

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.07.2017

CORAM:

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

W.P.No.14719/2017 & WMP.Nos.15954 & 15955/2017

M.Ramasamy

.. Petitioner

Vs

1.The District Collector,
Dharmapuri District

2. The Block Development Officer,
Pappireddipatti,
Dharmapuri District

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records which culminated in issuing the notice in Na.Ka.No.1224/2011/A3 dated 05.06.2017 on the file of the 2nd respondent.

For Petitioner : M/s.R.Ganesan

For Respondents : Mr.A.Vijaya Kumar
Additional 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 grievance expressed by the petitioner is that the Collector, Dharmapuri District vide proceedings dated 06.09.1975 in No.K.Dis.69946/97 has indicated that four persons have encroached upon the land in Survey No.180 of A.Pallipatti Village classified as "Eri Ulvari" in the village accounts and the said land is situated in a higher level of about 2 ½ feet / meter than Survey No.179 and even if the water body in Survey No.179 filled up fully, it will not come to Survey No.188 and as such, the land in occupation of the petitioner, being classified as water body and that, he is in encroachment of the same is per se unsustainable.

3 The learned counsel appearing for the petitioner has drawn the attention of this Court to Form No.III r/w Rule 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and Rules framed thereunder and would submit that the said act contemplates 21 days notice but the petitioner has been granted only 8 days notice by the respondent and hence prays for interference.

4 Per contra, Mr.R.Vijayakumar, the learned Additional Government Pleader appearing for respondents 1 and 2 has invited the attention of this Court to the counter affidavit of the 2nd respondent and would submit that in compliance of the order dated 18.01.2017 in WP No.1252 of 2017, the impugned notice was issued to the petitioner and the survey done by a team consisting Taluk Head Surveyor / Village Administrative Officer / Revenue inspector would clearly indicate that there are encroachments in Survey No.179 as well as in Survey No.180 and the name of the petitioner was listed out in Sl.No.22 in Survey No.180 and the encroachment area is 2.01.5 (2 hectares 01.5Ares) in the revenue records and the said encroachment has been certified by the Taluk Head Surveyor on 07.02.2012 and despite very many notice issued to the petitioner calling upon him to vacate and deliver the possession of the land in occupation, he failed to do so and hence, prays for dismissal of this writ petition.

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

6 It is a primordial submission of the learned counsel appearing for the petitioner that in the light of the proceedings of the Collector of Dharmapuri District dated 06.09.1975 in K.Dis.69946/97, the encroachments made by the petitioner in Survey No.188 is not classified as objectionable one and it is also compoundable and therefore, the impugned notice is to be questioned.

7 This Court taking into consideration of the stand of the 2nd respondent in the counter affidavit, permits the petitioner to respond to the impugned notice dated 05.06.2017, in the form of representation along with necessary documents to the 2nd respondent within a period of two weeks from the date of receipt of copy of this order and the 2nd respondent upon receipt of the same, shall afford an opportunity of personal hearing to the petitioner and thereafter, shall consider and dispose of the explanation / representation to be submitted by the petitioner on merits and in accordance with law and pass appropriate orders within a further period of four weeks thereafter and till such time, shall defer all further proceedings in terms of the impugned notice dated 05.06.2017.

8 Accordingly, the writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Dharmapuri District

2. The Block Development Officer,
Pappireddipatti,
Dharmapuri District

+ 1 cc to M/s. P. Ganesan, Advocate Sr.48534

CS-V

Eu 31.7.17

WP.No.14719/2017



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