

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2015

C O R A M

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

W.P. No.21133 of 2015
a n d
M.P.Nos.1 and 2 of 2015

R.Sengaliappan

...Petitioner

Vs

1. The District Collector
Coimbatore District.
2. The District Revenue Officer
Coimbatore District.
3. The Tahsildar
Taluk Office
Pollachi Taluk
Coimbatore District.

...Respondents

Prayer:-Writ Petition filed under Article 226 of the Constitution of India seeking for the issuance of a writ of certiorarified mandamus to call for the records in respect of the order passed by the third respondent against the petitioner dated 30/6/2015 and quash the same and direct the respondents to pass suitable orders over the requisition or representation dated 30/6/2015 of the petitioner in terms of the provision laid down under Act III of 1905 within the stipulated time.

For petitioner : Mr.V.Sivakumar

For respondents : Mr.P.S.Sivashanmugasundram
Special Government Pleader.

O R D E R

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

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

2 Being aggrieved by the notice dated 30.06.2015 issued under Section 6 of the Land Encroachment Act, 1905, (for short "the Act") calling upon the petitioner to remove the encroachment, the petitioner has come up with the instant writ petition, questioning the legality of the said notice on the ground that the same has been issued, without affording an opportunity of hearing to him, directing eviction.

3 It is submitted by the learned Counsel appearing for the petitioner that Section 7 of the Act contemplates issuance of a notice and also affording an opportunity of hearing before passing an order / notice under Section 6 of the Act. The issue with regard to purported encroachment in the area came up for consideration in W.P. No.10246 of 2014. A Division Bench of this Court directed the Tahsildar, Chengalpet to consider the representation dated 04.07.2013, made by one K.S. Rajan, the petitioner therein and take action after notice to all the parties. The authorities, without notice and affording an opportunity of hearing to the petitioner against whom allegation of encroachment was made, passed the impugned order. Thus, the same is not sustainable in the eye of law.

4 The learned Special Government Pleader appearing for the respondents would submit that on a perusal of the impugned notice, as there is no reference of any notice issued under Section 7 of the Act, it appears that opportunity of hearing was not afforded to the petitioner. Thus, the impugned notice may be treated as notice under Section 7 of the Act, granting reasonable time to the petitioner to file his reply to the same. Thereafter, the authorities be permitted to take action on merits and in accordance with law.

5 We are of the view that the submission of the learned Special Government Pleader is reasonable. If there is no notice under Section 7 of the Act, the impugned notice which is issued under Section 6 of the Act be treated as notice under Section 7 of the Act. The petitioner is accordingly granted two weeks time to file his reply, putting forward his case before the authorities. Thereafter, the authorities, after considering the petitioner's reply, shall pass appropriate orders and take action in accordance with law and on its

own merits. If it is found that there is encroachment, necessary steps for removal of the same shall be taken within a further period of three weeks.

6 With the above direction and observation, the writ petitions stand disposed of. Costs made easy. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector
Coimbatore District.
2. The District Revenue Officer
Coimbatore District.
3. The Tahsildar
Taluk Office
Pollachi Taluk
Coimbatore District.

1 CC to Mr.V.Sivakumar, Advocate SR.No. 36270

1 CC to the Government Pleader, SR.No. 36138

RSI (CO)
PSI (28.07.2015)

W.P. No.21133 of 2015

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