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W.P.Nos.35151 & 35161 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.Nos.35151 & 35161 of 2024
and
W.M.P.No. 38065 of 2024 in W.P. No.35151 of 2024
and
W.M.P. No.38073 of 2024 in W.P.No.35161 of 2024

T.Aravinth

... Petitioner
in W.P.No.35151/2024

P.Sakthivel

.. Petitioner
in WP No. 35161/2024

VS

- 1.The Additional Chief Secretary/
Commissioner of Land Administration,
Chepauk, Chennai 600 005.
- 2.The District Collector,
The Collectorate of Tiruvallur,
Tiruvallur District.
- 3.The Revenue Inspector,
Thirumullaivayal, Avadi Taluk.
- 4.The Authorized Officer,
Asset Recovery Management Branch,
State Bank of India,
No.44, Eldams Road, 1st Floor
Teynampet, Chennai -600 018.

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5.The Manager,
RACPC, State bank of India,
Ayyappanthangal, Chennai – 600 056.

... Respondents
in both writ petitions

Prayer in WP No. 35151 of 2024: Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the entire records pertaining to Na.Ka.No.174 of 2024 dated 08.07.2024 issued by the 3rd respondent and quash the same.

Prayer in WP No. 35161 of 2024: Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the entire records pertaining to Na.Ka.No.176 of 2024 dated 08.07.2024 issued by the 3rd respondent and quash the same.

For Petitioner : Mr.G.Murugendran
(in both WPs)

For Respondents : Mr.V.Ravi
Special Government Pleader
for R1 to R3
(in both WPs)



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COMMON ORDER

[Order of the Court was made by K.RAJASEKAR, J.,]

Challenging the 'notices dated 08.07.2024 bearing reference Na.Ka.Nos.174 of 2024 and 176 of 2024' (hereinafter 'impugned notices' for the sake of brevity) issued under Section 7 of 'The Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity}, the present writ petitions have been filed.

2. The petitioners claim to be the purchasers of flats measuring 861 sq. ft. and 525 sq. ft. respectively at Aparajithapuri Apartment situated in Manikandapuram, 3rd Main Road, Thirumullaivoyal, Chennai in the auction sale conducted by the fourth respondent bank pursuant to proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). One Cholambedu Village People Welfare Association had filed a Public Interest Litigation (PIL) in W.P. No.10075 of 2008 for removal of encroachment in the land in 'Survey No.572, Old Survey No.51, New



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No.16, Manikandapuram, Thirumullaivoyal Village, Ambattur Taluk, Thiruvallur District' (hereinafter 'said land' for the sake of brevity) stating that the said land in which encroachments were made is a waterbody and pattas were also issued infavour of various individuals. This writ petition was allowed with a direction to the official respondents to take appropriate action for removal of encroachment.

3. Based on the order passed by this Court in the said PIL, proceedings were initiated by the official respondents to remove the encroachment in the abovesaid survey number. In the meantime, the fourth and fifth respondents who have already initiated proceedings under SARFAESI Act against some of the borrowers had come forward to challenge the proceedings initiated by the Government for removal of encroachment. Subsequently, the Commissioner of Land Administration has issued a proceedings dated 26.12.2019 stating that the said land is a waterbody and directed to cancel the patta. This was challenged by the Bank in W.P. No.8661 of 2020. This writ petition was disposed of by another Hon'ble Division Bench by order dated 11.07.2024 directing the official respondents therein to restore said land in Survey No.572 (waterbody) to its original position and further



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directions were also issued to complete the exercise of demolishing the construction put up therein and to file the compliance report. Based on this order, individual notices under Section 6 of said 1905 Act were also issued to those persons who are in occupation of said land.

4. The writ petitioners herein, who are purchasers of flats from the Bank, have approached this Court by filing W.P. Nos.28302 and 28305 of 2024 with a prayer to quash the confirmation of sale by the Bank in favour of the petitioners and also for refund of the bid amount of Rs.36,03,102/- and Rs.44,04,726.03 respectively together with interest. These writ petitions were also dismissed by order dated 06.11.2024 by another Hon'ble Division Bench, however, petitioners were given liberty to take steps as advised in accordance with law.

5. Learned counsel for the petitioners submits that in W.P. No.8661 of 2020 vide an interim order dated 20.06.2024, another Hon'ble Division Bench has directed the Government to implead all the persons who are in possession of any portion of the waterbody. However, without so impleading, final order in the writ petition has been passed. The grievance of the petitioners is that they are ready to



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handover the possession of the property if the sale consideration paid by them is refunded to them. Learned counsel further stated that the Bank has taken a consistent stand that the said land is not a waterbody and even in the earlier writ petitions in W.P. Nos.28302 and 28305 of 2024, they have also stated that it is not a waterbody. Hence he prays this Court to quash the impugned notices issued under Section 7 of said 1905 Act.

6. We have considered the submission and also perused the records.

7. A perusal of the records shows that the petitioners have purchased flats from the Bank in public action confirmed as per letter dated 29.04.2019 and sale certificates were also issued on 24.06.2019. The petitioners have also paid the sale consideration by availing bank loan. However, pursuant to the order passed by this Court in PIL, an enquiry has been conducted regarding the nature of the land and it culminated into final orders by the Commissioner of Land Administration wherein it has been held that the said land is a waterbody (Kanakkan Pillai Kuttai). This was also challenged by the



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Bank by filing W.P.No.8661 of 2020 and another Hon'ble Division Bench, after considering the materials on record and hearing all the parties, has held that Survey No.572 is Kanakkan Pillai Kuttai and directed the authorities to initiate steps to remove the encroachment including the demolition of construction put up in the waterbody.

8. Based on the above order, the present impugned notices have been issued to the petitioners under Section 7 of the said 1905 Act. We have held in various matters that the said 1905 Act is a self contained Code which provides for noticee to be show caused under Section 7 followed by an order under Section 6 which is appealable under Section 10 with a provision for further revision to revisional authority under Section 10-A with a specific provision for stay pending appeal or revision vide Section 10-B.

9. As the show cause notices are under challenge, we are of the view that the petitioners shall be given liberty to respond to the impugned notices by giving proper reply including questioning the authority of the person who has issued the notices. Therefore, the petitioners are permitted to submit their reply to the impugned notices



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and after receipt of reply, the authority concerned is directed to consider the same in accordance with the said 1905 Act and pass appropriate orders in accordance with law.

10. Since show cause notices are being challenged, we are not inclined to entertain the writ petitions. Accordingly, the writ petitions are dismissed, preserving the rights of the petitioners in the aforesaid manner. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

(M.S.,J.) **(K.R.S.,J.)**
28.11.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

- 1.The Additional Chief Secretary/
Commissioner of Land Administration,
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- 2.The District Collector,
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**M.SUNDAR, J.,
and
K.RAJASEKAR, J.,**

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