

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2015

CORAM:

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

W.P. No. 21657 of 2015
and

M.P. No. 1 of 2015
.....

Loganayaki

.. Petitioner

vs.

1. The District Collector,
District Collector Office,
Kancheepuram,
Kancheepuram District.
2. The Tahsildar,
Vandalur,
Chengalpet Taluk,
Kancheepuram District.
3. The Revenue Inspector,
Vandalur Division,
Chengalpet Taluk,
Kancheepuram District.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorarified Mandamus calling for the records of the 3rd respondent herein relating to notice dated 11.7.2015 issued under Section 7 of the Land Encroachment Act, 1905 in respect of 5 cents of land comprised in Survey No.110/1B in No.8 Ayyencherry Village , Kancheepuram District and quash the same and forbear the respondents herein from in any manner evicting the petitioner from the above said property.

For petitioner : Mr. AR.L.Sundaresan
Sr. Counsel
for
M/s. AL. Ganthimathi

For respondents : Mr. P.S.Sivashanmugasundaram
Spl. Govt. Pleader

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ORDER

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

With the consent of both parties, this writ petition is taken for final disposal.

2. The petitioner has filed a petition earlier being W.P.No. 4584 of 2015 challenging the legality and validity of the notice dated 18.07.2014 issued under Section 7 of the Land Encroachment Act, 1905 (for short "The Act") in respect of 0.02.0 hectares of land in Survey No.110/1B in No.8 Ayyancherry Village, Kancheepuram District.

3. A Division Bench of this Court, considering the submission of the parties, disposed of the said writ petition holding as under: -

" (4) On a perusal of the impugned notice, it is evident that there is no reference as to whether the petitioner has been either previously evicted, pursuant to the order under Section 6 or has vacated after the receipt of notice under Section 5-B or under the provisions of the Act. At this stage, even if the petitioner is in unauthorised occupation, she cannot be directed to vacate the encroachment without affording an opportunity of hearing to her before passing an order under Section 6.

(5) Accordingly, we direct the authorities to consider the representation/ reply filed by the petitioner, if any, pursuant to this 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 her request, is granted two weeks time to file her reply/ representation to the impugned notice, from the date of receipt of a copy of this order. Thereafter, further two weeks time is granted to the authorities to consider the same and take appropriate action on its own merit and according to law."

4. It is submitted by the learned Senior Counsel appearing for the petitioner that pursuant to the liberty granted to the petitioner, she has made a representation on 29.06.2015, but, the authorities, without considering the said representation, has again issued the impugned notice dated 11.07.2015 under Section 7 of the Act. It is further contended that this notice is null and void and is liable to be set aside. Once a representation has been made pursuant to the earlier notice, there is no reason to issue second notice for the same cause. The authorities be directed to afford an opportunity of personal hearing and pass appropriate formal order under Section 6 of the Act, before taking any action.

5. Learned Special Government Pleader appearing for the respondents, on the other hand, submits that in fact, there was no necessity for issuing the impugned notice under Section 7 of the Act. Once, earlier Section 7 notice has been responded to and also, this Court has directed the authorities to consider the representation and pass appropriate orders, for the reasons mentioned hereinabove, without reiterating the aforesaid observation, we direct the authorities/respondents to pass appropriate formal order under Section 6 of the Act on its own merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner and take consequential action, if necessary. Needless to state that each and every averment/issue raised by the petitioner has to be adverted to in the reasoned order to be passed under Section 6 of the Act.

6. With the above observation and direction, this writ petition is disposed of. Consequently, M.P. No. 1 of 2015 is closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The District Collector,
District Collector Office,
Kancheepuram,
Kancheepuram District.

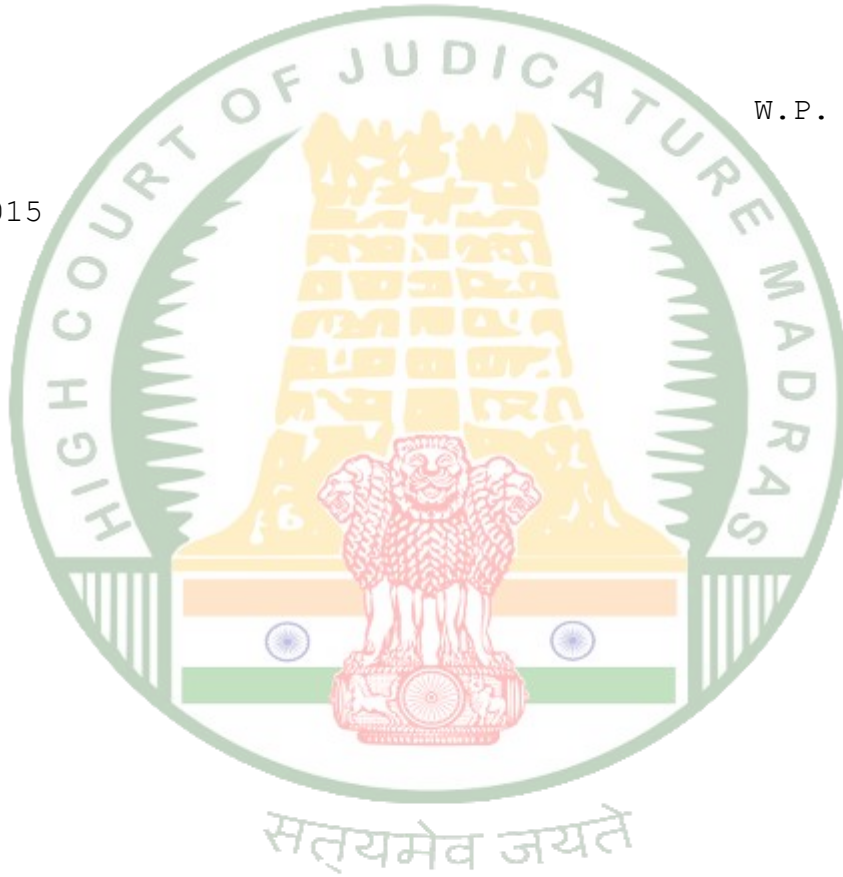
2. The Tahsildar,
Vandalur,
Chengalpet Taluk,
Kancheepuram District.

3. The Revenue Inspector,
Vandalur Division,
Chengalpet Taluk,
Kancheepuram District.

+1 cc to Government Pleader sr.38609/15

W.P. No.21657 of 2015

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