



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2017

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

W.P.(MD)No.18760 of 2017 and
W.M.P(MD)No.15136 of 2017

G.Ramasubramani : Petitioner

.vs.

1. The District Collector,
Madurai District, Madurai.

2. The Thasildhar,
Madurai North,
District Collectorate Building,
Madurai.

: 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 relating to the impugned notice dated 05.10.2017 on the file of the second respondent and quash the same.

For Petitioner : Mr.S.Poornachandran
For Respondents : Mr.M.Govindan,
Special Government Pleader

O R D E R

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

This Writ Petition has been filed seeking issuance of a Writ of Certiorari calling for the records relating to the impugned notice dated 05.10.2017 on the file of the second Respondent and quash the same.

2.Heard both sides. No counter-affidavit is filed on behalf of the Respondents.

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

4.According to the Petitioner, in the year 1994, he was appointed as a dealer of TANTEA at Madurai North Region as per the allotment order dated 30.09.1994. A space was allotted to the Petitioner for installation of a Bunk Shop in S.No.811/2 Alagar Kovil Road, Madurai. From the date of allotment order, the Petitioner is running a Tea Stall to sell the TANTEA products. A



Government Order in G.O.(2D) No.16 dated 12.06.1995 was also issued by the Environment and Forest Department.

5. The categorical case of the Petitioner is that the second Respondent came to his shop on 06.10.2017 and issued a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, calling upon him to show-cause as to why he should not be evicted from the said land. As a matter of fact, the Petitioner was directed to submit his explanation by the second Respondent, on or before 08.10.2017.

6. It is brought to the notice of this Court by the Learned Counsel for the Petitioner that the Bunk Shop of the petitioner in T.S.No.811/2 Alagar Kovil Road, Madurai, was totally demolished by the second Respondent on 09.10.2017 at 7.00 a.m.

7. At this stage, the Learned Counsel for the Petitioner informs this Court that the Petitioner had sent a reply dated 07.10.2017 addressed to the first Respondent/District Collector, Madurai, through registered post and produced a postal receipt to that effect.

8. On behalf of the Respondents, it is brought to the notice of this Court that the Petitioner's reply dated 07.10.2017, was not received by them.

9. A close scrutiny of the notice dated 05.10.2017 issued by the second Respondent/Tahsildhar, Madurai North, shows that the same was issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. Obviously, there is a reference to this Court's order dated 10.08.2017 passed in W.P.No.33537 of 2003 filed by one K.V.Baskaran against the Collector, Madurai District, Madurai and another. In the said order passed in W.P.No.33537 of 2003 dated 10.08.2017, this Court at Paragraph Nos.6 and 7 had observed the following:

"6. In the light of the observations made by the Full Bench and Division Bench of this Court and finding that the impugned orders issued are justified in terms of the above decisions and also taking into consideration the fact that the impugned orders have been issued by the second and first respondents only to protect the water course poramboke, on which the land in question stands, this Court finds no merit in the contentions of the petitioner. Hence, the writ petition is dismissed. No costs.

7. The encroachment of the petitioner in the property in question shall be removed by the respondents within a period of one week from the date of receipt of a copy of this order and the compliance report shall be submitted to the Registrar General of this Court forthwith, who shall place the same before me within one week from the date of receipt of the said compliance



report. The District Collector, Madurai and the Commissioner of Police, Madurai shall extend their support to remove the above said encroachment."

10. Indeed, the W.P.No.33537 of 2017 filed by K.V.Baskaran, relates to Door No.163, Alagar Koil Road, Ouotpost, Madurai - 625 002, comprised in Survey No.811/2, Thallakulam, Madurai North Taluk, Madurai measuring an extent of 0.06 cents.

11. Even though the Survey number of the present Writ Petition filed by the Petitioner (G.Ramasubramani) is the same one as that of the one seen in W.P.No.33537 of 2003 namely Survey No.811/2, Thallakulam, Madurai North Taluk, Madurai, measuring an extent of 0.06 cents, the door number of the present Writ Petitioner is different. It appears that the present Petitioner's Ward Number is 10, Block Number is 19 in T.S.811/2, the nature of the land is mentioned as 'Vaaikaal' measuring an extent of 0.0511.0 Acre and the enjoyment area is mentioned as 0.0100.0 sq. mts., and the nature of enjoyment of the property is mentioned as 'Tea Shop (Asbestos sheet).

12. Notwithstanding the fact that the Petitioner had submitted his objections/reply, to the notice issued to him under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, dated 05.10.2017 issued by the second Respondent and the Petitioner in fact had submitted his objections/reply through RPAD, the fact of the matter is, by the deadline fixed on 08.10.2017, the second Respondent would not have received the reply. Obviously, the second Respondent will receive the reply of the Petitioner dated 07.10.2017 either today namely 09.10.2017 or tomorrow at the latest.

13. The position of Law is that after receipt of explanation/reply furnished by the Petitioner, the Authority, namely, the second Respondent/Thasildhar, Madurai North, is to look into the same with an open mind that too in an unbiased and dispassionate manner and after providing necessary opportunity to the Petitioner, is to pass a reasoned speaking order on merits. In fact, the second Respondent at the time of passing orders in the subject matter in issue, is to adhere to all the factual and legal pleas if any raised by the petitioner in his objections/reply and after providing necessary opportunity, is to pass necessary orders.

14. It is brought to the notice of this Court that already a competent civil Court in I.A.No.510 of 2005 in O.S.No.761 of 2005, had granted the relief of temporary injunction, where the respondents are not parties to the said proceedings. Even though the present respondents in the Writ Petition are not parties to the said proceedings in I.A.No.510 of 2005 in O.S.No.761 of 2005, where an order of temporary injunction was granted, this Court is of the considered view, since the said order of temporary injunction is operating against the respondents therein in the suit, it is also to be taken into account by the second Respondent. Unfortunately, in



the present case, the same was not taken note of by the second Respondent/Thasildhar, Madurai North, Madurai, which has resulted in serious miscarriage of justice.

15. It cannot be gainsaid that the second Respondent is to adhere to the ingredients of the Tamil Nadu Land Encroachment Act, 1905 in a true letter and spirit. Only thereafter, the second Respondent is to take a calm, collective, cool and cucumber like action. But, before that, in the present case, the second Respondent has acted hastily without receiving the objections/reply from the Petitioner. As such, the impugned order bristles with legal infirmities and therefore, this Court in the interest of justice interferes with the said notice dated 05.10.2017 and sets aside the same. Consequently, this Writ Petition succeeds.

16. In fine, this Writ Petition is allowed. The impugned notice dated 05.10.2017 is hereby quashed. The second Respondent is directed to restore the Tea Bunk Shop of the petitioner in T.S.811/2Thallakulam, Madurai North Taluk, Madurai, which was demolished pursuant to the notice dated 05.10.2017, to its original position on or before 23.10.2017 and to report compliance to this Court by that time. The act of restoration shall be carried out by the second Respondent at his own costs, since this Court had found the act of demolition of the Tea Bunk Shop of the petitioner as a illegal one. Liberty is granted to the second Respondent to look into the reply/objection/representation of the Petitioner dated 07.10.2017 with a broad outlook and that too in an unbiased manner and the second Respondent shall after providing necessary opportunity to the Petitioner, is to pass a fresh order in the subject matter in issue, by adhering to the principles of natural justice in true letter and spirit. No Costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Madurai District, Madurai.
2. The Thasildhar,
Madurai North,
District Collectorate Building,
Madurai.

+ 1 CC TO Mr.S.POORNACHANDRAN, ADVOCATE IN SR No. 81989

PM

JS/SV-MMS/SAR-II : 10/10/2017 : 4P/4C

ORDER MADE IN

W.P. (MD) No.18760 of 2017 and

W.M.P (MD) No.15136 of 2017

09.10.2017