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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.09.2016

CORAM :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Petition (MD) Nos.13713 and 16544 of 2016
and
W.M.P(MD)Nos.10215, 10216 and 12069 of 2016

Mohammed Sulthan Rowthar ..Petitioner in W.P(MD)No.13713 of 2016
M.Raja ..Petitioner in W.P(MD)No.16544 of 2016

Vs.

1.The District Collector,
Pudukkottai District.

2.The Tahsildar,
Avudaiyar Kovil Taluk,
Pudukkottai District.

..Respondent in both W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records pertaining to the proceedings passed by the 2nd respondent dated 27.05.2016 and 15.06.2016 and quash the same.

For Petitioners	: Mr.K.Baalasundharam
For Respondent	: Mr.M.Alagadevan,
(In both W.Ps)	Special Government Pleader.

ORDER

(Order of the Court was made by NOOTY.RAMAMOHANA RAO,J)

Both these cases can be disposed of by this common order as the cause in both the cases is one and the same and the legal question raised is one and the same.

2.A show cause notice under Section 7 of the Land Encroachment Act, 1905 has been issued by the competent authority namely, the Tahsildar. Section 7 of the Tamil Nadu Land Encroachment Act, 1905 clearly stipulates that before taking proceedings under Section 6, the Collector or Tahsildar or Deputy Tahsildar or Revenue Inspector or any authorised officer or any other officer specified by the State Government in this behalf, shall cause to be served on the person reputed to be in unauthorised occupation of land being the property of Government, a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under Section 6.



3. Therefore, the notice issued under Section 7 is purely provisional in content and scope and its a forerunner for action to be initiated under Section 6. Under Section 6, any person unauthorisedly occupying any land for which he is liable to pay assessment under Section 3 or under Section 3-A may be summarily evicted by the Collector or subject to his control by the Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government in this behalf and any crop or other product raised on the land shall liable to be forfeited. The procedure for eviction was also specified under sub- section(2) thereof. Because of the summary nature of the proceedings, all those who have received notices either under Section 7 or 6 of the Land Encroachment Act, 1905 invariably rush to this Court. But however, it would only be appropriate to recognise that even an encroacher shall be afforded fair and reasonable opportunity to defend his position by explaining to the authority who has drawn the show cause notice as to the manner of his acquiring right, title or interest or even possession of the land in question. Any such objection must be dealt with fairly and reasonably and for reasons to be disclosed in the order, then alone an order under Section 6 of the Land Encroachment Act, 1905 can be passed. Even then, a reasonable time should be afforded to the individual concerned, to retrieve his belongings from the land allegedly encroached upon by him.

4. In the instant case, a series of contentions are canvassed by the learned counsel for the petitioners. It is contended that the provisions contained under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 which get attracted but not the provisions of the Land Encroachment Act, 1905. Even such an explanation when offered pursuant to the show cause notice issued under Section 7, the authority is bound to deal with the same first and then pass an appropriate speaking order for rejecting any such plea and then alone legitimately proceed against the alleged encroacher for removal. In case, it goes without saying if the objection of the writ petitioners that it is the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, which will get attracted, the Tahsildar will refrain from passing any order under Section 6 and on the other hand, refer the matter to the competent authority under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 for getting rid of the alleged encroachment. Till an appropriate order is passed under Section 6 and communicated to the petitioners and a reasonable time is also afforded thereafter either for preferring an appeal under Section 10 of the said Act or otherwise to deal with it, the petitioners shall not be evicted. However, under the guise of this order, the petitioners shall also not make further encroachments.



5.The writ petitions are accordingly disposed of. No costs. Consequently, W.M.P(MD)Nos.10215, 10216 and 12069 of 2016 are closed.

Sd/-

Assistant Registrar(T&P)

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/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

1.The District Collector, Pudukkottai District.

2.The Tahsildar, Avudaiyar Kovil Taluk,
Pudukkottai District.

+2cc to M/s.K.Baalasundharam, Advocate in SR.49164 & 49163
+1cc to the Special Government Pleader, in SR.50044 & 50061

Writ Petition (MD) Nos.13713 and 16544 of 2016
and
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sms

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