

WP (MD) No.12026 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 19.06.2023
Pronounced on : 14.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

**WP(MD)No.12026, 15272 to 15276, 13062,
13066, 12930, 13070, 12926, 13061, 12855, 12907 and 12846 of 2021
and
WMP(MD)Nos.9983, 10011, 10117, 10003,
10115, 10118, 10114, 9956, 4115, and 9954 of 2021**

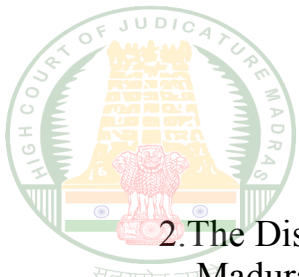
WP(MD)No.12026/2021:-

B.B.Kulam- Mullai Nagar Kudiirupor Nalasangam,
Represented by its Secretary,
S.Pandia Raj,
S/o.R.Seenivasan,
14 Ex-Service Men Quarters,
Rajiv Gandhi Nagar,
Nehruji Street,
Madurai – 2.

: Petitioner

Vs.

1.The Department of Municipal Administration and
Water Supply,
Represented by its Principal Secretary,
Fort.St.George,
Chennai- 09.



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2.The District Collector,
Madurai District,
Madurai.

3.The Public Works Department,
Represented by its Executive Engineer,
Irrigation Section No.II,
Periyar Vaigai Basin Sub Division No.1,
Madurai 02.

4.The Tamil Nadu Slub Clearance Board,
Represented by its Superintending Engineer,
169, KK.Nagar Main Road,
Opp.Jawahar Hospital,
Madurai – 625 020.

5.The Assistant Engineer,
The Public Works Department,
Irrigation Section No.II,
Periyar Vaigai Basin Sub Division No.1,
Madurai 02.

6.The State of Tamil Nadu,
Represented by its Secretary to Government,
Public Works Department and Water Resource Organisation,
Fort St.George,
Secretariat, Chennai – 600 009.

7.R.Sathiamoorthy

8.D.Laxmanan

[R7 and R8 is impleaded vide Court order dated
1.11.2022 in WMP(MD)No.17122 of 2021]

: Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India

seeking a Writ of mandamus forbear the respondents from evicting the petitioner from evicting the petitioner from his residential house in Survey No.23/24, Bibikulam, Nethaji Main road, Madurai District without following the Direction issued in Para No.42 of order made in WP(MD)No.24297 of 2018 dated 23.12.2020 within the time frame stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy
Senior Counsel for
Mr.S.Rajasekar
For Respondent : Mr.Veerakathiravan,
Nos.1,2, 3, 5 Additional Advocate General
Assisted by Mr.
SP.Maharajan,
Special Government Pleader
For Respondent :Mr.M.Rajeshwari,
No.8 Standing Counsel
For Respondent :MrM.Rajeswari
No.6
For Respondent :Ms.S.Latha
No.4 Standing Counsel

COMMON ORDER

(Order of the Court was made by **B.PUGALENDHI.J**)

Considering the issue in all these writ petitions are one and the same, they are taken up together and disposed of by this common order.



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2.The case of the petitioner in WP(MD) No.12026 of 2021 is that on 28.11.2018, Form-III was issued against them stating that they have encroached the Bibikulam Tank which was challenged by the petitioner in WP(MD) No.25464 of 2018, etc., batch dated 23.12.2020 and this Court by its order dated 23.12.2020, disposed of these writ petitions with the following direction,

“42.In view of the disposal of the earlier writ petitions to treat the impugned notices as show cause notice and to take further action, after getting explanation from the encroacher, these writ petitions are disposed of, directing the petitioners to offer their explanation within a period of two weeks from the date of receipt of a copy of this order and the respondents are directed to take further action after receipt of the reply from the petitioners.

43.The official respondents are directed to check whether those who were given permission to enter upon the water body vide G.O.Ms.No.741, Revenue (L1) Department, dated 04.05.1990, are really below the poverty line and if they are below the poverty line and are eligible for any other scheme, they can be shifted to the Slum Clearance Board building situated at Rajakur or any other place, since if the permission to enter upon the water body is ratified, it will create a bad precedent.”

3.The grievance of the petitioner is that the petitioner was neither issued with a notice seeking explanation nor any alternative accommodation was provided as per the directions given by this court. Hence, they seek a writ of mandamus forbearing the

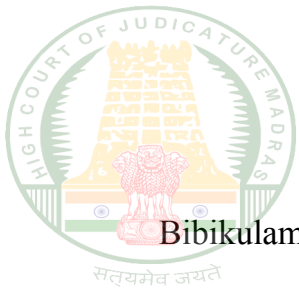


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respondents from evicting the petitioners from their residential house at Bibikulam area without complying with the orders passed by this court in WP(MD) No.25464 of 2018 Batch dated 23.12.2020.

4.The case of the petitioners in WP(MD) Nos.15272 to 15276 of 2021 is that the petitioners are the occupants of houses constructed by the Slum Clearance Board under Basic Service to Urban Poor in Jawaharlal Nehru National Urban Renewal Mission (JNNURM). According to these writ petitioners, on 28.11.2018, Form-III was issued against them stating that they have encroached the Bibikulam Tank which was challenged by the petitioners in WP(MD) No.25464 of 2018 Batch. The grievance of the petitioners is that without adherence to the above order and without rehabilitating the petitioners in an alternate accommodation, the respondent authorities have scheduled for eviction. Hence the petitioners seek a writ of mandamus forbearing the respondents from evicting the petitioners from their residential houses at Bibikulam area based on their representation dated 05.08.2021.

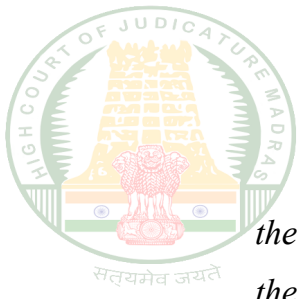
5.The writ petitions in WP(MD) Nos.13062, 13066, 12930, 13070, 12926, 13061, 12855, 12907, 12846 of 2021 are filed by the petitioners to issue a writ of mandamus forbearing the respondents from evicting the petitioners from their residential houses at



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Bibikulam area without complying with the orders passed by this court when the respective Form III notice issued under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 was challenged. According to these writ petitioners, on 05.12.2018, Form-III was issued against them stating that they have encroached the Bibikulam Tank. This Form-III was challenged by the petitioners in WP(MD).No.24634 of 2018, WP(MD).No.24636 of 2018, WP(MD).No.24639 of 2018, WP(MD).No.24641 of 2018, WP(MD).No.24642 of 2018, WP(MD).No.24640 of 2018, WP(MD).No.24643 of 2018, WP(MD).No.24639 of 2018 and WP(MD).No.24635 of 2018 respectively. This court by order dated 09.08.2019 disposed of all these writ petitions with the following direction,

“8.Insofar as the impugned notice is concerned, in the light of the judgment of this Court reported in 2010 Writ L.R. 113 (cited supra), this Court without going into the merits of the claim made by the petitioner in this writ petition, treats the impugned notice as a Show Cause Notice, for which the petitioner is permitted to submit his detailed response with supporting documents of genuineness and authenticity to the sole respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondent is directed to consider the same on merits and in accordance with law and if required, give the petitioner an opportunity of personal hearing and thereafter, pass appropriate orders within a period of six weeks thereafter and communicate the decision taken to the petitioner and till such time



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the possession and enjoyment of the petitioner in respect of the land and the superstructure in question shall not be disturbed. It is made clear that till a decision is taken by the respondent on the response to be submitted by the petitioner, he shall not create any third party right in respect of the land in question as well as the superstructure put up therein and cooperate with the respondent for expeditious conclusion of the enquiry.”

6. The petitioners claimed that after receiving the copy of order on 14.09.2019, they made their reply with documents within a period of two weeks. The petitioners claim that the respondents have not complied with the above order by passing a final order within a period of six months from date of receipt of the reply given by the petitioners. Hence, they seek a writ of mandamus forbearing the respondents from evicting the petitioners from their residential house at Bibikulam area without complying with the earlier orders passed by this Court.

7. The learned Additional Advocate General appearing for the respondents submits that one D. Lakshmanan has filed a public interest litigation in WP(MD) No.24207 of 2016 before this Court for removal of encroachments made in the Government Kanmoi Poramboke land in S.No.23/24, Nethaji Main Road, Bibikulam, Madurai and this Court by order dated 10.01.2017 directed the public works department to remove the encroachments within a period of two months. Thereafter the respondents issued notices



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to all the encroachers and some encroachers have filed writ petition before this Court challenging the eviction notice and this Court clubbed all the writ petitions and disposed them by a common order dated 23.12.2020 directing the respondents to remove the encroachments after providing opportunity to the encroachers. In pursuance of the same, Form III notices were issued to 581 encroachers by the Junior Engineer, Water Resources Department, Irrigation Section No.II, Madurai in the year 2021 and notices were served to all the encroachers on 02.02.2021. The final announcement was given through “Tom Tom” to all encroachers directing them to vacate the encroachments or before 09.04.2021. For the removal of encroachment assistance was also requested from the department of Madurai Corporation, Police Department, Electricity Board and Revenue Department.

8.The learned Additinoal Advocate General further submits that on 13.07.2021, around 102 numbers of commercial shop building encroachments were removed with the help of other departments. Thereafter Government buildings such as Village Administrative Office, Bibikulam, Anganvadi Center and TASMAL building around 6 numbers were removed on 23.08.2021. Totally 108 commercial buildings were evicted from the said Bibikulam tank.

9. Adding to this, the learned Additional Advocate General submits that the Tahsildar, Madurai North Taluk requested the Project Director, Tamil Nadu State Rural



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Livelihood Mission (TNSRLM), Madurai to identify the persons who are below the poverty line and the Project Director, TNSRLM, Madurai vide his proceedings dated 21.09.2021 informed the Tahsildar, North Taluk that out of 642 encrochers, only 109 persons are alone eligible. He further submits that 14 Ex-servicemen were given allotment of house sites at Slum Clearance Board, Rajakoor. Around, 141 persons died and their legal heirs are the occupants. The beneficiaries are identified and the official respondents are taking steps to allot houses to all eligible beneficiaries at the earliest and therefore, the learned Additional Advocate General prays that the writ petitions may be dismissed.

10. From the submissions of the learned Additional Advocate General, it appears that the petitioners were given adequate opportunity to offer their reply and the eligible persons are also identified for alternative accommodation at Slum Clearance Board, Rajakoor.

11. In view of the above, all the writ petitions are disposed of with a direction to proceed further, after considering the reply submitted by the petitioners in accordance with law within a period of one week from the date of copy of receipt of an order. The eligible persons shall be provided with alternative accommodation at the Slum Clearance Board, Rajakoor or at any other place and to proceed further in accordance with law. Let this



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exercise be completed within a period of six months from the date of receipt of a copy of this order. Consequently connected miscellaneous petitions are closed. No costs.

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[R.S.M.,J.] [B.P.,J.]
14.08.2023

Index : Yes / No

Internet : Yes

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To

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Represented by its Principal Secretary,
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- 2.The District Collector,
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