

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6/7/2015

C O R A M

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

W.P. No.19640 of 2015

R.Karunakaran ... Petitioner

Vs

The Tahsildar
Tiruvallur Taluk
Tiruvallur District. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the respondent herein pertaining to the impugned order dated 24/6/2015 under Section 6 of Act 3 of 1905 and quash the same.

For petitioner ... Mr.G.Karthikeyan

For respondent ... Mr.P.S.Sivashanmugasundaram
Spl.G.P.

O R D E R

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

Mr.P.S.Sivashanmugasundaram, Special Government Pleader takes notice on behalf of 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 petitioner, stated to be residing at 75 Kakkalur Village, Thiruvallur Taluk and is in possession for a long time. The Tahsildar, without having competent jurisdiction had issued the impugned notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 (for short "The Act") directing the petitioner to vacate the land in question within a period of seven days.

3. It is contended by the learned counsel for the petitioner that before taking recourse to provisions of Section 6 of the Act, the authorities are required to issue a notice under Section 7 of the Act, affording opportunity of hearing to the alleged encroacher. In the case on hand, the Tahsildar, without having jurisdiction, has

issued the final order without affording an opportunity of hearing to the petitioner to put forward his case.

4. Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader appearing for the respondent submits that the instant show cause notice was issued to the petitioner, after granting some time to place his case before the authorities for taking consequential action, if need be.

5. We have considered the rival contentions advanced by the learned counsel appearing for the parties.

6. On a perusal of the pleadings as well as the impugned notice, it is not manifest that any opportunity of hearing as contemplated under Section 7 of the Act was afforded to the petitioner and as such, without going into the merits of the case, we treat the impugned notice as a show cause notice issued under Section 7 of the Act and grant two weeks time to the petitioner to file his representation/explanation, placing his case before the authorities.

7. According to the learned counsel for the petitioner, the Tahsildar has no competency to issue such a notice. In that event, the petitioner is at liberty to raise the issue of jurisdiction also in his reply/representation before the authority. The authority, while considering his representation, is obligated to advert to the issue of jurisdiction while considering other issues before passing a reasoned order and taking consequential action thereon, if necessary. Such an exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

8. The writ petition stands disposed of, with the above direction and observation. No costs. Connected Miscellaneous Petition No.1 of 2015 is closed.

सत्यमेव जयते

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mvs.

To

The Tahsildar
Tiruvallur Taluk
Tiruvallur District.

+1cc to M/s. G. Karthikeyan, Advocate, S.R.No.33778

+1cc to the Government Pleader, S.R.No.34007

PPA (CO)
EU(23/07/2015)

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