



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

W.P(MD)No.1640 of 2017

and

W.M.P(MD)Nos.1329 and 1330 of 2017

B.Kottai

.. Petitioner

Vs.

1.The District Collector,
Sivagangai District, Sivagangai.

2.The Tahsildar,
Devakottai Taluk Office,
Devakottai Taluk, Sivagangai District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the second respondent's notice under Section 3(7) of Tamil Nadu Encroachment Act, 1905 dated 15.07.2016 and quash the same and consequently direct the second respondent not to disturb the possession and enjoyment of the petitioner's house in Survey No.49/29, Ekarai Kottavayal, Periyakottai Post, Devakottai Taluk, Sivagangai District.

For Petitioner : Mr.P.Muthusamy

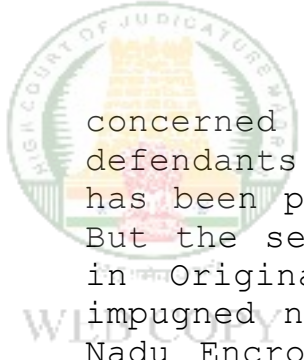
For Respondents : Mr.M.Govindan,
Special Government Pleader.

ORDER

[Order of the Court was made by A.SELVAM, J.]

This writ petition has been filed under Article 226 of the Constitution of India praying to call for records relating to the notice dated 15.07.2016 issued by the second respondent and quash the same, by way of issuing a writ of certiorarified mandamus.

2.The learned counsel appearing for the petitioner has contended that the house of the petitioner is situate in Survey No.49/29, Ekarai Kottavayal, Periyakottai Post, Devakottai Taluk, Sivagangai District and in respect of the same already Original Suit No.104 of 2010 has been filed on the file of the District Munsif Court, Devakottai for the reliefs of declaration and permanent injunction, wherein the respondents 1 and 2 and the



concerned Village Administrative Officer have been shown as defendants. In Original Suit No.104 of 2010, an executable decree has been passed and the defendants have not preferred any appeal. But the second respondent without considering the reliefs granted in Original Suit No.104 of 2010 has erroneously issued the impugned notice dated 15.07.2016 under Section 3(7) of the Tamil Nadu Encroachment Act, 1905 and the same is totally illegal and therefore the present writ petition has been filed for getting the relief sought therein.

3.It is seen from the records that in Original Suit No.104 of 2010, the very same survey number has been shown as suit property. It is an admitted fact that the present respondents 1 and 2 and the Village Administrative Officer have been arrayed as defendants. The Trial Court after considering the rival contentions putforth on either side has granted the reliefs of declaration and permanent injunction. Since in Original Suit No.104 of 2010, a declaratory decree has been granted in respect of Survey No.49/29, it is needless to say that the second respondent is not competent to issue the impugned notice and therefore the same is liable to be quashed.

4.In fine, this writ petition is allowed without costs and the impugned notice dated 15.07.2016 issued by the second respondent is quashed. Consequently, connected Miscellaneous Petition are closed.

sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

1.The District Collector,
Sivagangai District, Sivagangai.

2.The Tahsildar,
Devakottai Taluk Office,
Devakottai Taluk, Sivagangai District.

+1cc to Mr.P.Muthusamy, Advocate, SR.No:8719

+1cc to Spl. Government Pleader, SR.No:8361

smn

AE/CM MSA/SAR1/20.02.2017/2P/5C

ORDER MADE IN
W.P (MD) No.1640 of 2017
and
W.M.P (MD) Nos.1329 and 1330 of 2017
14.02.2017