

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2015

CORAM:

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

THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P. No.17807 of 2015 and M.P. No.1 of 2015

M. Elumalai

Petitioner

vs.

1 The District Collector
Sathuvachari
Vellore District - 9

2 The Tahsildar
Arakkonam Taluk
Arakkonam

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records culminating in the order dated 05.06.2015 of the second respondent and quash the same and consequently, forbear the respondents 1 and 2 from interfering with the petitioner's right for possession of the lands comprised in Survey S.F. No.9, measuring an extent of 001.0, 005.0 ares, Murungai Village, Arakkonam Taluk, Vellore District, pending finality of the proceedings initiated by the respondents under the provisions of the Tamil Nadu Land Encroachment Act, 1905.

For petitioner Mrs. G. Thilakavathi

For respondents Mr. P.S. Sivashanmugasundaram
Special Government Pleader

ORDER

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

Mr. P.S. Sivashanmugasundaram, learned Special Government Pleader, accepts notice for the respondents. With the consent of the learned counsel for the parties, this writ petition is taken up for final disposal, at the admission stage itself.

2 Being aggrieved by the notice dated 05.06.2015 issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 (for short "the Act"), the petitioner has come up with this writ petition, seeking to quash the same on the ground that no opportunity of hearing was afforded to him before directing him to remove the encroachment by demolishing the alleged unauthorised structure.

3 It is contended by the learned counsel for the petitioner that the petitioner was in peaceful possession of the property, in question for a long period. Yet, without affording an opportunity of hearing, all of a sudden, the petitioner has been directed to vacate the premises in question and also to demolish the same, as according to the authorities, the premises in question was on the Government land.

4. The notice in question has been issued under Section 7 of the Act. Section 7 of the Act contemplates service of notice on the person reputed to be in unauthorised occupation of land being the property of the Government. It also contemplates that the notice should specify the land so occupied and calling on the encroacher to show cause as to why he should not be proceeded against under Section 6 before a certain date. However, the first proviso provides that no such notice shall be necessary in the case of any person unauthorizedly occupying the land, if he had been previously evicted from such land under Section 6 or if he has previously vacated such land voluntarily after the receipt of a notice under Section 5-B under this Act.

5. On a perusal of the notice, it is noticed that there is no reference about the fact that the petitioner has been either previously evicted, pursuant to the order under Section 6 or has vacated voluntarily after the receipt of notice under Section 5-B or under the provisions of the Act. Though, at this stage, the petitioner, even if he is in unauthorised occupation, cannot be directed to vacate the encroachment without affording an opportunity of hearing to him before passing an order under Section 6.

6. Accordingly, we direct the authorities to consider the representation / reply filed by the petitioner, if any, pursuant to the impugned notice and pass an order thereafter under Section 6, on its own merit and according to law. It is, thereafter, open to the authorities to take appropriate action as provided under the provisions of the Act. The petitioner, on his request, is granted two weeks' time, from the date of receipt of a copy of this order, to file his reply/representation to the impugned notice. Thereafter, further two weeks' time is granted to the authorities to consider the same adverting to each and averment therein and take appropriate action on merits and in accordance with law.

7 The writ petition stands disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1 The District Collector
Sathuvachari
Vellore District - 9

2 The Tahsildar
Arakkonam Taluk
Arakkonam

1 cc to Mr.G. Thilakavathi, Advocate, sr. 30518
1 cc to Government Pleader, Sr. 30449

W.P. No.17807 of 2015

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