



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

W.P (MD) No.23711 of 2016

and

W.M.P (MD) No.17050 of 2016

Mrs.Tamilselvi

.. Petitioner

Vs.

1.The District Collector,
O/o.District Collectorate,
Sivagangai District.

2.The Thasildhar,
Thirupathur Taluk,
Sivagangai District.

3.The Deputy Thasildhar,
Singampunari,
Thirupathur Taluk,
Sivagangai District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the proceedings of the impugned notice Na.Ka.A5/7944/2016 passed by the third respondent dated 08.11.2016 signed on 21.11.2016 in respect of the property situated in Natham Survey No.168, Kavanoor Village, Thirupathur Taluk, Sivagangai District.

For Petitioner

: Mr.T.Lajapathi Roy

For Respondents

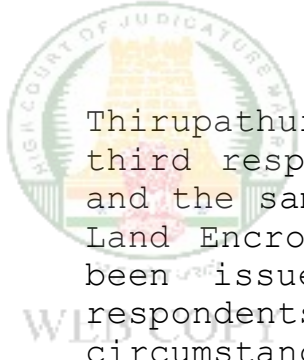
: Mr.D.Muruganandam,
Additional Government Pleader.

ORDER

[Order of the Court was made by A.SELVAM, J.]

This writ petition has been filed under Article 226 of the Constitution of India praying to issue a writ of certiorari so as to call for records relating to the notice dated 08.11.2016 passed in Na.Ka.A5/7944/2016 by the third respondent and quash the same.

<https://hcservices.ecourts.gov.in/hcservices/>
2. It is observed in the petition that the petitioner has put up a construction in Natham Survey No.168, Kavanoor Village,



Thirupathur Taluk, Sivagangai District and all of a sudden the third respondent has issued the impugned notice dated 08.11.2016 and the same is not in consonance with Section 6 of the Tamil Nadu Land Encroachment Act, 1905. Since the impugned notice has not been issued as per the provision of the said Section, the respondents cannot act upon the same. Under the said circumstances, the present writ petition has been filed for getting the relief sought therein.

3.The learned counsel appearing for the petitioner has contended to the effect that the notice dated 08.11.2016 has not been issued as per the provision of Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and since the same is a defect notice, the present writ petition has been filed for quashing the same.

4.Per contra, the learned Additional Government Pleader appearing for the respondents has contended to the effect that Natham Survey No.168, Kavanoor Village, Thirupathur Taluk, Sivagangai District, has been classified as a street and the petitioner has encroached a portion of the same and put up construction and after knowing the encroachment, the impugned notice dated 08.11.2016 has been issued as contemplated under Section 7 of the Land Encroachment Act, 1905 and therefore the relief sought in the petition cannot be granted.

5.The only grievance expressed on the side of the petitioner is that the impugned notice dated 08.11.2016 has not been issued on the basis of the provision mentioned in the said Section. For deciding the issue, the Court has to look into the said Section and the same reads as follows:

"Before taking proceedings under section 6 the Collector or Tahsildar or Deputy Tahsildar or Revenue Inspector or any authorised office or any other officer specified by the State Government in this behalf (not being an authorised office) (hereinafter referred to as the 'specified officer') as the case may be 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".

6.A mere reading of the said Section would clearly go to show that before taking proceedings under Section 6 of the Act, a prior notice is mandatory to alleged encroacher(s). In the impugned notice it has been clearly mentioned that the petitioner has encroached the land in question and the petitioner has been given time of fifteen days to clear off the encroachment. Failing compliance as per law the alleged encroachment will be removed.

7.In fact the materials found in the impugned notice are in consonance with the provision of Section 7 of the said Act and further this Court is of the view that no deviation has taken place in issuing the impugned notice.



8. Since no deviation has taken place in issuing the impugned notice and the same is in consonance with the provision of the said Section, the contention put forth on the side of the petitioner cannot be accepted and therefore the present writ petition deserves to be dismissed.

9. In fine, this writ petition is dismissed with costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub-Assistant Registrar

To

1. The District Collector,
O/o. District Collectorate,
Sivagangai District.

2. The Thasildhar,
Thirupathur Taluk,
Sivagangai District.

3. The Deputy Thasildhar,
Singampunari,
Thirupathur Taluk,
Sivagangai District.

+One cc to Mr. T. Lajapathi Roy, Advocate, SR.No.80480
+One cc to The Special Government Pleader, SR.No.80302

smn
RL/6C/2P/SKS/RR/21.12.2016

ORDER MADE IN
W.P (MD) No.23711 of 2016
and
W.M.P (MD) No.17050 of 2016

09.12.2016