

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.5839 of 2015

and

M.P.No.1 of 2015

1. M.Magendran
S/o.Muniappa Moopanar

2. M.Pushpanathan
S/o.Muniappa Moopanar

... Petitioners

vs.

1. The Additional Chief Secretary/
Commissioner of Land Administration,
Ezhilagam, Chennai - 6.

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.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order of the first respondent dated 19.02.2015 in ROC T2/1874/2015 confirming the order of the second respondent made in Ta.Pa.No.E2/40949/14 dated 20.11.2014 and quash the same as illegal, void, ultravires and direct the respondents to remove the cremation ground and pathway from petitioners patta land in S.No.21/1B and 21/3 of Viachery Village, Papanasam Taluk, Thanjavur District.

For Petitioner : Mr.D.Rajagopal
For Respondents : Mr.S.Gunasekaran,
Government Advocate

O R D E R

Heard Mr.D.Rajagopal, learned counsel for petitioners and Mr.S.Gunasekaran, learned Government Advocate, for respondents and perused the materials placed on record. By consent, the main Writ Petition is disposed of at the admission stage itself.

2. The petitioner seeks for issuance of a certiorarified mandamus to quash the order of the first respondent dated 19.02.2015. By the said order, the appeal filed by the petitioner was rejected as not maintainable and the petitioner was directed to approach the civil Court for remedy. The first respondent has stated that as per Section 10 of the Tamil Nadu Land Encroachment Act, 1905, only in cases of encroachment of Government land, appeal has to be filed before him and in the petitioner's case, no Government land is involved. The only ground on which the impugned order is challenged is that the first respondent, without issuing notice to the petitioner and without affording him an opportunity of personal hearing, has passed the order. It is further submitted that if notice had been issued to the petitioner, the petitioner would have convinced the first respondent that an appeal is maintainable. In the order passed by the District Collector dated 20.11.2014, which was impugned before the first respondent, it has been clearly stated that an appeal against the said order lies before the first respondent. Therefore, the petitioner, in compliance with the said order, has preferred the appeal. If, for any reason, the first respondent was of the opinion that the appeal was not maintainable, then before passing any order, the petitioner should have been put on notice.

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 interferes 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

1. The Additional Chief Secretary/
Commissioner of Land Administration,
Ezhilagam, Chennai - 6.
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Thanjavur District.
5. The Tahsildar,
Papanasam Taluk,
Thanjavur District.

+1cc to Mr.D.Rajagopal, Advocate, S.R.No.11948

+1cc to the Government Pleader, S.R.No.12159

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GP(CO)
CA(13/03/2015)