



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.P.(MD)No.18380 of 2017

and

W.M.P(MD)No.14818 of 2017

K.S.A.Durairaj

: Petitioner

.vs.

1. The District Collector,
Dindigul.
2. The District Revenue Officer,
Dindigul.
3. The Tahsildar,
Vedasandur,
Dindigul District.
4. The Revenue Inspector,
Kovilur,
Vedasandur Taluk,
Dindigul District.
5. Kovilur Panchayat,
represented by the Special Officer,
(Block Development Officer),
Kovilur, Vedasandur Taluk,
Dindigul District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorari calling for the records pertaining to the impugned orders issued by the Third Respondent in Proceedings No.Nil, dated 19.09.2017 and the proceedings of the Fourth Respondent in No.Nil, dated 29.08.2017 and to quash the same.

For Petitioner

: Mr.P.Jegadeesh
for M/s.R.Subramanian

For Respondents

: Mr.T.R.Janarthanan
Additional Govt.Pleader



O R D E R

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

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This Writ Petition has been filed seeking issuance of a Writ of Certiorari calling for the records pertaining to the impugned orders issued by the Third Respondent in Proceedings No.Nil, dated 19.09.2017 and the proceedings of the Fourth Respondent in No.Nil, dated 29.08.2017 and to quash the same.

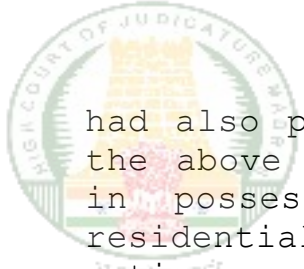
2.Heard both sides.

3.By consent, the main Writ Petition itself is taken up for final disposal.

4.According to the Petitioner, he is a native of Vembur Village and running a small grocery shop in his village. He is also selling fertilizers and seeds to the agriculturists. He along with his paternal uncle's son Jeyaraj had purchased a plot measuring 3605 sq.ft. in their village by way of two registered sale deeds, dated 27.7.1961 and they have constructed two houses and they are residing there.

5.The Petitioner's village is an ancient village and the land in question is a 'Natham' Land. The Fifth Respondent had assessed the property-tax for the building in question and that the Petitioner is paying the said property-tax, besides remitting the electricity charges for the building. About 15 years back, the Petitioner had constructed a go-down in the southern portion of the property and using the same for storing his goods.

6.When that be the facts situation, he received a proceedings, dated 26.07.2017 from the Third Respondent/The Tahsildar, Veda sandur Taluk, Dindigul District, stating that he had made encroachments in the Natham S.No.1285/5 and constructed the Go-down. Also, the impugned proceedings pointed out that the action was based on the legal notice issued by the Advocate. Immediately, he verified the revenue records and was shocked to know that during UDR Survey, the Plot purchased by the Petitioner and one Jeyaraj was classified as S.Nos.1285/3, 1285/4 and 1285/5. The authorities had wrongly classified the area on the southern side as 'street' and made a sub-division as S.No.1285/5. Further, during the UDR Survey, numerous mistakes were committed by the authorities concerned and the Government had issued Orders permitting the public to approach the concerned District Revenue Officers, if any error is committed during UDR Survey. Therefore the Petitioner had preferred an appeal before the Second Respondent for correcting the mistakes. In fact, the Petitioner



had also purchased the property situated on the western side of the above property bearing New S.Nos.1285/1 and 1285/2 and he is in possession and enjoyment of the same by constructing residential houses. He had also put up concrete floor on the entire vacant land and is in exclusive possession of the same.

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7.It comes to be known that on the basis of the some of the business rivals of the Petitioner, a legal notice was issued to him on 26.7.2017 through Advocate and based on the same, the impugned proceedings were initiated. He sent a reply to the said legal notice on 11.08.2017 and also sent a representation to the First Respondent. The First Respondent had directed the Third Respondent to make a spot inspection and to take action by considering his contentions. .

8.Continuing further, the Petitioner has received a notice, dated 29.8.2017 under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and the grievance of the Petitioner is that the Fourth Respondent even without following the directions issued by the District Collector, had issued the impugned notice in question. He sent a reply on 8.9.2017 explaining his stand. However, no further orders were passed by the Fourth Respondent. In the meanwhile, on 19.09.2017 from the Third Respondent, the Petitioner had received a notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, in a printed format, without even referring to the contentions raised by him in his reply, dated 11.08.2017 and 08.09.2017.

9.In reality, the Third Respondent/The Tahsildar, Veda sandur Taluk, Dindigul District had called the Petitioner to remove the go-down within 15 days. It appears that the Respondents 3 and 4 had not even conducted any enquiry and without considering his reply, had hurriedly passed a non-speaking order in a printed format. As the impugned order, dated 19.09.2017 is ex-facie illegal one, the Petitioner has filed the present Writ Petition before this Court.

10.It transpires that in the impugned notice, dated 19.09.2017 issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, the nature of the land is mentioned as Natham, Survey Number as S.No.1285/5, Street in Vembur, the total extent is mentioned as 0.00.90 hectares and the encroachment / enjoyment area in occupation of the Petitioner is described as 0.00.24 hectare and the character of the land is mentioned as construction of the go-down and the same being in enjoyment of the Petitioner. In this connection, on a mere running of the eye over the contents of the impugned notice, dated 19.09.2017 issued under Section 6 of the 'Act', 1905, latently and patently indicates that the representation of the Petitioner, dated 11.8.2017 and the subsequent representation, dated 8.9.2017 were not adverted to by the Third Respondent/The Tahsildar, Veda sandur Taluk, Dindigul



Taluk. In short, the impugned notice, dated 19.09.2017 straight-away calls upon the Petitioner to vacate from S.No.1285/5 at Vembur Village within 15 days from the date of receipt of notice etc.

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11. It is to be noted that the Principles of Natural Justice require that a fair hearing must be given to the concerned, (including persons hearing, if the individual seeks for). Further, the place and date of enquiry are to be specified/mentioned, when an individual is called upon to explain his position. After receiving explanation/representation of the Petitioner, it is the bounden duty of the concerned authority namely, the Executive/Administrative Authority to look into the representation, both in substance and form and to take a final call in the subject-matter in issue by adverting to all the factual and legal pleas taken by the Petitioner, by meeting out the same. It cannot be gainsaid that the concerned authority is to pass a reasoned speaking order on merits, after following the Principles of Natural Justice by issuing notice, fixing the date and time of enquiry and also to hear the objections of others, who are interested, if any and to pass final orders within a reasonable time. Unfortunately, in the impugned notice, dated 19.09.2017 of the Third Respondent, un-erringly points out that the Petitioner's earlier representation, dated 11.08.2017 and subsequent representation, dated 8.9.2017 were not adverted to by the Third Respondent/The Tahsildar, Veda sandur Taluk, Dindigul Taluk in his impugned notice, dated 19.09.2017. As such, there appears to be a non-consideration of the afore-said two representations made by the Petitioner by the Third Respondent. Therefore, the impugned order, dated 19.09.2017 suffers from legal infirmities, material irregularities and patent illegalities in the eye of Law.

12. Viewed in that perspective, this Court sets aside the impugned notice, dated 19.09.2017 issued by the Third Respondent and directs the Third Respondent to take into account the objections/representations of the Petitioner, dated 11.08.2017 and 8.9.2017 and after providing necessary opportunity of personal hearing to the Petitioner as well as to others who are interested in the subject-matter of the land, as per the Principles of Natural Justice, is to pass necessary final orders, within a period of four weeks from the date of receipt of a copy of this order. Liberty is granted to the Petitioner to produce necessary documents to substantiate his case/in support his view, before the Third Respondent to take note of the same at the time of passing of final orders, so as to give a complete quietus to the controversies centering around the present subject-matter of the land.



13. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous petition is closed.

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Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Dindigul.
2. The District Revenue Officer,
Dindigul.
3. The Tahsildar,
Vedasandur,
Dindigul District.
4. The Revenue Inspector,
Kovilur,
Vedasandur Taluk,
Dindigul District.
5. The Special Officer,
Kovilur Panchayat,
(Block Development Officer),
Kovilur, Vedasandur Taluk,
Dindigul District.

+ 1 cc TO Mr. R. Subramanian, Advocate in SR No. 92266
+ 1 cc TO The Special Government Pleader in SR No. 92214

vsn

AE/SKN RSK/SAR4/26.12.2017/5P/8C

ORDER MADE IN
W.P. (MD) No. 18380 of 2017
and
W.M.P (MD) No. 14818 of 2017
11.12.2017