

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.SUNDAR

W.P.No.7969 of 2017

and

W.M.P.No.8714 of 2017

R.S.Rajan

... Petitioner

Vs.

1. The District Collector,
Salem District,
Salem.

2. The Tahsildar,
Salem Taluk,
Salem.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records of the second respondent pertaining to the eviction of the petitioner under the provisions of the Tamil Nadu Land Encroachment Act, 1905 with respect to the lands, measuring acre 3.00 in S.No.70/4 (part), Kondappanacikenpatti, Salem taluk and to quash the notice under Section 6 of the said Act dated 8.3.2017 served on the petitioner on 10.3.2017 and consequently, to direct the respondents to forbear from interfering with possession and enjoyment of the petitioner, except in accordance with law.

For Petitioner : Mr.T.M.Hariharan

For Respondents : Mr.M.K.Subramanian, G.P.

ORDER

(Order of the Court was made by M.SUNDAR, J.)

This writ petition has been filed calling in question an order, dated 8.3.2017 passed under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 (hereinafter referred to as "the

2 The entire matter lies in a very short and narrow compass. The only point that is urged before us is that the impugned order under Section 6 of the said Act was not preceded by a show cause notice under Section 7 of the said Act.

3 Owing to this ground, we directed the learned Government Pleader to produce the official records for verifying whether a notice under Section 7 of the said Act was served at all. The records with photographs have been placed before us today.

4 We see from the records that Section 7 notice dated 24.2.2017 has been sent to the writ petitioner. The endorsement of the process server shows that the writ petitioner refused to receive the notice and therefore, the same was affixed in the property, which is subject matter of the writ petition. To buttress this, photographs showing the affixure are also placed before us and the same are also part of the official record.

5 These are all official acts. We cannot presume anything to the contrary, unless something very compelling is placed before us. There is nothing of that kind in this matter.

6 However, with an intention of ensuring that no prejudice is caused to the writ petitioner, we permit the writ petitioner to raise all the objections that he would have raised in response to Section 7 notice, in a statutory appeal against the impugned order.

7 It is to be noted that, as stated supra, the impugned order was under Section 6 of the said Act and the said Act provides for a statutory appeal to the first respondent District Collector under Section 10 of the said Act.

8 The writ petitioner, now, states before us that he would prefer a statutory appeal under Section 10 of the said Act against the impugned order.

9 We make it clear, as stated supra, that it is open to the writ petitioner to raise all objections that may be available to him, which he could have raised in response to Section 7 notice, in the statutory appeal. The writ petitioner undertakes to file the statutory appeal within a fortnight from today, i.e., on or before 21.04.2017. No statutory appeal shall be entertained thereafter.

10 If the statutory appeal is filed within the above said time frame, the same shall be heard and disposed of, within a period of three weeks from the date of filing of the statutory appeal, by the first respondent before us, who is

the appellate authority under the Statute.

11 The writ petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

vvk

To

1. The District Collector,
Salem District,
Salem.

2. The Tahsildar,
Salem Taluk,
Salem.

+1 cc to Mr. T.M. Hariharan, Advocate, sr 20686

W.P.No.7969 of 2017

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rmp(10/04/17)

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