL MURUGAN

W.P.Nos.30310 and 30311 of 2024
and WMP Nos.32999 and 33000 of 2024

Kalaiyarasi .. Petitioner in W.P.No.30310 of 2024

Soumiya .. Petitioner in W.P.No.30311 of 2024

-VS-

1.The District Collector,
Cuddalore District,
Cuddalore.

2. The Executive Engineer,
Water Resources Department,
Khan Sahib, Canal Unit,
Chidambaram,
Cuddalore District.

3. The Assistant Engineer,
Water Resources Department,
Khan Sahib, Canal Unit,
Chidambaram,
Cuddalore District.

.. Respondents in both the writ petitions



W.P.Nos.30310 and 30311 of 2024

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Prayer in W.P.No.30310 of 2024: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the entire records pertaining to the impugned notice passed by the 3rd respondent, dated 24.08.2024 and to quash the same as illegal, incompetent and as against the nature of justice and consequently directing the respondents to provide opportunity to the petitioner and her villagers to show their cause in respect of eviction notice dated 24.08.2024 and to hear their objections and to provide one year time period to transfer and set up their place of residence by considering the petitioner's representation dated 05.10.2024.

Prayer in W.P.No.30311 of 2024: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents not to disturb the peaceful possession of the petitioner house situated in Cuddalore District, Chidambaram Taluk, Uppanatrunkarai, Usuppur Revenue Village, without issuance of eviction notice in accordance with law and provide opportunity to hear her objections and provide sufficient time period to transfer and set up her place of residence by considering the petitioner's representation dated 06.10.2024.



W.P.Nos.30310 and 30311 of 2024

WEB COPY

For Petitioners : Mr.C.R.Gokulvisvas

For Respondents : Mr.K.Karthik Jagannath
Govt. Advocate

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COMMON ORDER

(Order of the Court was made by **P.B.BALAJI, J.**)

Heard the learned counsel for the parties and with consent, the main writ petition itself is taken up for final disposal.

2. W.P.No.30310 of 2024 has been filed seeking to quash the impugned eviction notice dated 24.08.2024, the same being illegal, incompetent and against the principles of natural justice and W.P.No.30311 of 2024 has been filed by the petitioner therein seeking to issue writ of mandamus not to disturb her peaceful possession from her house and consequently, both the petitioners seek to direct the respondents to provide an opportunity to hear their objections.



W.P.Nos.30310 and 30311 of 2024

WEB COPY

3. The learned counsel for the petitioners would submit that 65 families are residing in the subject land and only to few families, the eviction notice dated 24.08.2024 has been served, one among them is the petitioner in W.P.No.30310 of 2024. The specific allegation of the petitioner in W.P.No.30310 of 2024 is that Form-II notice has not been served on her and directly, Form-III notice has been served on 24.08.2024 calling upon her to remove the encroachment on or before 01.09.2024 failing which forcible removal of encroachment would be carried out by the authorities. The learned counsel would submit that in respect of the petitioner in W.P.No.30311 of 2024, no such eviction notice has been issued.

4. The learned Government Advocate for the respondents submitted that a fresh Form-II notice would be issued to the petitioners and other residents and proceedings will be conducted thereafter in accordance with law after giving an opportunity to them.

5. The learned Government Advocate also brought to our notice



W.P.Nos.30310 and 30311 of 2024

the order passed by the Hon'ble First Bench of this Court in W.P.No.29038 of 2024 dated 30.09.2024 wherein similarly placed persons had sought for issuance of writ of mandamus seeking an alternate site to set up their residence considering the survival of their life and consequently to direct the authorities not to disturb their peaceful possession in the said land. The Hon'ble First Bench of this Court dismissed the said writ petition finding that the encroachments are pertaining to a major drain cum irrigation canal and therefore, encroachments on waterbodies cannot be permitted. Insofar as the alternate site allotment was concerned, the Hon'ble First Bench held that such a direction cannot be issued to the respondents and left it open to the petitioners therein to make a representation to the State and thereafter, the State may consider the same on merits. In short, the request for alternate site was rejected by the Hon'ble First Bench of this Court as it would amount to encouraging the encroachers.

6. In the present case, however, considering the fact that Form-II notice has not been issued, the respondents are directed to issue a fresh Form-II notice to the petitioners and others and after hearing



W.P.Nos.30310 and 30311 of 2024

their objections, the final order shall be passed. If the respondents find that the encroachments are made by the petitioners and others, Form-III notice shall be issued and suitable action shall be taken thereafter. The entire process shall be completed within a period of four weeks from the date of receipt of a copy of this order.

7. With the aforesaid direction, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(P.B.B., J.) (G.A.M., J.)
09.10.2024

Index : Yes/No
NC : Yes/No

sr/sra



W.P.Nos.30310 and 30311 of 2024

WEB COPY

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W.P.Nos.30310 and 30311 of 2024

P.B.Balaji, J.
and
G.Arul Murugan, J.

(sra)

W.P.Nos.30310 and 30311 of 2024

09.10.2024