

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.677 of 2017

C.Bangarurajan

...Appellant

Vs

1.The Special Commissioner and Secretary,
Land and Revenue Department,
Chepauk, Chennai - 600 005.

2.The Collector of Vellore District,
Vellore.

3.The Tahsildar,
Thirupathur, Vellore District.

...Respondents

Prayer:- Writ Appeal filed under clause 15 of Letters Patent,
against the order made in W.P.No.16476 of 2003 dated
10.02.2017.

W.P.No.16476 of 2003: Praying to issue a writ of
certiorari to quash the order passed by the third respondent
dated 3.6.2003.

For Appellant : Mr.V.Shanmugam
Senior Counsel for
Mr.S.V.Karthikeyan

For Respondents: Mrs.A.Sri Jayanthi
Special Govt.Pleader

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J U D G M E N T

K.K. SASIDHARAN, J.

The writ petition filed by the appellant challenging the
eviction order dated 3 June, 2003 on the file of the
Tahsildar, Thirupathur, was dismissed by the learned single
Judge. The learned single Judge branded the appellant as a
rank trespasser while dismissing the writ petition. Feeling
aggrieved by the said order, the appellant has come up with
this intra court appeal.

2. The learned Senior Counsel for the appellant by placing reliance on the counter affidavit filed by the District Collector, Vellore, contended that the so called notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 (hereinafter referred to as the "Act") was not delivered to the appellant. According to the learned Senior Counsel, there was no question of service of Notice under Section 7 of the Act by Affixture on 20 September, 2002 when the order itself was passed by the Court only at a later point of time. The learned Senior Counsel fairly admitted that the Government took possession of the land on 16 July, 2015 and it was handed over to the Health Department for construction of Primary Health Centre.

3. We have also heard the learned Special Government Pleader on behalf of the respondents.

4. The appellant was in unauthorised occupation of large extent of Government land in S.No.62/2, Pacchoor Village in the district of Vellore. The statutory authority initiated action for eviction invoking the provisions of Tamil Nadu Land Encroachment Act. The notice issued to the appellant under Section 7 of the Act was refused by him. The competent authority, therefore, affixed the notice in the presence of independent witnesses. Thereafter, final order under Section 6 of the Act was passed. The possession of the land was taken over by the authorities and it was handed over to the Health Department for construction of Primary Health Centre for the benefit of local people.

5. The Court exercising jurisdiction under Article 226 of the Constitution of India is concerned only with the decision making process. The Court is not concerned with the merits of the decision as such. There is a procedural safeguard given to the encroacher under Section 7 of the Act. The competent authority was expected to give notice to the encroacher before passing final orders under Section 6 of the Act.

6. In the subject case, attempt was made by the competent authority to serve notice on the appellant. The appellant refused to receive the notice and the same resulted in the service of notice by Affixture in the presence of independent witnesses on 20 September, 2002. The Competent Authority therefore complied with the statutory requirement. It was only thereafter final order under Section 6 of the Act was passed. It is also a matter of record that after passing final orders, the Government took possession of the land on 16 July, 2015 and it was handed over to the Health Department for construction of Primary Health Centre.

7. The learned single Judge considered the entire factual matrix and rightly dismissed the writ petition filed by the appellant. We do not find any reason to take a different view in the matter.

8. In the up shot, we dismiss the intra court appeal. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

svki

To

1.The Special Commissioner and Secretary,
Land and Revenue Department,
Chepauk, Chennai - 600 005.

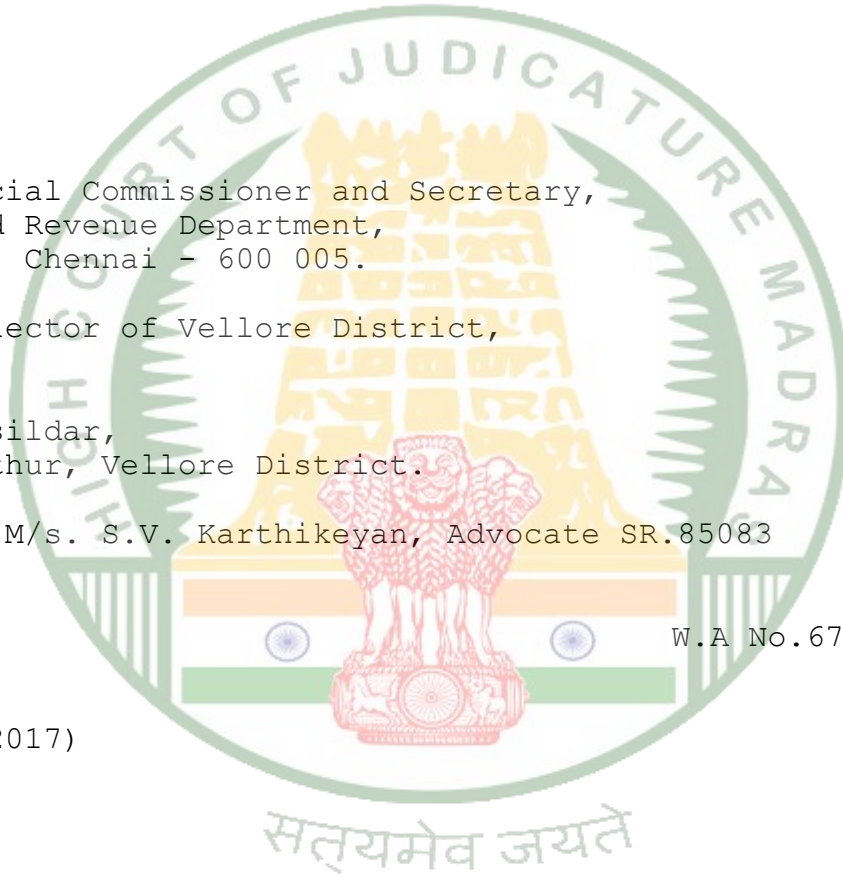
2.The Collector of Vellore District,
Vellore.

3.The Tahsildar,
Thirupathur, Vellore District.

+ 1 cc to M/s. S.V. Karthikeyan, Advocate SR.85083

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