



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **27.07.2017**

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.13946 of 2017

and

W.M.P. (MD) .Nos.10898 and 10899 of 2017

Shanmuganathan

.. Petitioner

Vs.

1.The District Collector,
Ramanathapuram,
Ramanathapuram District.

2.The Commissioner,
Mandapam Panchayat Union,
Uchipuli,
Ramanathapuram District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for records relating to the impugned proceedings issued by the second respondent in Na.Ka.No.A2/4242/2015, dated 17.07.2017 and quash the same as illegal.

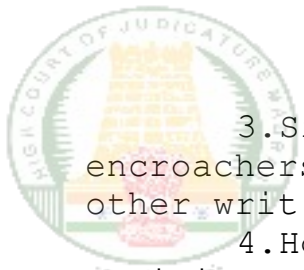
For petitioner : Mr.M.Mahaboob Athiff
for M/s. Ajmal Associates
For respondent No.1 : Mr.T.S.Mohamed Mohideen
Additional Government Pleader
For respondent No.2 : Mr.M.Govindan
Special Government Pleader

O R D E R

[Order of the Court was made by **G.R.SWAMINATHAN, J.**]

The writ petitioner challenges the order dated 17.07.2017 issued by the second respondent herein, directing the removal of the encroachment in Survey No.1098/2A, 48 C, Pamban Group, Pamban Village, Ramanathapuram District.

2.It is mentioned in the impugned order that coercive action will be taken against the "Bakery" in D.No.3/1425, if the encroachment is not voluntarily clear the encroachment within three days from the date of receipt of a copy of the notice.



3. Similar orders were passed in respect of other encroachers and the said orders were sustained by this Court in other writ petitions.

4. However, the learned counsel appearing for the writ petitioner would submit that the impugned order deserves to be set aside, as it suffers from complete non-application of mind and besides, it is also a nullity. According to the writ petitioner, notice was issued in the name of Subbaiah, who is none other than the father of the writ petitioner but who passed away long ago. At present, his son Shanmuganathan, the writ petitioner herein is in occupation of the said "Bakery". When the show cause notice was issued in the name of his dead father, the writ petitioner pointed it out. Without even taking note of this aspect, final order has been passed by the second respondent herein again in the name of the father of the writ petitioner, who is no more. According to the learned counsel for the writ petitioner, this shows the non-application of mind on the part of the second respondent and it is clear that the second respondent has acted mechanically.

5. We have considered the above submissions and perused the materials available on record.

6. As rightly contended by the learned counsel for the petitioner, the impugned notice has been issued in the name of a dead person. On this sole ground alone, the impugned order dated 17.07.2017 is quashed and the matter is remitted to the file of the second respondent with a direction to issue a fresh notice in the name of the writ petitioner, hear the writ petitioner and thereafter pass a fresh order in accordance with law.

7. This writ petition is allowed as indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/Truecopy/

Sub Assistant Registrar

To:

1. The District Collector,
Ramanathapuram, Ramanathapuram District.
2. The Commissioner,
Mandapam Panchayat Union,
Uchipuli, Ramanathapuram District.

+1cc to M/S. AJMAL ASSOCIATES, Advocate SR.No.68176
+1cc to Special Government Pleader, SR.No.68994

km/rmk/gns

MAS/KP/SAR2:22.08.2017:2P-5C