



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P. (MD) No.23263 of 2016

and

W.M.P. (MD) Nos.16700 and 16701 of 2016

P.Krishnamoorthy

.. Petitioner

Vs.

1.The District Collector,
Collectorate,
Sivagangai District, Sivagangai.

2.The Zonal Deputy Thasildar,
O/o the Zonal Deputy Thasildhar,
Tirupathur Taluk,
Sivagangai District.

3.The Revenue Inspector,
Natchiyarpuram Bricka,
Tirupathur Taluk,
Sivagangai District.

... Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to quash the impugned notice dated 18.11.2016 issued by the respondent No.2, consequently direct the respondents to issue Patta in Survey No.360/1, Veliyathur Village, Thirupathur Taluk, Sivagangai District or alternative place to the petitioner for running his Tea Shop.

For Petitioner :Mr.K.Navaneetharaja

For Respondents :Mr.R.Velmurugan
Government Advocate

ORDER

(Order of this Court was delivered by M.SATHYANARAYANAN, J.)

<https://hcservices.ecourt.gov.in/hcservices/> By consent, this writ petition is taken up for final disposal.



2. Mr.R.Velmurugan, learned Government Advocate accepts notice for the respondents.

3. The learned Counsel appearing for the petitioner would submit that the petitioner is the resident of Pallivasal Street, Kandaramanickam, Tirupathur Taluk, Sivagangai District and is running a tea stall in Survey No.360/1, Veliyathur Village, Thirupathur Taluk, Sivagangai District for the past 20 years and the shop was constructed in the Government Poromboke land and along with him, 17 persons have also constructed the shops and running commercial operation without any hindrance and due to the instigation of the local body President, intimidation was given and therefore, the petitioner on an earlier occasion filed a writ petition in W.P.(MD)No.5739 of 2016 praying for issuance of Writ of Mandamus forbearing the local body President from evicting the tea shop of the petitioner and notices were ordered and on appearance, it was represented that the eviction will be taken place by following due process of law and therefore, the writ petition was disposed of.

4. It is further submitted by the learned Counsel for the petitioner that once again the local body President started to threaten the petitioner and in this regard, he has already lodged a complaint, based on which, the Tirukoshtiyoor Police Station has registered the case in Cr.No.91 of 2016 for the commission of offences under Sections 147, 148, 294(b), 506(ii) I.P.C. and Section 3 of TNPPDL Act on 29.06.2016. The petitioner would further state that at the instance of the local body President, the third respondent has issued the impugned notice under Section 7 of the Tamil Nadu Encroachment Act, 1905 and challenging the same, the petitioner has come forward to file this writ petition.

5. The learned Counsel for the petitioner would submit that due to the instigation of the local body President only, the notice came to be issued and that too without properly following due process of law and therefore, prays for interference.

6. Per contra, Mr.R.Velmurugan, learned Government Advocate appearing for the respondents would contend that admittedly, the petitioner is an encroacher and only after following due process of law, action is being taken and prays for dismissal of the writ petition.

7. This Court heard the rival submissions made by learned Counsel appearing on either side and perused the materials placed before this Court.

8. It is relevant to extract Section 10 of the Tamil Nadu Encroachment Act, 1905, which is as follows:

"10.Appeal: An appeal shall lie (a) to the Collector from any decision or order passed by a Tahsildar or



Deputy Tahsildar under this Act, and to such officer as may be specified by the State Government in this behalf (herein after referred to as the appellate authority) from any decision or order passed by an authorised officer under this Act and different appellate authorities may be specified for different classes of cases; and

(b) to the District Collector from any decision or order of a Collector passed otherwise than on appeal, and

(c) to the (Commissioner of Land Administration) from any decision or order of a District Collector passed otherwise than on appeal."

9. Since there is an effective alternative remedy in the form of appeal available to the writ petitioner against the impugned order passed by the second respondent, this Court is of the view that the Writ Petition is not maintainable and therefore, the same is dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are also dismissed. If the petitioner is so advised, he is always at liberty to approach the competent Authority in terms of the said provision and as and when the appeal is filed, it may be entertained if the papers are otherwise in order and given disposal as expeditiously as possible.

Sd/

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar.

To

1.The District Collector,
Collectorate,
Sivagangai District, Sivagangai.

2.The Zonal Deputy Thasildar,
O/o the Zonal Deputy Thasildhar,
Tirupathur Taluk,
Sivagangai District.

3.The Revenue Inspector,
Natchiyarpuram Bricka,
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+1CC to the Special Government Pleader, SR.No. 79017

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