



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 19.07.2016

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THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P (MD) No.12668 of 2016

and

WMP (MD) Nos.9583 & 9584 of 2016

S.Suresh Kumar

... Petitioner

Vs

1. The Taluk Surveyor,
Thoothukudi Taluk,
Thoothukudi.

2. The Taluk Sub Inspector of Survey,
Thoothukudi Taluk, Thoothukudi.

3. The Chief Engineer (Civil),
Thoothukudi VOC Port Trust,
Thoothukudi.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the proceedings of the impugned Notice in Survey boundary application No.193/2016, dated 14.07.2016, on the file of the 2nd Respondent and quash the same.

For Petitioner : Mr.G.,Prabhu Rajadurai

For Respondents 1 & 2 : Mr.S.Kumar
Addl.Govt.Pleader

ORDER

Heard both sides.

2. By consent, the main Writ Petition itself is taken up for final disposal.

3. No counter is filed on behalf of the Respondents 1 and 2.

4. In the absence of a counter as Respondent No.3 is concerned, to avoid an avoidable delay, Notice is dispensed with.



5. According to the Learned Counsel for the Petitioner, the impugned Memo, dated 14.07.2016, issued by the Second Respondent / Taluk Sub-Inspector of Survey, Thoothukudi Taluk, Thoothukudi, requiring the Petitioner to appear on 16.07.2016 at 10.00 a.m., for the purpose of measurement work, with necessary documents showing the rights, is an unlawful and illegal one because of the simple reason that, as per Section 15(2) of the Tamil Nadu Survey and Boundaries Act, 1923, "before a survey officer or Collector maintains, renews or repairs any survey marks, he shall serve a notice in writing on the registered holder in the prescribed manner giving particulars of the survey marks in respect of which default has been committed and calling upon him to maintain, renew or repair the same within a time to be specified in such notice which shall be not less than fifteen days from the date of service thereof." and in the instant case, the Memo, dated 14.07.2016, is an illegal one because the 15 days time, as per Section 15(2) of the said Act, was not issued to the Petitioner. In fact, the Memo itself dated 14.07.2016 of the Second Respondent had clearly required the Petitioner to appear on 16.07.2016 at 10.00 a.m. As such, it is candidly clear that clear-cut 15 days Notice, as enshrined in Section 15(2) of the said Act, was not adhered to by the Second Respondent / Taluk Sub Inspector of Survey, Thoothukudi Taluk, Thoothukudi. As such, the Memo, dated 14.07.2016 of the Second Respondent suffers from patent legal infirmity in the eye of Law. Therefore, this Court, to secure the ends of justice, interferes with the Memo, dated 14.07.2016 of the Second Respondent / Taluk Sub-Inspector of Survey, Thoothukudi Taluk, Thoothukudi and sets aside the same. Consequently, the Writ Petition succeeds.

6. In fine, the Writ Petition is allowed, leaving the parties to bear their own costs. The impugned Memo, dated 14.07.2016 of the Second Respondent / Taluk Sub Inspector of Survey, Thoothukudi Taluk, Thoothukudi, is set aside by this Court, for the reasons assigned in this Writ Petition. Consequently, connected Miscellaneous Petitions are closed.

7. At this stage, the Learned Additional Government Pleader appearing for Respondents 1 and 2 informed this Court that the Petitioner will be issued with a fresh Memo, specifying the date and time, today.

8. Be that as it may, since this Court has allowed the Writ Petition by setting aside the Memo, dated 14.07.2016 of the Second Respondent / Taluk Sub Inspector of Survey, Thoothukudi Taluk, Thoothukudi, it is open to the Second Respondent to issue a fresh memo / notice requiring the Petitioner or the concerned party to appear on a specified date and on a specified time. In this regard, the Second Respondent is scrupulously follow Section 15(2) of the Tamil Nadu Survey and Boundaries Act, 1923,



by giving a clear 15 days notice from the date of service thereof to the concerned parties and to proceed further, in the manner known to law and in accordance with law.

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Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS)

To

- 1.The Taluk Surveyor,
Thoothukudi Taluk,
Thoothukudi.
- 2.The Taluk Sub Inspector of Survey,
Thoothukudi Taluk, Thoothukudi.
- 3.The Chief Engineer (Civil),
Thoothukudi VOC Port Trust,
Thoothukudi.

+1cc to the Special Government Pleader, Sr.No.37916

MPK

JM/SK-SKN/SAR-III/20.07.2016/3P-5C

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