IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.02.2017**

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.**17678 of 2003**

N.Subramani .. Petitioner

Vs.

1. The Tahsildar
   Tirupattur
   Vellore District

2. The Executive Officer
   Arulmighu Dharmarajar Temple
   Tirupattur
   Vellore District

3. The Commissioner
   Tirupattur Municipality
   Vellore District

4. The District Collector
   Vellore District

.. Respondents

Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Mandamus to direct the respondent 1 and 3 to restore possession of Door No.47-C, Dharmarajar Koil Street, Tirupattur Town, Vellore District to the petitioner.

For Petitioner .. Mr.Sarath Chandran for
V.Raghavachari

For Respondents 1, 3 & 4 .. Mr.VJayaprakash Narayanan
Spl.Government Pleader

ORDER

Admittedly, the petitioner was an encroacher, he having occupied a plot bearing Door No.47-C, Dharmarajar Temple Street, Tirupattur, Vellore in Suvey No.364/1. The petitioner is a hairdresser by profession and was said to be having a shop in the said place. He was assessed to "B" Memo under the Tamil Nadu Land Encroachment Act, 1905.

2. While so, one Srinivasan gave a representation on 4.4.2001, to the District Collector, Tahsildar and Tirupattur Town Municipality, calling upon them to remove the encroachments in Survey No.364/1. Since the authorities did not take any action, Srinivasan filed Writ Petition No.9168 of 2003 for a direction to the authorities to consider and take action on his representation dated 4.4.2001. This Court passed the following order in W.P.No.9168 of 2003 on 25.3.2003:

> "2. The petitioner has made several representations before respondents 1 and 3 alleging unlawful encroachment in Survey No.364/1, Tirupattur Town, Tirupattur Taluk, Vellore District. Without expressing any opinion on the contentions raised by either party, I call upon the respondents 1 and 2 to consider the representations including the representation dated 4.4.2001 within a period of eight weeks from the date of communication of the order."

3. Pursuant to the order passed by this Court, about 64 persons, who were encroachers in Survey No.364/1 were evicted by the authorities.

Challenging the eviction, 58 persons filed W.P.No.17301 of 2003 before this Court and the petitioner did not join them and instead, he filed the present writ petition, challenging the eviction on the ground that no notice under section 7 of the Tamil Nadu Encroachment Act was served on him, before he was evicted.

4. This writ petition should have been tagged along with W.P.No.17301 of 2003, but it was not done. However, W.P.No.17301 of 2003 was dismissed by a learned Single Judge of this Court on 13.8.2003 and it may be relevant to extract paragraph 7 of the order:

> "7. Today, it is represented by the learned Government Advocate that already action was taken under the Land Encroachment Act. Notices were sought to be served on the petitioners, who refused to receive. Thereafter, notices were affixed and following the procedure, these petitioners have already been dispossessed. However, the learned counsel for the petitioners represents that even as on date, all the petitioners are in occupation of the land, which they were hitherto in possession. This is being disputed. It is seen from the files that the proceedings have been initiated by the Tahsildar under the Land Encroachment Act and after following the procedure prescribed, the Tahsildar has removed the encroachers. Therefore, it is clear that the very relief prayed for in this writ petition has been carried out by the respondents themselves, namely, the Tahsildar, Tirupattur. Therefore, nothing survives in this writ petition. If the petitioners are aggrieved by the proceedings initiated under the Land Encroachment Act, it is open to them to

prefer an appeal or revision as the case may be under the Land Encroachment Act and work out their remedies. Even if the petitioners seek for an assignment or allotment, it is for them to approach the concerned authority and work out their remedies. As seen from the files, the petitioners have been dispossessed after following the procedure prescribed. Therefore, nothing survives in this writ petition and the same is dismissed. Consequently, all other connected Miscellaneous Petitions are closed. The parties shall bear their respective costs."

5. Challenging the dismissal, the 58 petitioners in W.P.No.17301 of 2003 filed W.A.No.2794 of 2003, which was also dismissed by the First Bench of this Court on 5.9.2003 and paragraph No.2 of the Division Bench order is as under:

"2. But, on a reading of the order of the learned Single Judge, we find that the learned single Judge has summoned the records, perused the same and was satisfied about following of the procedure by the authorities. It is found by the learned single Judge from the files that notices were sought to be served on the appellants, but they refused to receive the same. Thereafter, the proper procedure of affixing the notices was followed, and then only eviction was carried out in accordance with law. In the circumstances, we do not find any merit in this writ appeal. Accordingly, the writ appeal is dismissed. No costs. Consequently, W.A.M.P. is also dismissed.

3. However, it is open to the appellants to file an appeal, if they are so advised. The appellants are granted time of 30 days to

file the appeal before the appropriate authority."

6. Heard Mr.Sarath Chandran, learned counsel appearing for the petitioner and Mr.V.Jeyaprakash Narayanan, learned Special Government Pleader for the respondents 1, 3 and 4.

7. Mr.Sarath Chandran, learned counsel for the petitioner submitted that the petitioner has made a specific allegation in paragraph No.4 of his affidavit that he was not given any notice under the Tamil Nadu Land Encroachment Act before he was evicted by the authorities. The learned counsel further submitted that in the absence of the respondents filing a counter affidavit and denying the allegations, *a fortiori* it means that the allegations stand established. In support of his contention, the learned counsel placed strong reliance on the judgment of this Court in B.M.Habibullah, etc., vs. State of Tamil Nadu and others, reported in **AIR 9914 Mad 222** and S.Kamaraj and others vs. Government of Tamil Nadu and others, reported in **AIR 2002 Mad 311** and contended that if once this Court gives a finding that the authorities have not issued the Notice under section 7 of the Tamil Nadu Land Encroachment Act, the petitioner should be put back in possession.

8. Mr.V.Jeyaprakash Narayanan, learned Special Government Pleader strongly refuted the contentions and placed the communication between the

Tahsildar and the District Collector for the perusal of this Court.

9. This Court gave its anxious considerations to the rival contentions.

10. It is true that in the aforesaid judgments, this Court gave a finding that the encroacher was not issued notice under section 7 of the Tamil Nadu Land Encroachment Act and on the strength of such finding, the authorities were directed to put back the encroacher in possession. This Court has no quarrel with the aforesaid proposition of law.

11. From the records produced by Mr.Jeyaprakash Narayanan, it is seen that there were 64 encroachers in Survey No.364/1 and the name of the petitioner Subramani figures therein in Serial No.4. The entire eviction order was pursuant to the order passed by this Court in W.P.No.9168 of 2003. As regards the contention of Mr.Sarath Chandran that no Notice was served before eviction, this Court finds that this contention has been dealt with elaborately by the learned single Judge while disposing W.P.No.17301 of 2003 dated 13.8.2003. The relevant paragraph has been extracted above. The First Bench of this Court has agreed with the findings of the learned single Judge and refused to interfere.

12. Under such circumstances, this Court has no reason to disbelieve the

assertion of the Tahsildar in his communication dated 14.6.2003 addressed to the District Collector that Notices were served on the encroachers and only thereafter they were removed. In view of the above, this Court does not find any reason to interfere with the action taken by the authorities way back in the year 2003.

13. In the result, this Writ Petition is devoid of merits. However, this Court is inclined to follow the Division Bench Order in W.A.No.2794 of 2003 dated 5.9.2003 and give liberty to the petitioner to file an appeal, if so advised. The petitioner is granted time of 30 days from the date of receipt of a copy of this order to file appeal before the appropriate authority.

The Writ Petition is dismissed with the above direction. No costs.

02.02.2017

Index:Yes/No
ajr
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P.N.PRAKASH, J.

ajr

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