

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P. No.10934 of 2015

and

M.P. No.1 of 2015

1 Sivanesan
2 Gnanaraj

Partners of Raja Stores
192, G.N.T. Road
Old Gummidipoondi Village
Gummidipoondi Taluk
Tiruvallur District

...Petitioners

vs.

The Gummidipoondi Town Panchayat
represented by its Executive Officer
Gummidipoondi
Tiruvallur District

...Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records relating to the impugned notice in Na.Ka.No.103/2001/A1 dated 23.03.2015 issued by the respondent and quash the same.

For petitioners : Mr. R. Krishnaswamy

For respondent : Mr. P.S. Sivashanmugasundaram
Special Government Pleader
representing
Mrs. P. Kavitha, Govt. Advocate

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

Mr. P.S. Sivashanmugasundaram, learned Special Government Pleader representing Mrs. P. Kavitha, learned Government Advocate, takes notice for the respondent. With the consent of the learned

counsel for the parties, the writ petition is taken up for final disposal, at the admission stage itself.

2 The petitioners have come up with the instant writ petition, questioning the legality, validity and propriety of the notice dated 23.03.2015 issued by the respondent herein under Section 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, Sections 6 and 7 of the Tamil Nadu Land Encroachment Act, 1905 and the Tamil Nadu District Municipalities Act, 1920, whereby and whereunder, the petitioners have been directed to remove the encroachments made by them by constructing house and shops in Survey No.404/2, belonging to Gummidipoondi Town Panchayat in Old Gummidipoondi.

3 The learned counsel for the petitioners submits that the impugned notice is in the form of an order directing the petitioners to remove the encroachments, as aforesaid, within 15 days from the date of the said notice. However, before issuance of the impugned notice, no opportunity of hearing was afforded to the petitioners, as required under Section 7 of the Tamil Nadu Land Encroachment Act and also under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act. Hence, on this score itself, the impugned notice is liable for quashment.

4 The learned Special Government Pleader representing the learned Government Advocate would submit that on a perusal of the impugned notice, it appears that there is a confusion with regard to the legal provision, i.e., as to whether the said notice is issued under Section 7 of the Tamil Nadu Land Encroachment Act or under Section 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act. Thus, a fresh notice is required to be issued properly, after making a proper survey and inspection of the place in question, wherein, the petitioners have allegedly made encroachments, to afford proper opportunity of hearing to them.

5 Heard the learned counsel for the parties and perused the pleadings and documents appended thereto.

6 We have examined the entire facts of the case and also the relevant provisions of law carefully. Section 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act prescribes for conduct of a survey and submission of a report by the Survey Officer. Section 7, *ibid*, provides for eviction of encroachment. Section 7 of the Tamil Nadu Land Encroachment Act provides for issuance of prior notice to the person in occupation, in the form of a show cause notice and the final order or notice is contemplated under Section 6, *ibid*.

7 In the instant case, we are afraid that while issuing the impugned notice, the respondent has employed all the provisions which are available, without verifying as to which is the relevant and proper provision qua the alleged encroachments made by the petitioners.

8 In such view of the matter, we are constrained to quash the impugned notice dated 23.03.2015 issued by the respondent. Accordingly, the same is quashed. However, liberty is reserved to the respondent to issue a fresh notice in accordance with law and take appropriate coercive action for removal of encroachment, if any, found on proper survey and inspection of the survey number in question. Needless to state that an opportunity of hearing has to be afforded to the petitioners before issuance of such fresh notice.

9 With the above observations, the writ petition stands disposed of. Costs made easy. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (J)

//True Copy//

Sub Assistant Registrar

cad

To

The Executive Officer
Gummidipoondi Town Panchayat
Gummidipoondi
Tiruvallur District

1 CC to Mr.V. Ajoy Khose, Advocate SR.No. 20771

1 CC to Mrs. P. Kavitha,, Advocate SR.No. 20878

W.P. No.10934 of 2015

EV (CO)
PSI (28.04.2015)