

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Friday, the Twenty Fifth day of December Two Thousand Twenty

PRESENT

THE HON`BLE MR JUSTICE R.MAHADEVAN

and

THE HON`BLE DR.JUSTICE ANITA SUMANTH

WP Nos.20198 to 20201 of 2020

and WMP.Nos.24955, 24956,24957,24958,24959,

24960,24961 & 24962 of 2020

B.M.HABIBULLAH ... PETITIONER in WP No.20198 of 2020
& WMP No.24955,24956 of 2020

B.M.IQBAL ... PETITIONER in WP No.20199 of 2020
& WMP Nos.24957,24958 of 2020

N.MOORTHY ... PETITIONER in WP No.20200 of 2020
& WMP Nos.24959,24960 of 2020

V.THOMAS ... PETITIONER in WP No.20201 of 2020
& WMP No.24961,24962 of 2020

Vs

1 THE STATE [RESPONDENTS IN ALL THE PETITIONS]
BY ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
[REVENUE AND DISASTER MANAGEMENT DEPARTMENT]
LAND DISPOSAL WING [LD. 6(2) SECTION
FORT ST.GEORGE, CHENNAI-600 009

2 THE DISTRICT COLLECTOR
NILGIRIS DISTRICT
NILGIRIS

3 THE TASILDHAR
COONOR
NILGIRIS DISTRICT

Writ Petition under article 226 of the Constitution of India
praying that in these circumstances stated therein and in the
affidavit filed therewith the High Court will be pleased to issue a
WRIT OF CERTIORARI or any other order in the nature of the writ

(1) Calling for the records on the file of the 1st respondent in G.O. (Ms) No. 503 Revenue and Disaster Management Department Land Disposal Wing (Ld. 6 (2)) Section dated 18.09.2020 and all further proceedings quash the same [IN WP No.20198 of 2020] ;

(2) Calling for the records on the file of the 1st respondent in G.O. (Ms) No. 503 Revenue and Disaster Management Department Land Disposal Wing (Ld. 6 (2)) Section dated 18.09.2020 and all further proceedings quash the same [IN WP No.20199 of 2020] ;

(3) Calling for the records on the file of the 1st respondent in G.O. (Ms) No. 503 Revenue and Disaster Management Department Land Disposal Wing (Ld. 6 (2)) Section dated 18.09.2020 and all further proceedings quash the same [IN WP No.20200 of 2020] ;

(4) Calling for the records on the file of the 1st respondent in G.O. (Ms) No. 503 Revenue and Disaster Management Department Land Disposal Wing (Ld. 6 (2)) Section dated 18.09.2020 and all further proceedings quash the same [IN WP No.20201 of 2020] ;

(B) To pass an order of interim injunction restraining the respondents their men and agents from interfering with the petitioners peaceful possession and enjoyment of leased land in S. No. B-59/4 in Coonoor measuring to an extent of 345 sq.ft opposite to Coonoor Bus stand either by disconnecting the electricity, water or eviction or by any other means [IN WMP No.24955 of 2020] till the disposal of the in WP.No.20198/2020 ;

(2) To stay the impugned G.O. (Ms) No. 503 Revenue and Disaster Management Department Land Disposal Wing (LD. 6 (2)) Section dated 18.09.2020 and all further proceedings [IN WMP No.24956 of 2020] till the disposal of the in WP.No.20198/2020 ;

(3) To pass an order of interim injunction restraining the respondents their men and agents from interfering with the petitioners peaceful possession and enjoyment of leased land in S. No. B-59/4 in Coonoor measuring to an extent of 345 sq.ft opposite to Coonoor Bus stand either by disconnecting the electricity, water or eviction or by any other means [IN WMP No.24957 of 2020] till the disposal of the WP No.20199 of 2020;

(4) To stay the impugned G.O. (Ms) No. 503 Revenue and Disaster Management Department Land Disposal Wing, (LD. 6 (2)) Section dated 18.09.2020 and all further proceedings [IN WMP No.24958 of 2020] till the disposal of the WP No.20199 of 2020;

(5) To pass an order of interim injunction restraining the respondents their men and agents from interfering with the petitioners peaceful possession and enjoyment of leased land in S. No. B-59/4 in Coonoor measuring to an extent of 345 sq.ft opposite to Coonoor Bus stand either by disconnecting the electricity, water or eviction or by any other means [IN WMP No.24959 of 2020] till the disposal of the WP No.20200 of 2020 ;

(6) To stay the impugned G.O. (Ms) No. 503 Revenue and Disaster Management Department Land Disposal Wing, (LD. 6 (2)) Section dated 18.09.2020 and all further proceedings [IN WMP No.24960 of 2020] till the disposal of the WP No.20200 of 2020;

(7) To pass an order of interim injunction restraining the respondents their men and agents from interfering with the petitioners peaceful possession and enjoyment of leased land in S. No. B-59/4 in Coonoor measuring to an extent of 345 sq.ft opposite to Coonoor Bus stand either by disconnecting the electricity, water or eviction or by any other means [IN WMP No.24961 of 2020] till the disposal of the WP No.20201 of 2020;

(8) To stay the impugned G.O. (Ms) No. 503 Revenue and Disaster Management Department Land Disposal Wing, (LD. 6 (2)) Section dated 18.09.2020 and all further proceedings [IN WMP No.24962 of 2020] till the disposal of the WP No.20201 of 2020 ;

Order : These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of MR.J.RAVINDRAN, Advocate for the petitioner in each of the petitions and of MR.V.JAYAPRAKASH NARAYANAN, Government Pleader, on behalf of the respondents in all the petitions, the court made the following order:-

The petitioners have called in question the G.O.(Ms) No.503, Revenue and Disaster Management Department Land Disposal Wing (LD.6 (2)) Section, Dated 18.09.2020, passed by the first respondent.

2.Mr.J.Ravindran, learned counsel for the petitioners submitted that the petitioners as lease holders, are in occupation of the lands situated in S.No.B59/4 of Coonoor Taluk, opposite to Coonoor Bus Stand, for more than two decades, on payment of lease amount to the authorities concerned without any default and they are not encroachers and hence, the proceedings initiated against them, under the provisions of the Tamil Nadu Land Encroachment Act, 1905, are arbitrary and illegal. Further, the learned counsel, drawing the attention of this Court to the documents filed in the form of typed set of papers in WP.No.20200 of 2020, submitted that the first respondent on the one hand, stated that the subject land is in water course poramboke classified as "River", on the other hand, stated that there is a bus stand in the said area and it has to be expanded. Such an inconsistency and contradictory stand taken by the respondents cannot be slightly brushed aside. The learned counsel further submitted that without conducting proper enquiry as mandated under the law and without affording reasonable opportunity to the petitioners to defend their case, the first respondent has passed the impugned order on 18.09.2020, which was served on the petitioners only on 24.12.2020 and therefore, the same is in violation of the principles of natural justice. Thus, the order impugned herein is liable to be quashed, according to the learned

counsel.

3.Mr.V.Jayaprakash Narayanan, learned Government Pleader, accepting notice on behalf of the respondents, refuted the submissions so made on the side of the petitioners. However, he sought time to file counter enclosing necessary documents.

4.It appears that there was a series of legal proceedings taken by the petitioners, with respect to the subject land. According to the petitioners, they are the lessees and their lease was renewed periodically and hence, if at all the respondents want to evict the petitioners / lease holders, they have to follow the procedure as laid down under the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975, whereas the respondents claimed that the subject land is in water course poramboke classified as "River" and hence, action was taken under the provisions of the Land Encroachment Act. However, it is vivid from the documents produced before this Court that the petitioners along with others filed WP.Nos.3860 to 3865 of 2004 as against the Section 7 notice issued under the Tamil Nadu Land Encroachment Act. By order dated 11.01.2019, the said writ petitions were disposed of by the learned Single Judge, issuing certain directions to the respondent authorities. Feeling aggrieved, the petitioners went on appeals in WA.Nos.183, 184, 186 and 187 of 2019. By judgment dated 27.02.2019, the Division Bench of this Court disposed of the said appeals, directing the appellate authority to decide the appeals to be filed by the petitioners herein, on merits and in accordance with law, without being influenced by any of the observations made in WP Nos.3860 of 3865 of 2004. Contrary to the same and without touching the legal issues raised by the petitioners, the first respondent has passed the order impugned herein, based on the order passed by the learned Single Judge. This Court is of the opinion that there is no cavil that various judicial pronouncements have been made as regards the removal of Encroachment in water bodies, but yet, the course so adopted by the respondent authorities, is to be tested.

5.In the given factual matrix, this Court finds it appropriate to direct the respondents to file counter, besides permitting the petitioners to produce the relevant documents to buttress their case, if any. Call these matters on 30.12.2020. There shall be an order of *status quo*, till then.

-sd/-

25/12/2020

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Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE GOVERNMENT OF TAMILNADU
ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
LAND DISPOSAL WING LD. 6 (2) SECTION
FORT ST.GEORGE, CHENNAI

2 THE DISTRICT COLLECTOR
NILGIRIS DISTRICT NILGIRIS

3 THE TASILDHAR
COONOR NILGIRIS DISTRICT

C.C. to MR.J.RAVINDRAN Advocate sr.no.6536

Order

in

WP Nos.20198 to 20201 of 2020

and WMP.Nos.24955, 24956,24957,24958,24959,

24960,24961 & 24962 of 2020

Date :25/12/2020

From 26.2.2001 the Registry is issuing certified
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