

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.27739 of 2016
and
W.M.P.No.23938 of 2016

P.Doraikannan

...Petitioner

Vs.

1.The District Collector,
Villupuram District,
Villupuram.

2.The Tahsildar,
Kallakurichi Taluk,
Villupuram District.

3.The Commissioner,
Kallakurichi Municipality,
Villupuram District.

...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 third respondent in impugned notice in Na.Ka.No.A1/1541/2016 dated 25.07.2016, quash the same and consequently direct the respondents to issue patta in favour of the petitioner.

For Petitioner : Mr.N.Subramani

For Respondents : Mr.P.S.Sivashanmugasundaram, SGP

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ORDER

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

Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader accepts notice on behalf of the respondents. With the consent of both the parties, the writ petition is taken up for final disposal at the stage of admission itself.

2. This Writ Petition is filed to quash the notice dated 25.07.2016 issued by the third respondent and consequently direct the respondents to issue patta in favour of the petitioner.

3. The case of the petitioner is as follows:

3.1 The property bearing Old S.No.293/6, New S.No.450/1 admeasuring Acres 2.50 cents is Natham poramboke land and several persons have occupied the same by constructing houses, which were assessed to tax. The second respondent also issued patta to one Amutha and Arunachala with respect to S.No.450/1.

3.2 The petitioner's mother Dhanammal has purchased a house property in 1956. Subsequently, they constructed a house in the said property along with the Natham Poramboke land measuring to an extent of 525 sq.ft. in Old S.No.293/6A, New S.No.450/1, Kallakurichi Taluk and obtained electricity service connection for the same. They are residing in the said property by paying taxes to the authority concerned till date.

3.3 According to the petitioner, civil proceedings were initiated by and against the petitioner herein in respect of the property in question.

3.4 While so, the third respondent issued a notice dated 25.07.2016 to the petitioner, at the instance of one Chidambaram Poomali, who filed WP.No.31843 of 2015 and obtained an order, with regard to removal of encroachment in S.No.293/6A. Aggrieved over the said notice, the petitioner has filed the present writ petition before this Court.

4. Heard both sides and perused the available materials.

5. The documents placed before this Court would disclose that W.P.No.31843 of 2015 was filed by one Chidambaram Poomali, seeking a direction to (i) District Collector, Villupuram District, (ii) Tahsildar, Kallakurichi Taluk, Villupuram District, (iii) Commissioner, H.R & C.E. Department, Chennai, (iv) Assistant Commissioner, H.R & C.E. Department, Kallakurichi, Villupuram District and (v) Inspector, H.R & C.E. Department, Kallakurichi, Villupuram District, to remove the encroachments made by few private parties viz., (i) Durai, (ii) Chitti (iii) Murali and (iv) Ganesan in the temple land comprised in S.No.293/6A measuring to an extent of Acres 2.50 cents situated at Kallakurichi Taluk, Villupuram District, on the basis of his representation dated 18.09.2015. The said writ petition was disposed of by an order dated 08.10.2015, wherein, this Court has passed the following order:

"Considering the limited relief sought by the petitioner, without going into the merits of the case, we direct the first respondent to examine the petitioner's representation dated 18.09.2015 and take consequential action on merits and in accordance with law, after affording proper opportunity of hearing to the alleged encroachers viz., respondents 6 to 9. Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order."

Pursuant to the direction issued by this Court, the third respondent issued a notice dated 25.07.2016, calling upon the petitioner to remove the encroachment, failing which, appropriate action would be taken as per the Tamil Nadu District Municipalities Act, 1920, which is impugned herein.

6. It is the specific case of the petitioner that before issuing such notice, no opportunity was given to the petitioner, which is fairly admitted by the learned Special Government Pleader appearing for the respondents. In view of the same, in order to comply with the principles of natural justice, we are inclined to treat the impugned notice as show cause notice to the petitioner, so as to enable him to give his reply to the same.

7. Accordingly, the impugned notice dated 25.07.2016 issued by the third respondent shall be treated as show cause notice to the petitioner, calling upon him to remove the encroachment himself, if any. If there is any encroachment, the petitioner himself shall remove the same as stated in the notice, otherwise, he shall give his reply to the show cause notice within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the respondents shall take a decision with regard to the encroachment in Natham Old S.No.293/6A, New S.No.450/1, as per law, after examining the reply submitted by the petitioner. It is made clear that the petitioner can, suo motu proceed to remove the encroachment, if any, since he is given an opportunity to have a say to the notice dated 25.07.2016 and there is compliance of principles of natural justice. It is needless to say that the encroachment, if any, in respect of the survey number in question, shall be cleared either by the petitioner himself or by the respondent officials.

8. The writ petition is disposed of in the above terms.
No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The District Collector, Villupuram District,
Villupuram.

2.The Tahsildar, Kallakurichi Taluk,
Villupuram District.

3.The Commissioner, Kallakurichi Municipality,
Villupuram District.

+1 cc to Government Pleader sr.45475

+1 cc to Mr.N.Subramani Advocate sr.10615

W.P.No.27739 of 2016

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