

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2017

CORAM

THE HONOURABLE Mr. JUSTICE M.SUNDAR

W.P.No.825 of 2010
and M.P.No.1 of 2010

Sudandirakumar

.. Petitioner

...vs...

Vellankanni Town Panchayat
represented by
The Special Executive Officer,
Vellankanni,
Nagapattinam District.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings Na.Ka.No.228/2009 dated 21.12.2009 and quash the same.

For Petitioner : Mr.S.Sounthar
For Respondent : No appearance

O R D E R

Mr.S.Sounthar, learned counsel is present on behalf of the writ petitioner. The lone respondent in the writ petition is Vellankanni Town Panchayat. The lone respondent has been duly served on 15.02.2010 itself. Mr.G.Sankaran, learned counsel has entered appearance and his name has been duly shown in the cause list today, but none appears. It is seen from the records that no counter affidavit has been filed.

2.The main writ petition is taken up, on the basis of the available records.

3.It is the admitted case of the writ petitioner that he is running a small shop (fancy store) in an area admeasuring less than 100 sq.ft. thereabout.

4.It is the admitted case of the writ petitioner that the land is classified as Government Poramboke and it is situated in Survey No.100/2 in Vellankanni Beach which is otherwise referred to as வங்க கடற்கரை சாலை.

5.The lone respondent has issued a notice dated 21.12.2009 bearing reference Na.Ka.No.228/2009 (hereinafter referred to as "the impugned notice") purportedly under Sections 180, 182(1) and 362 of the District Municipalities Act. It is the case of the writ petitioner that the land does not vest with the respondent Panchayat and they have no authority or jurisdiction to issue such a notice. The impugned notice also refers to an order of this Court made in W.P.No.17118 of 2009. That order of this Court (Division Bench) is produced by the writ petitioner. A perusal of the said order reveals that it only refers to shops situated in road margins which may vest in the Panchayat.

6.In the instant case, it is very fairly submitted in the affidavit itself that action, if any, can be only under the Land Encroachment Act, 1905. The writ petitioner would submit that the Government shall initiate proceedings only under the Land Encroachment Act and therefore, the impugned notice issued by the lone respondent Panchayat cannot be sustained.

7.This Court agrees with such submission.

8.The impugned notice issued by the respondent is clearly without jurisdiction because the land in question comprised in Survey No.100/2 is Government Poramboke which vests in the Government and not in the Panchayat.

9.The impugned notice is set aside.

10.It is brought to the notice of the Court that the writ petitioner has been paying penalty/charges under B-memo for some time now.

11.It is made clear that this order will not preclude the Governmental authorities from initiating action under Land Encroachment Act or any other statute under which they may have powers.

12.With the above observation and rider, the writ petition is allowed. Connected Miscellaneous Petition is closed as unnecessary. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cse

To

The Special Executive Officer,
Vellankanni, Vellankanni Town Panchayat
Nagapattinam District.

+ 1 cc to Mr.S. Sounthar, Advocate SR.11749

W.P.No.825 of 2010
and M.P.No.1 of 2010

SV(CO)
EU 09.03.17



WEB COPY