



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2017

CORAM

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THE HON'BLE MR.JUSTICE M.VENUGOPAL
and
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD) No.14869 of 2017

and

W.M.P. (MD) No.11720 of 2017

Singarajakottai Rajakkal Sangam

Represented by its President

K.B.Ramsingh

Rajapalayam,

Virudhunagar District.

.. Petitioner

vs.

1.The Assistant Engineer,
Public Works Department,
Upper Vaipar Basin Sub Division,
Irrigation Section -I,
Rajapalayam, Virudhunagar District.

2.P.Ganesan

(R2 is impleaded vide Court order

dated 07.09.2017 in WMP (MD) No.13506/17)

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the impugned order passed by the Respondent which is signed on 28.07.2017 and quash the same.

For Petitioner : Mr.S.Anwar Sameem

For R1 : Mr.M.Govindan
Special Government Pleader

For R2 : Mr.L.Shaji Chellan

O R D E R

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

Heard Mr.S.Anwar Sameem, Learned Counsel for the Petitioner;
Mr.M.Govindan, Learned Special Government Pleader for the First
Respondent and Mr.L.Shaji Chellan, learned counsel for the second



2.By consent, the main writ petition itself is taken up for final disposal.

3.There is no dispute in regard to the fact that the Petitioner/Sangam was issued with a warning notice, dated 28.07.2017, by the First Respondent, to remove the encroachment in Survey No.3/2, measuring an extent of 0.8350.0 hectares at Rajapalayam in Kondaneri water catchment area.

4.As seen from the warning/caution notice, dated 28.07.2017, issued by the First Respondent, it is lucidly clear that the Petitioner was requested to clear the encroachments within 21 days from the date of receipt of the said notice.

5.At this juncture, the Learned Counsel for the Petitioner brings it to the notice of this Court that based on the Government Order, the lease agreement was entered into and registered in between the Petitioner/Sangam and the Revenue Department on 06.01.1997. In fact, a marriage hall was constructed and the foundation stone for the marriage hall was laid by the then Governor of the State of Orissa. More over, it is projected on the side of the Petitioner that on 06.05.1997 and 04.06.1998, the Petitioner/Sangam submitted applications and sought for allotment of additional land for the purpose of constructing a first aid centre, Hospital, library and tailoring training centre.

6.In pith and circumstance, the plea taken on behalf of the Petitioner is that the subject property lies on the bank and it is not a water catchment area and the Government granted Lease in favour of the Petitioner/Sangam in terms of the ingredients of G.O.Ms.No.1128, Revenue Department, dated 28.11.1995.

7.It transpires that the Government of Tamil Nadu after taking note of the object of the Petitioner/Sangam had issued another Government Order in G.O.Ms.No.208, Revenue Department, dated 28.04.2000 in and by which, the lease was granted in respect of additional land in T.S.No.3/2, measuring an extent of 0.39.6 hectares (98 cents). Furthermore, a Hospital was constructed by the Petitioner/Sangam in the name of P.S.Kumarasamy Raja Centenary Memorial Hospital and that the Petitioner/Sangam is providing free medical treatment and medicine to all the general public.

8.In fact, a fervent plea is made on behalf of the Petitioner/Sangam that the Petitioner is purely a charitable Hospital and it is run for not securing income and for the last seventeen years, the Petitioner/Sangam is successfully running the Hospital.

9.The principal stand taken on behalf of the Petitioner is that by means of issuance of impugned notice, dated 28.07.2017 by the Respondent, there is a violation of principles of natural justice, in that, the Petitioner/Sangam was not issued with the show cause notice to offer its explanation.

10. Another plea is taken on behalf of the Petitioner that the Petitioner/Sangam is not an encroacher in the subject land.

11. Considering the fact that the Petitioner/Sangam was issued with the warning notice, dated 28.07.2017 to remove the encroachment within a period of 21 days from the date of receipt of the said notice, in Kondaneri water catchment area in respect of Survey No.3/2, measuring an extent of 0.8350.0 hectares at Rajapalayam in Kondaneri, this Court, directs the Petitioner to treat the warning notice of the Respondent, dated 28.07.2017 as a show cause notice and to submit its explanation, within two weeks from the date of receipt of a copy of this order. Soon after receipt of the explanation/remarks submitted by the Petitioner/Sangam within the time adumbrated by this Court, the First Respondent shall look into the same by adverting to all the factual and legal pleas raised there to and to pass a reasonable speaking order on merits in a qualitative and quantitative manner in a fair, just and with an open mind, and that too, in a dispassionate and unbiased manner, within a period of four weeks thereafter, ofcourse, after adhering to the principles of natural justice by issuing notice to the Petitioner/Sangam (including the second Respondent and others, if any). Liberty is granted to the Petitioner and the second Respondent to raise all their factual and legal pleas before the First Respondent, who shall take into consideration of the same and to pass orders in the subject matter in issue, within the time adumbrated by this Court. Till final orders are passed within the time adumbrated by this Court, the First Respondent shall not take any coercive steps against the Petitioner/Sangam in respect of the purported encroachments made by it in Survey No.3/2, measuring an extent of 0.8350.0 hectares at Rajapalayam in Kondaneri.

12. With the aforesaid observation(s) and direction(s), the writ petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub-Assistant Registrar

To:

The Assistant Engineer, Public Works Department,
Upper Vaipar Basin Sub Division, Irrigation Section -I,
Rajapalayam, Virudhunagar District.

+One cc to M/s.T.Antony Arul Raj, Advocate, SR.No.81707

+One cc to Mr.L.Shaji Chellan, Advocate, SR.No.81696

+One cc to The Special Government Pleader, SR.No.81790

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