



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2016

CORAM :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

and

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Petition (MD) No.16163 of 2016

and

W.M.P (MD) No.11820 of 2016

Prithiviraj

... Petitioner

Vs.

1.The District Collector,
Madurai District, Madurai.

2.The Tahsildar,
Thirumangalam Taluk,
Madurai District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the 2nd respondent dated 18.08.2016 proceedings No. nil and Quash the same as illegal consequently forbearing the respondents from evicting the petitioner from his peaceful possession and enjoyment of the house property in Door No.70/1 in S.F.No.136/2 of Sengulam Village , Thirumangalam Taluk, Madurai District without following due process of law.

For Petitioner

: Mr.T.Vadivelan

For Respondents

: Mr.M.Alagadevan,

Special Government Pleader.

ORDER

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

Aggrieved by the action of the Tahsildar, Thirumangalam Taluk, Madurai District, the second respondent herein, who issued notice under Section 6 of the Land Encroachment Act, 1905, the present writ petition is filed.

2.Section 7 of the Tamil Nadu Land Encroachment Act, 1905 starts with the following expressions:

"7.Prior notice to person in occupation - 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 him under Section 6."

3.It is explicit from this provision that action under Section 7 shall precede any action under Section 6 of the Act. In



spite of the same, notice under Section 6 is slammed in the instant case without issuing notice under Section 7 of the Act, first.

4. Time and Time again, it is held that notice under Section 6 of the Land Encroachment Act has to be preceded with a notice under Section 7. The Tahsildars are regularly flouting this direction of this Court and contrary to this legal principle have been issuing notice under Section 6 straight away. We have reason to suspect that the Tahsildars act in such a manner so as to enable the encroacher to approach this Court and then obtain interim stay easily. It is time that the District Collector, Madurai instructs all the Tahsildars under his administrative control, to ensure that Section 7 notice is issued first and then alone any order under Section 6 can be passed. Any action to the contrary, should be viewed as to have been resorted to for extraneous reasons and considerations which might amount to a misconduct.

5. We further hope that the Collector will take up this matter with the Additional Chief Secretary to the Government and Chief Commissioner of Land Administration to ensure circular instructions to be issued to all the revenue officials in the State to follow this legal principle scrupulously and avoid unnecessary help to the encroachers and also avoid unwarranted litigation.

6. In the instant case, we direct the writ petitioner as well as the second respondent to treat the present notice dated 18.08.2016 as the one issued under Section 7 of the Act and provide the writ petitioner an opportunity to file his detailed objections thereto within 15 days from today. Upon such objections being filed by the writ petitioner, the same be taken into account and consideration and appropriate orders be passed thereon strictly in accordance with law.

7. With the above observation, the writ petition is disposed of. No costs. Consequently, W.M.P(MD)No.11820 of 2016 is closed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

1. The District Collector, Madurai District, Madurai.

2. The Tahsildar, Thirumangalam Taluk, Madurai District.

+One cc to Mr.T.Vadivelan, Advocate, SR.No.47674

+One cc to The Special Government Pleader, SR.No.48128

sms

RL/5C/2P/CK/16/9/2016

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