

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.30979 of 2014 and
M.P.No.1 of 2014 and 1 of 2015

P.Periya Nachimuthu ... Petitioner

vs.

1. The Tahsildar,
Taluk Office,
Tiruppur South, Tiruppur

2. The Sub-Inspector of Survey,
Taluk Office,
Tiruppur South, Tiruppur

3. Easwaran

4. R.Rajamani

5. Velusamy

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a issuance of Writ of Certiorari calling for the entire records pertaining to the Impugned Notice dated 14.11.2014 issued by the 2nd respondent herein, quash the same.

For Petitioner : Mr.K.Govi Ganesan

For Respondents: Mr.V.Jayaprakash Narayanan for R1 and R2
Special Government Pleader
Mr.M.Prabakaran for R3 to R5

O R D E R

Heard Mr.K.Govi Ganesan learned counsel appearing for the petitioner and Mr.V.Jayaprakash Narayanan, learned Special Government Pleader appearing for the 1st and 2nd respondents and Mr.M.Prabakaran, learned counsel for 3rd to 5th respondents and perused the materials placed on record.

2. The challenge in this Writ Petition is to the notice dated 14.11.2014 issued by the 2nd respondent calling upon the petitioner and the respondents 3 to 5 to attend the hearing to accept the 2nd respondent to survey the property.

3. Under the normal circumstances, this Court will not entertain a Writ Petition against a Notice. However, two contentions have been raised by the petitioner stating that the notice has been issued at the instance of the 3rd respondent based on the direction obtained by the 3rd respondent in the Writ Petition No.27570 of 2014 dated 17.10.2014 and in the said Writ Petition, the petitioner was not impleaded as a party. The 2nd ground is that there is no jurisdiction to the 2nd respondent to issue Impugned Notice under the provision of the Tamilnadu Survey and Buildings Act, 1923. In support of the said contention, reliance has been placed on the decision of this Court reported in 2003 (2) CTC 677 (Venugopal Vs. Chandrakasa Padayachi (deceased) and 6 others)

4. The learned counsel appearing for the respondents 3 to 5 submitted that the impugned proceedings is only a notice calling upon the petitioner to attend hearing to enable the 2nd respondent to survey the property and notice has been issued to the petitioner as well as to the respondents 3 to 5 and therefore, there is no reason for the petitioner to challenge the notice and he cannot have any grievance or said to be a aggrieved person as against the impugned notice.

5. Though submission made by the learned counsel for the respondents 3 to 5 appeared to be prima facie correct, but in closure scrutiny of the facts of the case on hand, it shows that notice issued by the 2nd respondent is virtually usurping jurisdiction of the civil court. The 3rd respondent has requested for grant of patta and the same was negatived by the order dated 26.06.2007.

6. Admittedly, the 3rd respondent did not prefer any appeal as against the said order passed by the Revenue Divisional Tahsildar, Tiruppur. Thereafter, it appears that he submitted a fresh application for grant of patta and the said application was considered by the Tahsildar and passed an order dated 06.01.2009 granting patta in favour of the 3rd respondent.

7. Aggrieved by the same, the petitioner filed Revision before the Revenue Divisional Officer, Tiruppur and the said officer by an order dated 12.02.2009 set aside the order passed by the Tahsildar dated 06.01.2009. In order to further assure his title, the petitioner has filed a Suit in O.S.No.152 of 2009 before the learned District Munsif Court, Tiruppur.

8. According to the petitioner, his counsel withdrew the Suit without his instructions and he has filed application for restoration of the said suit. Thereafter, the petitioner has filed another suit, in which the 3rd respondent has filed rejection of the plaint and the application was allowed and as against which, CMA is pending before the Lower Appellate Court. However, it is submitted by the learned counsel for the 3rd respondent, that as on date, there is no civil

suit pending. Therefore, his submission is that the authority was very well within his jurisdiction to issue notice for conducting a survey.

9. Though the suits are not pending as on date, it has to be noted that the order passed by the Tahsildar dated 22.06.2007 is not revised or set aside till date. Even as per order dated 12.02.2009, the enquiry has to be conducted afresh by the Tahsildar, which is not been done till date. Therefore, the question of the 2nd respondent to conduct survey of the petitioner's land at the instance of the 3rd respondent lacks jurisdiction.

10. Further more in the impugned notice, there is reference to the order passed by this Court in W.P.No.27570 of 2014, in which the present writ petitioner was not impleaded as respondents, even in the said Writ Petition, this Court did not grant any positive direction but considering the limited scope of the prayer sought for, direction was issued to the respondent to consider the representation and pass orders in accordance with law. Even such direction was issued to the Tahsildar and not to the 2nd respondent. Therefore, even assuming the Tahsildar issued direction he could have only considered the representation, which obviously means that he should have heard the writ petitioner before considering the representation.

11. In the light of the above facts, impugned notice is held to be without jurisdiction and the same is quashed. However, this will not prevent the 2nd respondent from acting in accordance with the directions of the Revenue Divisional Officer.

12. For all the above reasons, this Writ Petition is allowed. Consequently connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

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To

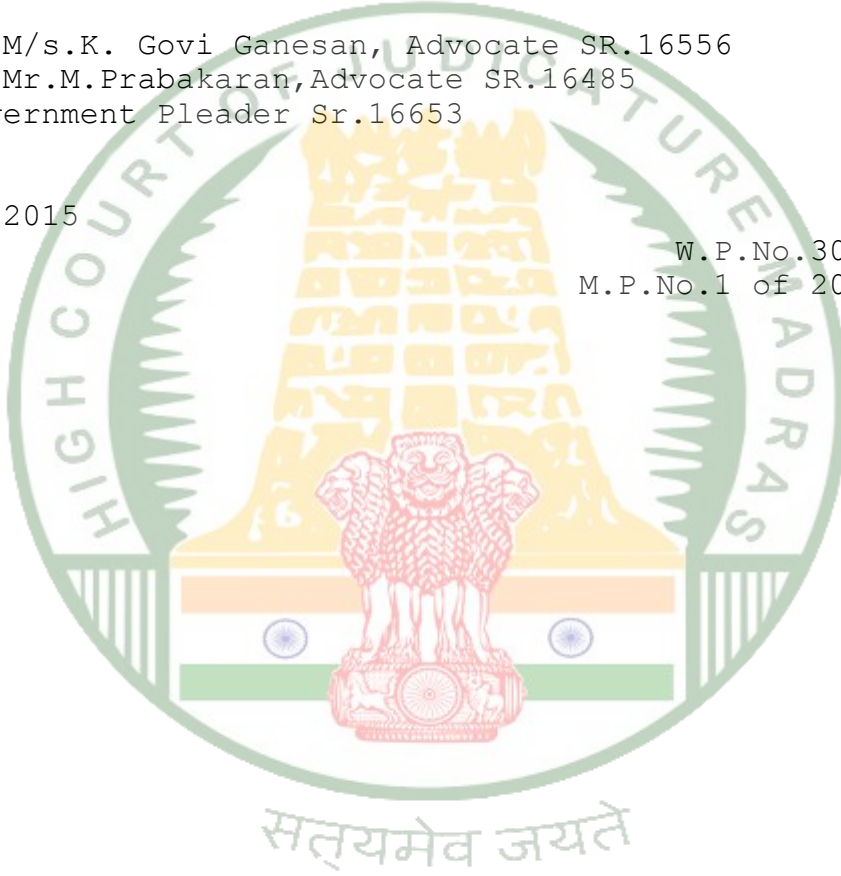
1. The Tahsildar,
Taluk Office,
Tiruppur South, Tiruppur

2. The Sub-Inspector of Survey,
Taluk Office,
Tiruppur South, Tiruppur

+ 1 cc to M/s.K. Govi Ganesan, Advocate SR.16556
+ 1 cc to Mr.M.Prabakaran, Advocate SR.16485
+ 1 cc Government Pleader Sr.16653

SAI (CO)
EU 07.04.2015

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