



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 31.07.2017

Pronounced on 08.09.2017

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CORAM :

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

W.P (MD) No.14074 of 2017
and
WMP (MD) No.11006 of 2017

M.Philomin Raj

... Petitioner

Vs.

1.The District Collector,
Thoothukudi District.

2.The Tahsildar,
Thoothukudi Taluk,
Thoothukudi District.

... Respondents

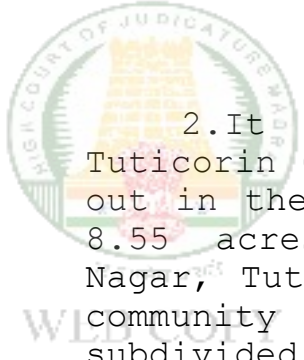
Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records relating to the proceedings of the impugned order No.A3/13740/14 dated 10.07.2017 on the file of the second respondent and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai
For Respondents : Mr.T.S.Mohammed Mohideen, AGP

ORDER

(Order of the Court was made by **G.R.SWAMINATHAN, J.**)

The writ petitioner challenges the proceedings bearing No.A.3/13740/14 dated 10.07.2017 issued by the second respondent herein. What is impugned is not a final order. It is only a notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. When this Court expressed its view that the writ petition has been prematurely instituted, the learned counsel for the petitioner pointed out that the impugned proceedings have been issued pursuant to the order dated 07.12.2016 made in W.P. (MD)



2.It is seen that the said writ petition was filed by Tuticorin Circle Washermen Union. According to the averments set out in the affidavit filed in support of the said writ petition, 8.55 acres in S.No.223/1, Mappillaiyoorani village, Thalamuthu Nagar, Tuticorin District was assigned in favour of a particular community and that the said survey number was subsequently subdivided as S.Nos.223/3 and 223/6. Since the said assigned lands had been encroached, request was made for removing the encroachments. Since it was not acted upon, the said writ petition came to be filed and by order dated 07.12.2016, this Court gave a direction for removal of the encroachments. Admittedly, the writ petitioner herein was not made a party to the said writ proceedings.

3.The petitioner is said to have put up a pucca construction after getting building plan permission from the local panchayat as early as on 08.09.1998. There is a decree of the civil Court in O.S.No.481 of 2008 on the file of the Principal District Munsif, Tuticorin operating in favour of the writ petitioner. The apprehension of the writ petitioner is that his explanation in response to the impugned show cause notice would not be considered and that an order for eviction would be straightaway passed in purported compliance of the order made in W.P.(MD) No.743 of 2010 dated 07.02.2016.

4.We make it clear that inasmuch as the writ petitioner was not a party to the proceedings in W.P.(MD) No.743 of 2010, the same cannot operate to his prejudice. The second respondent will have to apply his mind and independently consider the issue. It is open to the writ petitioner to place all the materials in support of his contention before the second respondent. The second respondent is entitled to take into account all the relevant aspects and thereafter pass an order in accordance with law. The second respondent shall not reject the case of the petitioner solely on the ground of the directions issued in W.P.(MD) No.743 of 2010. We may incidentally mention here that petitions for removal of encroachments ought not to be entertained unless all the affected parties are made respondents in the writ petition. In W.P.(MD) No.743 of 2010, only one private respondent is shown in the cause title. Therefore, the writ petitioner therein cannot shelter behind the said order for throwing out the present writ petitioner.

5.Having clarified the effect of the said order dated 07.12.2016 made in W.P.(MD) No.743 of 2010, we relegate the writ petitioner to go before the second respondent with his explanation in response to the notice impugned in this writ petition. The petitioner is given a further two weeks time from the date of <https://hcservices.pntrts.gov.in/hcservices/> copy of this order to submit his explanation. The second respondent is directed to consider the same independently and pass appropriate orders in accordance with law.



6.This writ petition is disposed of with the above direction and clarification. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

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/True copy/

Sub Assistant Registrar

To

1.The District Collector,
Thoothukudi District.

2.The Tahsildar,
Thoothukudi Taluk,
Thoothukudi District.

+1cc to Mr.M.PRABHU RAJADURAI,Advocate,SR.77921

W.P (MD) No.14074 of 2017
and

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08.09.2017

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