

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Petition No.23391 of 2016
and

WMP.No.20052 of 2016

M.Veluchamy

...Petitioner

Vs.

1.The District Collector,
Erode District,
Erode.

2.The Revenue Divisional Officer
Sathyamangalam Taluk,
Sathyamangalam, Erode District.

3.The Tahsildar,
Sathyamangalam Taluk,
Sathyamangalam, Erode District.

4.The Commissioner,
Punjai Puliampatti Municipality,
Punjai Puliampatti,
Sathyamangalam Taluk,
Erode District - 638 459.

5.S.Raja Ramalingam

(R5 impleaded as per the order of this Court
dated 11.08.2016 in WMP.No.23117/2016
in WP.23391/2016)

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the order in Na.Ka.No.620/F/2016 dated 04.07.2016 on the file of the fourth respondent and quash the same and consequently forbear the respondents from evicting the petitioner from his land without following due process of law.

For Petitioner : Mr.N.Ponraj
For R1 to R3 : Mr.P.S.Sivashanmugasundaram, SGP
For R4 : Mr.A.S.Thambusamy
For R5 : Mr.A.Jenasenan

ORDER

(Order of the Court was made by HULUVADI G. RAMESH,J.)

The petitioner has filed this Writ Petition to quash the notice issued by the fourth respondent dated 04.07.2016 and consequently forbear the official respondents from evicting the petitioner of his land without following due process of law.

2. The case of the petitioner is that his father had purchased a land measuring to an extent of 0.14.5 hectares in S.F.No.104 (Old S.F.No.109) at Senkunthapuram, Punjai Puliyampatti Village through a sale deed dated 27.01.1978 executed by the learned District Munsif, Gobichettipalayam, as per the judgment and decree made in O.S.No.1819 of 1974. The petitioner has acquired the same through a settlement deed dated 07.09.2016 which was registered as Document No.4146 of 2009 on the file of Sub Registrar, Punjai Puliyampatti. While so, the said S.F.No.104 was sub divided, due to which, the petitioner is having his land at S.F.Nos.104/17, 104/105, 104/106, 104/107 and 104/108. Thereafter, the petitioner has decided to construct a building by demolishing the old building in the land in question, for which, he obtained necessary permission from the fourth respondent vide order dated 26.11.2010. In such circumstances, the fourth respondent has issued a notice dated 04.07.2016, calling upon the petitioner to remove the encroachment made in the land in question within three days, failing which, appropriate action would be taken as per law. Challenging the same, the petitioner has come up with the present writ petition for the above stated relief.

3. Respondents 3 and 4 have filed their respective counter affidavits, wherein, it has been stated as follows:

3.1 The petitioner is the owner of the property in S.F.Nos.104/17 and 104/108 in Punjai Puliyampatti. He is running two institutes in the name and style of Sivasakthi Tuition Centre and Siva Sakthi Play School. S.F.No.104/107 measuring to an extent of 0.03.0 Hectare has been classified as Road in the records maintained by the Municipality.

3.2 One Raja Ramalingam, S/o.Sambandam (fifth respondent herein) is having a property on the eastern side of Punjai Puliyampatti - Sathyamangalam Road and he gave a petition to the third respondent as if the petitioner has encroached the Road in

Natham field survey No.104/107 and requested the third respondent to remove the said encroachment. Pursuant to the same, the land was inspected by the surveyor and a report was given to the third respondent. Consequently, the third respondent by an order dated 27.06.2016, instructed the fourth respondent to remove the encroachment made by the petitioner in the Road in S.F.No.104/107 to an extent of 14.8 sq.m. Accordingly, the fourth respondent has issued the impugned notice to the petitioner.

4. A counter affidavit has been filed by the fifth respondent inter alia stating that he is the owner of the land in S.Nos.104/108, 109, 110 of Punjaipuliampatti Village, Sathyamangalam Taluk, Erode District, which is abutted by a National Highway 209 on one side and by a Government poramboke Road in Survey No.104/107 on the northern side. The said Road has been encroached by the petitioner, which causes disturbance to free access to the fifth respondent's land as well as to the general public. Therefore, the fifth respondent made a representation dated 19.04.2016 to the concerned Revenue Authorities. Pursuant to the same, enquiry was conducted and the impugned notice has been issued. The fifth respondent has further stated therein that the Head Circle Surveyor of Puliampatti filed a report dated 27.06.2016, stating that the natham land in S.No.104/107 as per village records, has been marked as a street. However, the petitioner had made encroachment by putting up a super structure.

5. Heard Mr.N.Ponraj, learned counsel for the petitioner, Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader for respondents 1 to 3, Mr.A.S.Thambusamy, learned counsel for the fourth respondent and Mr.A.Jenasenan, learned counsel for the fifth respondent and also perused the materials available before us.

6. The petitioner has challenged the impugned notice of the fourth respondent on the ground that the same was served on him, without issuing prior notice under the relevant provisions of the Act and without affording an opportunity of personal hearing to him, whereas, according to the respondents, as per the revenue records, the Natham land in S.No.104/107 has been classified as Road and the same is maintained by Punjai Puliampatti Municipality. However, it was encroached by the petitioner by putting up a building and hence, the fourth respondent was directed to remove the encroachment made by the petitioner in accordance with law.

7. We are of the view that there might be an encroachment made by the petitioner in the land in question. However, it does not mean that the same can be suo-motu removed, without issuing notice and without affording an opportunity of personal hearing

to the petitioner. Therefore, what is required to be done at this juncture is to comply with the principles of natural justice.

8. Accordingly, the impugned notice dated 04.07.2016 issued by the fourth respondent shall be treated as show cause notice to the petitioner. Consequently, the petitioner is directed to submit his reply along with the relevant documents in support of his contention, to the fourth respondent within a period of two weeks from the date of receipt of a copy of this order. On such reply, the fourth respondent shall consider the same and pass a fresh order on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner as well as to all the parties, who are likely to be affected, within a period of two months thereafter. If there is any encroachment/construction in violation of plan, the authorities can proceed to demolish the same. If any superstructure constructed is sought to be brought in line with the plan, the parties can do so, however, till it is rectified and the authorities approve it, they cannot be permitted to stay there.

9. Accordingly, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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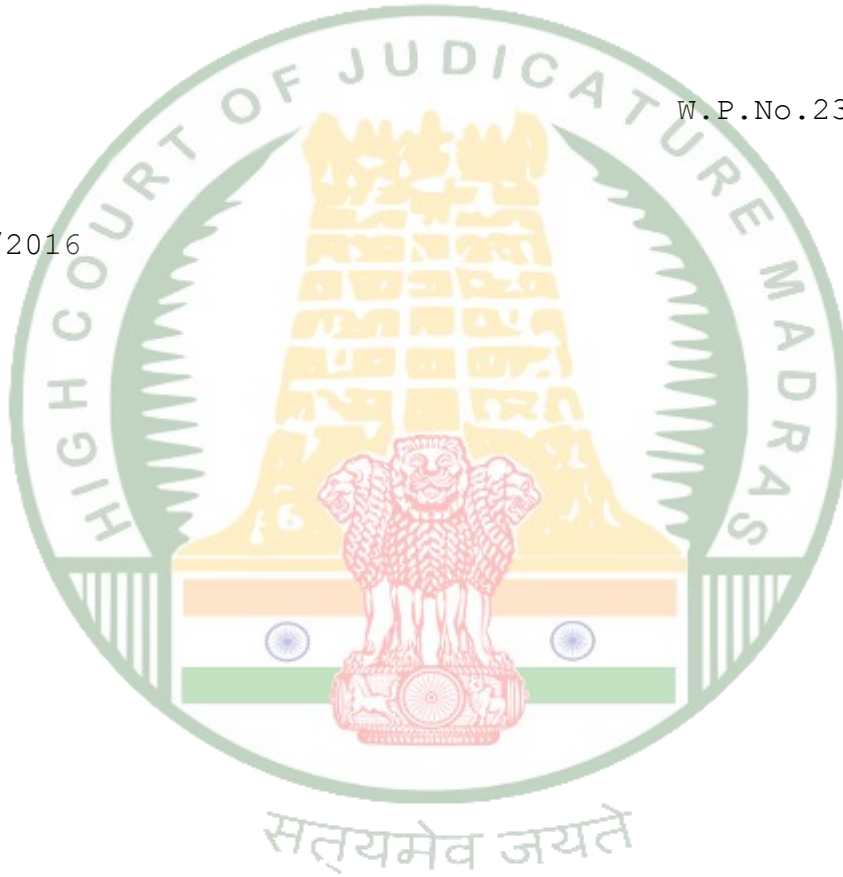
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Punjai Puliyampatti,
Sathyamangalam Taluk,
Erode District.

+1cc to Mr.N.Ponraj, Advocate sr.55444
+1cc to Mr.A.S.Thambuswamy, Advocate sr.55432
+1cc to Mr.A.Jenasenan, Advocate Sr.55551
+1cc to the Government Pleader Sr.56083

W.P.No.23391 of 2016

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