



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD) No.20823 of 2017

and

W.M.P. (MD) Nos.17109 an 17110 of 2017

R.Vellaiammal

: Petitioner

-Vs-

1.The District Collector,
Collectorate,
Dindigul District.

2.The Tahsildar,
Vedachandur Taluk Office,
Dindigul District.

3.The Executive Officer,
O/o. the Executive Officer,
Vedachandur Town Panchayat,
Dindigul District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned notice dated 25.10.2017 on the file of the Respondent No.2 and quash the same as illegal.

For Petitioner
For Respondents

: Mr.T.Lajapathi Roy
: Mr.M.Govindan,
Special Government Pleader

O R D E R

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

Mr.M.Govindan, Learned Special Government Pleader, takes notice for the Respondents.

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

Respondents.

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

4. According to the Petitioner, she is residing at Door No.9, Pampatti Street, Vedachandur Village, Vedachandur Taluk, Dindigul District. She had purchased the house property in Survey No.1886/16, Pampatti Street, Vedachandur Village, Vedachandur Taluk, Dindigul District on 12.04.1995, by means of a duly registered sale deed. She is residing in the said dwelling house from the year 1995 in a peaceful manner. There is an adjacent lane in Survey No.1886/17, which purportedly belongs to the third Respondent/Panchayat.

5. The stand of the Petitioner is that the lane in Survey No.1886/17 alone is an accessible pathway to enter into her house and she is using the same from time immemorial and laid a house door.

6. It comes to be known that one Sakunthala Ammal, W/o.Soma Sundaram Pillai filed a Civil Suit in O.S.No.158 of 1996 on the file of Learned District Munsif -cum- Judicial Magistrate, Vedachandur, against the Petitioner seeking a relief of 'declaration and injunction', in respect of Survey No.1886/17, which purportedly belongs to the third Respondent/Panchayat. An Advocate Commissioner was appointed and the Advocate Commissioner had filed a report as if the Petitioner is only in enjoyment of the lane from time immemorial and not the Plaintiff therein. Placing reliance on the Learned Advocate Commissioner's report as well as the sketch of the Village Map, the said civil suit came to be dismissed by the Trial Court on 30.11.1998 with a positive observation in favour of the Petitioner. The said Judgment and Decree passed in O.S.No.158 of 1996 on the file of Trial Court has become final, since no Appeal has been filed against the said Judgment and Decree.

7. It transpires that one A.Muthusamy, S/o.Arumuga Gounder, the elder brother of the Petitioner, had sent a representation before the second Respondent stating that the Petitioner made an encroachment by laying the house door in the common lane and, therefore, requested for taking necessary action to remove the encroachment. Based on the said representation of the Petitioner's brother, the second Respondent had passed the order on 05.04.2017 stating that the Petitioner had encroached the common lane by laying a house door, which is situated in Survey No.1886/17, as pathway to her house which belongs to the third Respondent and hence, the third Respondent was directed to take necessary steps to remove the encroachment.

8. On 20.04.2017, the third Respondent/Panchayat passed the consequential order (of course, based on the order passed by the second Respondent) stating that the Petitioner had encroached the common lane by laying house door and the house door should be removed immediately or otherwise, encroachment, namely the house



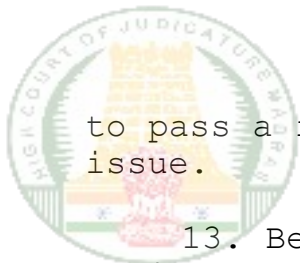
door will be removed by the Personnel of the third Respondent.

9. At this juncture, the Learned Counsel for the Petitioner submits that the orders passed by the second and third Respondents dated 05.04.2017 and 20.04.2017 respectively are highly arbitrary and illegal one, because of the reason that the Respondents had unilaterally and that too, in a self-serving fashion, had determined to remove the said encroachment by way of passing the orders, in negation to the Principles of Natural Justice as well as by not adhering to the ingredients of Sections 6(1) and 7 of the Tamil Nadu Land Encroachment Act, 1905.

10. The Learned Counsel for the Petitioner brings it to the notice of this Court that the two impugned orders dated 05.04.2017 on the file of the second Respondent and the consequential order dated 20.04.2017 on the file of third Respondent, were assailed by the Petitioner in W.P.(MD)No.6932 of 2017 before this Court and this Court, on 17.05.2017, had allowed the Writ Petition by setting aside both the impugned orders dated 05.04.2017 and 20.04.2017 respectively. Furthermore, this Court had remanded the matter before the second Respondent and directed the second Respondent in W.P.(MD) No.6932 of 2017 to issue notice to the Petitioner and the Parties concerned and to pass appropriate orders after affording an opportunity to the Petitioner and other parties concerned. Even 'the opportunity of personal hearing' was directed to be given to the Petitioner and other parties and the necessary orders were to be passed, within a period of eight weeks from the date of receipt of copy of the said order. While so, the second Respondent has issued the impugned notice dated 25.10.2017, without following the procedure contemplated in the Tamil Nadu Land Encroachment Act, 1905.

11. At this juncture, this Court has perused the impugned notice dated 25.10.2017 issued by the second Respondent/Tahsildar, Vedachandur (under Section 6 of the Tamil Nadu Land Encroachment Act, 1905) and is of the considered view that the said order does not either expressly or impliedly refer to the aspect of affording necessary opportunity to the Petitioner to air her point of view or her grievances. In this connection, this Court relevantly points out that the second Respondent/Tahsildar, under the Tamil Nadu Land Encroachment Act, 1905, firstly, is to issue notice to the concerned party/litigant under Section 7 of the Act, 1905.

12. A cursory perusal of the ingredients of Section 7 of the Act, 1905, latently and patently indicates that the notice is required to be served in the manner prescribed in Section 25 of the Tamil Nadu Revenue Recovery Act, 1864, or in such other manner as the State Government by rules or orders under Section 8 may direct. Ordinarily, in Law, when a competent authority issues a show cause notice to the concerned party/litigant, by adhering to the principles of Natural Justice, the said authority is to receive the objection/explanation of the concerned individual and thereafter, is



to pass a reasoned speaking order on merits in the subject matter in issue.

13. Be that as it may, as far as the present case is concerned, admittedly, no Section 7 notice, as envisaged under the Tamil Nadu Land Encroachment Act, 1905, was issued to the Petitioner and only Section 6 notice under the Act, 1905, was issued to the Petitioner on 25.10.2017. In this regard, the second Respondent had not followed the procedure prescribed under the Tamil Nadu Land Encroachment Act, 1905, prior to the issuance of Section 6 notice under Tamil Nadu Land Encroachment Act, 1905 to the present Writ Petitioner. Notwithstanding the fact that the second Respondent had issued only notice under Section 6 of the Act, 1905 and not issued the requisite notice at the earliest point of time under Section 7 of the Act, 1905, this Court directs that the notice dated 25.10.2017 (issued to the Petitioner by the second Respondent) be treated as a show cause notice as one issued under Section 7 of the Act, 1905, in which event, the second Respondent shall wait for the submission of explanation by the present Writ Petitioner. In this regard, the Petitioner is granted two weeks time from the date of receipt of copy of this order to file her explanation/objections/reply to the show cause notice dated 25.10.2017 and after the receipt of the explanation/objections/reply of the Petitioner, within the two weeks time adumbrated by this Court, the second Respondent is directed to pass a reasoned speaking order on merits, within a period of four weeks thereafter, taking into account all the factual and legal pleas to be raised by the Petitioner, at the time of personal hearing to be afforded by the second Respondent to the Petitioner, of course, after issuing notice to the Petitioner and others concerned and also after adhering to the Principles of Natural Justice. Till such time, it is abundantly made quite clear that the possession of the Petitioner in the subject land shall not be disturbed by anyone by any means whatsoever.

14. With the aforesaid observation(s)/direction(s), the Writ Petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The District Collector,
Collectorate,
Dindigul District.

2.The Tahsildar,
<https://hcservices.ecourts.gov.in/hcservices/>
Vedachandur Taluk Office,
Dindigul District.



3.The Executive Officer,
O/o. the Executive Officer,
Vedachandur Town Panchayat,
Dindigul District.

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+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No. 87299
+1cc to Mr.T.LAJAPATHI ROY Advocate in SR. No. 87002

SML

JS/KK/SAR.1/24.11.2017/5P-6C

Order made in
W.P. (MD) No.20823 of 2017
Dated: 13.11.2017