

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2016

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.23065 of 2008

and

M.P.No.1 of 2008

B.Ravi
Petitioner

..

vs.

1.The State of Tamil Nadu,
rep. by Secretary to Government,
Local Administration Department,
Fort St.Georg, Chennai - 600 009.

2.The District Collector,
Vellore.

3.The Executive Officer,
Thuttipattu Panchayat,
Thuttipattu,
Devalapuram Post,
Vellore District - 635 811.

4.The President,
Thuttipattu Panchayat,
Thuttipattu,
Devalapuram Post,
Vellore District - 635 811.

5.Mahadevan

(R-5 is impleaded as per Order dated 29.8.2016
passed by this Court in WMP No.25984 of 2016
in W.P.No.23065 of 2008)

.. Respondents

Writ Petition filed under Article 226 of the Constitution
of India to issue a Writ of Certiorari to call for the records
pertaining to the order passed by the fourth respondent in his
Proceedings dated 1.9.2008 and quash the same.

For petitioner

: Mr.K.Selvakumar

for M/s.T.R.Raja Raman

For Respondent Nos.1 to 3: Mr.Rubas Abraham,
Government Advocate

For 4th Respondent

: Mr.R.Thirugnanam

For 5th Respondent

: Mr.PA.Sudesh Kumar

ORDER

The impugned order dated 1.9.2008 of the fourth respondent was challenged by the writ petitioner in this Writ Petition.

2. According to the petitioner, the property situate in S.No.241, Kandrapatti Village, Thuttipattu Panchayat, Vaniyambadi Taluk, belonged to his father, Balakrishnan. He purchased the same under different registered Sale Deeds in Doc.Nos.2275/74, 5222/07 and 2404/2008. Thus, he was the absolute owner of the property and he had been in peaceful possession and enjoyment of the same without any interruption. Subsequently, his father settled the property by virtue of Settlement Deed's dated 24.4.2008 in Doc.No.2510/2008 and 2511/2008, between his brother and the petitioner, respectively. As such, the petitioner has been in possession and enjoyment of the property. There is no ambiguity over the title of the property. While so, the President of Thuthipattu Panchayat/4th respondent herein issued an order dated 1.9.2008 directing the petitioner to demolish the construction made on the encroached land to an extent of 6 feet, failing which demolition work would be done by using police force.

3. The grievance of the petitioner is that no notice was issued to the petitioner with regard to the alleged encroachment of 6 feet of poramboke land and the impugned order was passed arbitrarily and baselessly and the allegation that survey was conducted in the presence of public is false. Had the petitioner given an opportunity, he would have explained that there was no alleged encroachment. As such, there is violation of principles of natural justice in passing the impugned order. Therefore, the impugned order is liable to be set aside.

4. Opposing the Writ Petition, a counter affidavit has been filed by the fourth respondent stating that a complaint dated 10.7.2008 had been received from the fifth respondent, viz., Mahadevan, contending that the petitioner had encroached the land situated in the common pathway thereby disturbed the said Mahadevan and others who were not able to pass through the common pathway which belongs to the Thuthipattu Panchayat and the petitioner started to put up construction in the said common passage. Under the said common pathway, the water line pipes are passing. On enquiry, it was found that the petitioner had encroached upon the poramboke land which belongs to Thuthipattu Panchayat. Thereafter, Surveyor of Vaniyambadi Taluk Office was asked to survey the land comprised in Survey No.241/44 in order to find out the extent of the encroachment. The land was surveyed in the presence of the petitioner, Village Administrative Officer, Ward Councillor, the fourth respondent and public. Since it was found that the petitioner had

encroached in the common pathway, he was requested to remove the encroachment. The fourth respondent also denied the allegation that he had no jurisdiction to instruct the petitioner to remove the encroachment.

5. Heard the learned counsel appearing for the parties and perused the impugned order.

6. A perusal of the impugned order passed by the President, Thuttipattu Panchayat / fourth respondent herein, shows that no notice was given to the writ petitioner to explain about the particular extent of land alleged to have been encroached by the writ petitioner. Therefore, principles of natural justice are violated while passing the impugned order by the fourth respondent. In view of the same, this Court is of the view that the impugned order may be treated as show cause notice and the petitioner may be permitted to submit his objections, if any, to the notice.

7. Accordingly, the petitioner is permitted to submit his reply or objections, if any, treating the impugned order, as show cause notice, in respect of the allegations made therein, within a period of four weeks from the date of receipt of a copy of this order. The competent authority shall pass appropriate orders on merits and in accordance with law within a period of 8 weeks from the date of receipt of such reply or objections from the petitioner.

8. It is represented by the learned counsel for the fifth respondent that Suit Nos.9/2008 and 3/2009 pending on the file of the Principal District Munsif at Ambur, instituted by the fifth respondent, would be withdrawn by the fifth respondent since the Panchayat has initiated action on his complaint for removal of the encroachment in the subject matter of pathway.

9. With the above directions, the Writ Petition is disposed of. No costs. Connected Miscellaneous Petition is closed.

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Assistant Registrar

/true copy/

Sub Assistant Registrar

asvm

To

1.The Secretary to Government,
Government of Tamil Nadu
Local Administration Department,
Fort St.Georg, Chennai - 600 009.

2.The District Collector,
Vellore.

3.The Executive Officer,
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4.The President,
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Thuttipattu,
Devalapuram Post,
Vellore District - 635 811.

+1 CC to M/S.T.R.Rajaraman, Advocate SR.No.49324

+1 CC to Mr.R.Thirugnanam, Advocate SR.No.48749

+1 CC to Mr.PA.Sureshkumar Advocate SR.No.48726

+1 CC to The Government Pleader, High Court, Madras SR.No.49145

W.P.No.23065 of 2008
and
M.P.No.1 of 2008

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