

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.No.14478 of 2017
and WMP.No.15707 of 2017

Sabareeswari

... Petitioner

Vs

The Assistant Engineer,
Public works Department,
Canal no.1, Vettaikaranpudhur,
Pollachi, Coimbatore District.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the entire records relating to the proceedings in reference letter No.UoPo/Vepu/Ko.C3/-/2017, dated 16.05.2017 passed by the respondent and quash the same.

For Petitioner : Mr.S.Gunalan

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

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

2. The petitioner claims that he is a resident of New Arijan Colony, Odayakulam Village, Pollachi Coimbatore District in S.F.Nos.936/1B & 937/1B and according to him, assignment patta in respect of the land admeasuring to an extent of 52 x 32 feet in the said survey number, bearing Plot No.98 has been granted and apart from the said land, he has not encroached any other land and the said land is not in the near vicinity of the water body and however, to his shock and surprise, the petitioner has been issued with a impugned notice dated 16.05.2017 under section 5 of Tamil Nadu Land Encroachment Act, 1905 and challenging the same the petitioner came forward to file this writ petition.

3. The learned counsel appearing for the petitioner would submit that the petitioner is in possession of the land

assigned in his favour and he has not committed any encroachment in patta land or water body and would further draw the attention of this Court to the impugned notice and would submit that it does not contain any particulars such as survey numbers, detailed extent of the land and the extent of deviation in the form of encroachment by the petitioner herein etc and hence prays for interference.

4. Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the official respondent has drawn the attention of this Court to the Counter affidavit that there is a canal belonging to the Public Works Department in Survey No.936/2 and 937/2 of Odayakulam Village and by constructing a pucca house, the petitioner has encroached the canal situated in the Survey Nos.936/2 and 937/2 and accordingly, action was taken after the measurement was done by the Tahsildhar, Pollachi and hence prays for dismissal of this writ petition.

5. The Hon'ble First Bench of this Court while entertaining the writ petition has recorded the findings that the impugned notice do not contain the relevant details and accordingly granted interim orders.

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

7. In the light of the specific stand taken by the petitioner that apart from the land assigned, the petitioner has not encroached upon any other land especially, the lands classified as water body, this Court is of the view that the impugned notice issued to him without containing factual details such as survey numbers, the extension of the portion of the land classified as water body, is inclined to quash the same.

8. In the result, the writ petition is partly allowed and the impugned notice dated 16.05.2017 is quashed. The matter is remanded back to the respondent who shall issue notice by invoking the relevant and appropriate provisions of law and giving out all the details, viz., the extent of encroachment, the nature of encroachment and the survey number of the land in which the petitioner is said to have committed the encroachment and pass orders within a period of four weeks from the date of receipt of a copy of the order and upon receipt of the same, the petitioner is at liberty to submit his representation along with the relevant authenticated documents within a period of four weeks thereafter and the respondent shall consider the said representation and give a disposal on merits and in accordance with law within a further period of six weeks thereafter and also communicate the decision to the petitioner. It is made clear that till the disposal of the representation to be submitted by the petitioner, the petitioner apart from the extent of land,

shall not commit any further encroachment especially in respect of the lands classified as water body. No costs. Consequently, the connected Miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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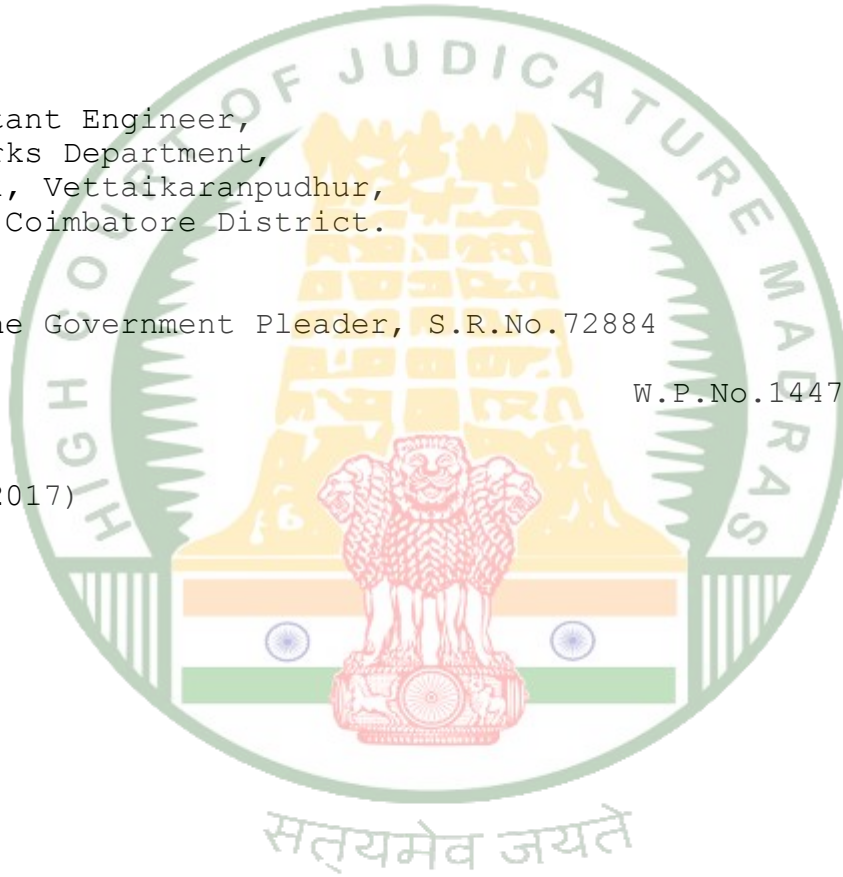
To

The Assistant Engineer,
Public works Department,
Canal no.1, Vettaikaranpudhur,
Pollachi, Coimbatore District.

+1cc to the Government Pleader, S.R.No.72884

W.P.No.14478 of 2017

AD(CO)
CA(16/11/2017)



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