



WP No.36193 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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1.Murugesan
2.Gowthaman
3.Anbumani
4.Selvam
5.Rajendran
6.Shanthi
7.Masilamani
8.Govindasamy
9.Sukumar
10.Vasuki
11.Ganesan
12.Lakshmi
13.Bhuvaneshwari
14.Karthik
15.Dhanam
16.Indira
17.Munirathanam
18.Gopi
19.Pandiyan
20.Kannan
21.Shankar
22.Esther
23.K.Elumalai

: Petitioners

Vs

1.The Registrar
National Green Tribunal Southern Zone

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Kamaraj Salai PWD estate Chepauk
Triplicane Chennai -05

2.The Principal Secretary to Government
Public Works Department
Secretariat Chennai -600009

3.Tamil Nadu Pollution Control Board
No.76, Mount Salai, Guindy, Chennai-32

4.The District Collector, Thiruvallur- 602001

5.The Commissioner
Avadi Municipality
NM Road TNHB Avadi
Chennai- 600054

6.The Tasildhar
Avadi, Chennai- 600072.

: Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings on the file of National Green Tribunal (Southern Zone Chennai) in O.A 06 of 2021(S2) dated 12/05/2023 and quash the same as illegal incompetent and without jurisdiction and further restrain the respondents 1 to 3 from taking any coercive action with respect to the survey No.81, 82, 84 and 92 of Vilinjambakkam Village, Avadi Municipality

For the Petitioners : Mr.V.Raghavachari,
Senior Counsel,
for Mr.V.Srimathi

For Respondents 2,4,6 : Mr.P.Muthukumar,
State Government Pleader

For Respondent No.5 : Mr.P.R.Gopinath



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ORDER

(Made by the Hon'ble Chief Justice)

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We have heard Mr.V.Ragavachari, learned Senior Counsel for the petitioners, Mr.P.Muthukumar, learned State Government Pleader, appearing for respondents 2, 4 and 6 and Mr.P.R.Gopinath, learned counsel appearing for the fifth respondent.

2. The petitioner is challenging the order passed by the National Green Tribunal (NGT, for short) in OA No.6/2022, dated 12.05.2023. Under the said order, the NGT has directed the respondents authorities to remove encroachments on Vilingjambakkam Lake, Avadi.

3. Mr.V.Raghavachari, learned Senior Counsel for the petitioners, submits that the impugned order passed by NGT is without notice to the petitioners, and if the order is passed in flagrant violation of the principles of natural justice, this court would exercise its jurisdiction under Articles 226 and 227 of the Constitution of India. He further submits that even the Supreme Court in the case of **Madhya Pradesh High Court Advocates Bar Association vs. Union of India (2022 SCC**



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Online SC 639) has observed that the remedy of appeal provided under Section 22 of the NGT Act would not extinguish the remedy of a litigant under Articles 226 and 227 of the Constitution of India. This court can still exercise its jurisdiction under Articles 226 and 227 of the Constitution of India and more particularly, in a case where orders are passed without adhering to the principles of natural justice. According to the learned Senior Counsel, the petitioners are assigned the subject lands and construction permission has been granted to them. Pursuant to the construction permission, structures are erected. However, the NGT has passed a blanket order directing removal of encroachments.

4. The learned counsel for the corporation submits that it is for the Government to take steps to remove the encroachments.

5. Mr.P.Muthukumar, learned State Government Pleader, submits that notice under Form I and Form II have been issued. However, Form III notice has not yet been issued after the order is passed by the NGT. The learned State Government Pleader, on instructions, submits that within two weeks, notice under Form III would be issued to the petitioners and other persons.



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6. It is further submitted that the matter is kept on 23.01.2024 for reporting compliance by the State.

7. The petitioners' case is that the order passed by the NGT is exparte and without notice to them. It is further contended that six houses have been demolished pursuant to the orders of the NGT.

8. It appears that the petitioners were not heard by the NGT. The petitioners can make an application before the NGT and put-forth their case, as contended by them, of the land being assigned to them, construction permission being granted; and taxes being paid. It is for the NGT to consider the case put-forth by the petitioners.

9. As it is submitted that it will take two weeks' time for the State authorities to issue notice under Form III to the petitioners and that unless notice under Form III is issued, demolition would not take place, petitioners have ample time to move the NGT to make an application.



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10. The petitioners may make an application before the NGT to put-forth their case. In that event, all contentions raised in the present writ petition are kept open.

11. The writ petition is disposed of. There shall be no order as to costs. Consequently, WMP Nos.36177, 36178, 36181 of 2023 are closed.

12. WMP No.36176 of 2023 filed to permit the petitioners to file a single writ petition is allowed and disposed of.

(S.V.G., CJ.)

(D.B.C., J.)

02.01.2024

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

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