

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.07.2017

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.11544/2017 and WMP.No.12534/2017

Ramakrishnan

.. Petitioner

Versus

1.The Thasildhar,
Thasildhar Office,
Jayankondam,
Ariyalur District.

2.The Block Development Officer,
Block Development Office,
Andimadam,
Ariyalur District.

3.T.Savarimuthu

.. Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus or any other appropriate writ, or order or direction in the nature of Writ, to call for the records of the first respondent in his Proceedings Na.Ka.A1/05/2016 dated 21.04.2017 and to quash the same as illegal and to further forbear the respondents from demolishing the petitioner's thatched hut in S.No.146/11-A in Savurveli Village, Ariyalur District.

For Petitioner :Ms.N.Mala

For Respondents :Mr.A.N.Thambidurai
Special Government Pleader for R1 & R2.
Mr.A.Gouthaman, for R3.

ORDER

By consent, the writ petition is taken up for final disposal.

2 The 3rd respondent, on an earlier occasion filed W.P.No.3465/2017 against the 1st respondent and also against the Collector of Ariyalur District, The District Revenue Officer, Udayarpalayam, Ariyalur District and the Revenue Divisional Officer, Andimadam, Ariyalur District and also against three other private respondents, praying for issuance of writ of Mandamus directing the respondents 1 to 4 to consider his representation dated 30.01.2017 and further directing the District Revenue Officer, Ariyalur District, to remove the illegal construction put up by the respondents 5 to 7 viz., Ramakrishnan, Thangarasu, Santhanam in the lands comprised in S.No.146/11A and for other consequential relief.

3 The First Bench of this Court vide order dated 13.02.2017, after taking note of the submission made by the learned Special Government Pleader, has passed an order, directing the 1st respondent

herein / 3rd respondent in the said writ petition to take action in accordance with law and concluded the same within two months from the date of receipt of the order. The 3rd respondent has passed the impugned proceedings dated 21.04.2017, purported to be in compliance of the above said order directing the 2nd respondent to remove the encroachment made by the petitioner and inform the same to the Collector, Ariyalur District, as well as to the 1st respondent. Challenging the legality of the same, the present writ petition is filed.

4 M/s.N.Mala, learned counsel appearing for the petitioner would submit that the Division Bench of this Court vide order dated 13.02.2017 in W.P.No.3465/2017 filed by the 3rd respondent herein, direct the concerned officials to take action in accordance with law, without putting the petitioner on notice and a direction has been given to the 2nd respondent herein to remove the encroachment and report the same to the 1st respondent as well as to the Collector of Ariyalur District and the same is impermissible in law, for the reason that it is in gross violation of the principles of natural justice.

5 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1 and 2 would submit that the action has been taken strictly in accordance with the above said order passed by the Division Bench of this Court in W.P.No.3465/2017.

6 Learned counsel appearing for the 3rd respondent has invited the attention of this Court to the counter affidavit filed in support of this writ petition and would submit that he filed a suit in O.S.No.305/2014 on the file of the District Munsif Court, Jeyankondam, for permanent and mandatory injunction and would submit that the writ petitioner is in possession of the 3rd item in the schedule mentioned property, wherein, the petitioner has put up an hut and the said suit came to be decreed ex-parte and thereafter, he has submitted the representation dated 30.01.2017 to the concerned officials for taking action in pursuant to the order dated 13.02.2017 in W.P.No.3465/2017. The impugned order came to be passed and since, the 3rd respondent is not an encroacher, the petitioner is not entitled to claim any equity before this Court and prays for dismissal of the writ petition.

6 This Court has considered the rival submissions and also perused the materials placed before it.

7 A perusal of the impugned order dated 21.04.2017 passed by the 1st respondent would disclose that it is not in consonance with the order dated 13.02.2017 in W.P.No.3465/2017. The 1st respondent in all fairness before directing the Block Development Officer to take necessary action for removal of encroachment ought to have invoked the relevant provisions of law and after putting the petitioner on notice, should have proceeded further but he has failed to do so.

8 It is also brought to the knowledge of this Court that the petitioner has also filed a petition for setaside the exparte decree passed in O.S.No.305/2014 along with the application for condonation of delay and both the applications are pending. Subject to the result of the same, the petitioner is always at liberty to workout his remedy.

9 The Impugned Order, in the considered opinion of this Court, is per se in violation of principles of natural justice and hence, on the same ground, it warrants interference.

10 In the result, writ petition is partly allowed and the impugned order dated 21.04.2017 passed by the 1st respondent is setaside and the matter is once again remanded to the 1st respondent, who shall put the petitioner on notice under the relevant provisions of law for removal of encroachment, if any, on the part of petitioner within two weeks upon receipt of the same and upon receipt of the notice, the petitioner is at liberty to submit his representation along with necessary and required documents within a further period of three weeks thereafter and the 1st respondent, after receipt of the same,

shall put the 3rd respondent on notice and thereafter, consider and dispose of the explanation/response submitted by the petitioner on merits and pass orders in accordance with law within further period of four weeks thereafter and communicate the decision taken, to the petitioner as well as to the 3rd respondent. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Thasildhar,
Thasildhar Office,
Jayankondam,
Ariyalur District.

2.The Block Development Officer,
Block Development Office,
Andimadam,
Ariyalur District.

+lcc to Mr.A.Gouthaman, Advocate SR.No.48761
+lcc to Mr.N.Mala, Advocate SR.No.48565
+lcc to Government Pleader SR.No.48607

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WP.No.11544/2017

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GN(31/07/2017)