



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD) .No.18795 of 2016
and
W.M.P. (MD) .No.13594 of 2016

Srinivasan

... Petitioner

Vs

The Tashildar,
Musiri Taluk,
Karur District.

... Respondent

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the impugned order of the respondent made in AA2/4546/2016 dated 14.09.2016 and quash the same.

For Petitioner :Mr.K.Govindarajan

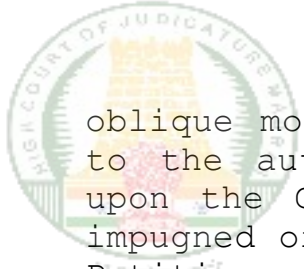
For Respondent :Mr.VR.Shanmuganathan
Spl.Govt.Pleader

ORDER

[Order of the Court was made by **M. SATHYANARAYANAN, J.**]

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

2. The petitioner claims to be the permanent resident of Komangalam Village and in occupation of natham S.No.385/26 and part of 385/27. He claims that for several decades persons who are the residents of the said properties were given patta for their occupation. It is further stated by the petitioner, he along with his wife, has gone to Mangalore for eking out his living and returned to his native place and thereafter, constructed a small house in the said survey number and due to an



oblique motive, the local president started giving representation to the authority concerned as if the petitioner has encroached upon the Government land, which resulted in passing the present impugned order. Hence, the petitioner came forward with this Writ Petition.

3. Mr.K.Govindarajan, learned Counsel for the petitioner would submit that due to wrong assumption that the land in question is classified as *Sarkar Poramboke* land and accordingly, action is being initiated under the provisions of Land Encroachment Act, 1905 and actually, it is a grama natham and in respect of the subject land, the respondent cannot invoke the provisions of the Tamil Nadu Land Encroachment Act, 1905 and would further submit that without issuing Section 7 notice, straightaway, Section 6 notice came to be issued and in this regard, he has also submitted a representation to the District Collector, Trichy, on 18.09.2016 and though the said representation is yet to be disposed of by him, precipitative action is being taken by the respondent to demolish the house of the petitioner and prays for appropriate orders.

4. *Per contra*, Mr.VR.Shanmuganathan, learned Special Government Pleader, would submit that, admittedly, the land in question is a Government *poramboke* land and the petitioner has encroached a portion of the property and put up his construction and the respondent, after following due process of law, has passed the impugned order and prays for the dismissal of this Writ Petition.

5. This Court has considered the rival submissions of the parties and perused the materials available on records.

6. Be that as it may, as against the impugned order, as per Section 10 of the Land Encroachment Act, an appeal shall lie to the Collector concerned from any decision or order passed by a Tashildar or Deputy Tashildar under the Tamil Nadu Land Encroachment Act, 1905. In this connection, the petitioner has already submitted a representation to the District Collector, which was also acknowledged by the office of the District Collector in Request No.2016/15/0919/DST/019142, dated 19.09.2016. The said representation may be treated as an appeal under Section 10 of the said Act. Either the District Collector of Trichy or an Official authorised by the District Collector shall consider and dispose of the said representation of the petitioner, on merits and in accordance with law, as expeditiously as possible, in any event, not later than 12 weeks from the date of receipt of a copy of this order and till such time, the respondent shall defer further decision in terms of the impugned notice issued by him. It is also made clear that the petitioner shall not put up any further construction / alter physical features nor create any third party interest in respect of the property in question, till the disposal of the representation by the District Collector or an Official authorised by him. The decision taken thereon by the said authority shall be communicated to the petitioner, forthwith.



7. This Writ Petition is disposed of, with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To:

The Tashildar,
Musiri Taluk,
Karur District.

+1 cc to M/s.K.Govindarajan, Advocate in SR.No.57211
+1 cc to The Special Government Pleader in SR.No. 57782

ssm
CSL/SK-SKN/17.10.2016: 3p/4c

W.P (MD) .No.18795 of 2016
29.09.2016