

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No. 25109 of 2015
And
M.P.Nos. 1 and 2 of 2015

1. M.Magendran
2. M.Pushpanathan : Petitioners

-Vs-

1. The Additional Chief Secretary/
Commissioner of Land Administration
Chepauk, Chennai.
2. The District Collector,
Thanjavur District,
Thanjavur
3. The District Revenue Officer
Thanjavur District.
4. The Sub Collector cum Revenue Divisional Officer
Kumbakonam, Thanjavur District.
5. The Tahsildar
Papanasam Taluk, Thanjavur District.
6. The Superintendent of Police
Thanjavur District.
7. The Inspector of Police
Iyyempettai Police Station
Papanasam Taluk, Thanjavur District : Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records pertaining to the order of the first respondent in ROC T2/7597/2015 dated 27.07.2015 and quash the same as illegal, ultravires and unconstitutional.

For Petitioners : Mr.D.Rajagopal

For Respondents : Mr.S.Diwakar
Additional Government Pleader

O R D E R

Challenging the order passed by the second respondent, the petitioner has filed an appeal. It is the specific grievance of the petitioner that the Government has encroached upon the private property belonging to him. The petitioner's appeal was rejected as not maintainable. A challenge was made in W.P.No. 5839 of 2015 before this Court. By an order dated 04.03.2015, the writ petition was disposed of as follows:-

"3. The plea raised by the petitioner is sustainable. As noticed above, in the order passed by the District Collector dated 20.11.2014, it has been stated that an appeal is maintainable before the first respondent. Though the order of the District Collector states that an appeal is maintainable, the same cannot be accepted unless the statute or regulation provided for. However, this issue cannot be decided at this juncture since this Court is inclined to set aside the order of the first respondent as it has been passed without affording the petitioner an opportunity of personal hearing. Hence, on this score alone this Court interfere with the impugned order.

This Writ Petition is allowed. The impugned order is set aside. The matter is remitted back to the first respondent to consider afresh after issuing show cause notice to the petitioner to explain as to how an appeal is maintainable. The petitioner is entitled to submit his objections/reply to the said show cause notice. Thereafter, after affording an opportunity of personal hearing to the petitioner, the first respondent shall pass fresh orders on merits and in accordance with law within a period of three months. No costs. Consequently, connected Miscellaneous Petition is closed."

Thereafter, after affording opportunity to the petitioner, once against the appeal was dismissed as not maintainable. Challenging the same, the present Writ Petition has been filed.

2. Mr.S.Diwakar, learned Additional Government Pleader, takes notice on behalf of the respondents. By consent of both sides, the Writ Petition itself is taken up for final hearing.

3. The learned counsel appearing for the petitioner submitted that Section 10(c) provides for an appeal. A further submission has been made that the earlier order passed by this Court in W.P.No. 13482 of 2014 dated 19.08.2014 has not been complied with. This Court is not inclined to accept the submissions made.

4. An order passed by the Court of law is not a statute. Such an order cannot be construed to mean that an authority can go beyond the statute and assume jurisdiction which is otherwise not available. In any case, the first respondent is bound by the order passed in W.P.No. 5839 of 2015 dated 04.03.2015 which has been passed by taking into consideration earlier order passed and after hearing the parties. In the said order, a specific direction has been issued to go into the question of jurisdiction which the first respondent complied with correctly. The reliance made upon Section 10(c) of the Tamilnadu Land Encroachment Act also cannot be countenanced as the very enactment itself is made applicable against the encroachment made by a private party against the Government land.

5. As the second respondent has given a factual finding denying the allegations made by the petitioner, the remedy open to him is to seek under the common law by filing a comprehensive suit. Thus, the Writ Petition stands dismissed giving liberty to the petitioner in the manner known to law. Consequently, connected Miscellaneous Petitions are closed. No costs.

6. On the request made by the learned counsel for the petitioner that sufficient time may be granted to file comprehensive suit. The petitioner is given further period of two weeks to file comprehensive suit. The status quo as on today shall be maintained till then.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

vsg

To

1. The Additional Chief Secretary/
Commissioner of Land Administration
Chepauk, Chennai.

2. The District Collector,
Thanjavur District,

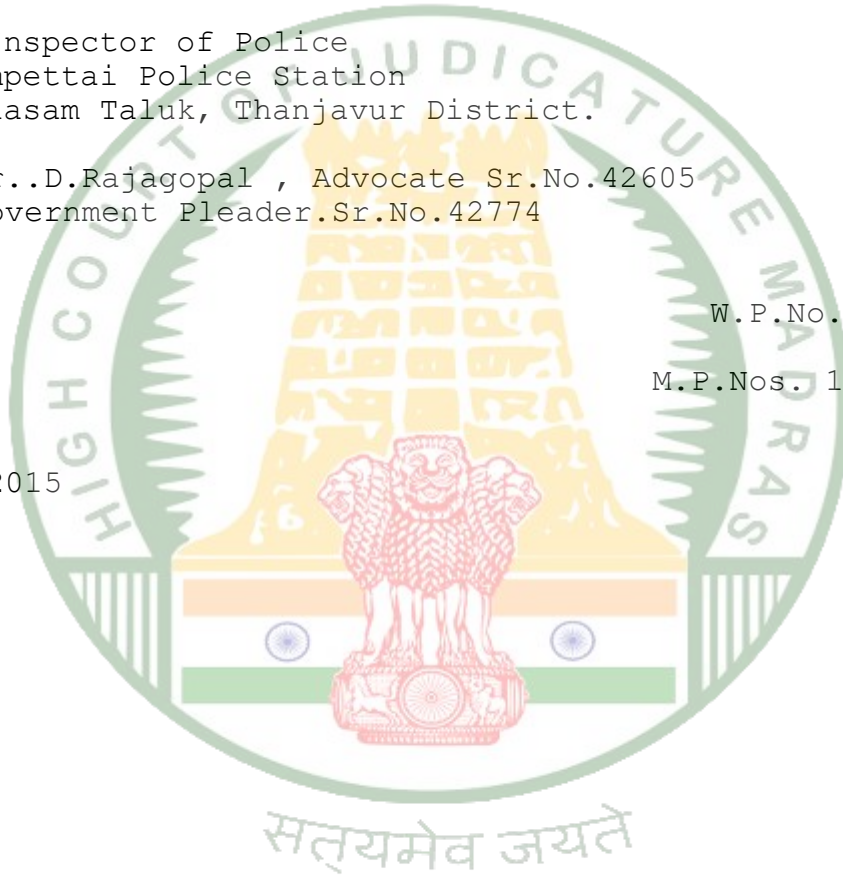
Thanjavur

3. The District Revenue Officer
Thanjavur District.
4. The Sub Collector cum Revenue Divisional Officer
Kumbakonam, Thanjavur District.
5. The Tahsildar
Papanasam Taluk, Thanjavur District.
6. The Superintendent of Police
Thanjavur District.
7. The Inspector of Police
Iyyempettai Police Station
Papanasam Taluk, Thanjavur District.

1 cc to Mr..D.Rajagopal , Advocate Sr.No.42605
1 cc to Government Pleader.Sr.No.42774

W.P.No. 25109 of 2015
And
M.P.Nos. 1 and 2 of 2015

jsv(co)
pmk.14.8.2015



WEB COPY