



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.20836 of 2017

and

W.M.P (MD) Nos.17120 and 17121 of 2017

K.Rajendran

: Petitioner

. vs .

1. The District Collector,
Ramanathapuram District,
Ramanathapuram.
2. The Revenue Divisional Officer,
Revenue Divisional Office,
Ramanathapuram.
3. The Tahsildar,
Taluk Office,
Thiruvadanai Taluk,
Ramanathapuram District.
4. The Executive Officer,
Thondi Town Panchayat,
Thondi, Ramanathapuram District.
5. The Village Administrative Officer,
53, Thondi Group, Thondi,
Thiruvadanai Taluk,
Ramanathapuram District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 5th Respondent, dated 7.11.2017 and to quash the same and consequently to forbear the Respondents from interfering with the peaceful possession and enjoyment of the Petitioner in the property situated in S.No.73, measuring an extent of 2 cents at Thondi, Thiruvadanai Taluk, Ramanathapuram District, except under due process of Law.



For Petitioner : M/s.C.Jeyaprakash
For Respondents : Mr.T.R.Janarthanan
1,3 and 5 Additional Govt.Pleader

For Respondents-4 : Mr.T.S.Mohammed Mohideen

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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 Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 5th Respondent, dated 07.11.2017 and to quash the same and consequently to forbear the Respondents from interfering with the peaceful possession and enjoyment of the Petitioner in the property situated in S.No.73, measuring an extent of 2 cents at Thondi, Thiruvadanai Taluk, Ramanathapuram District, except under due process of Law.

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 admission stage itself.

4.It is the version of the Petitioner that he is carrying on sea-food business by selling fish, crab etc., in a small-scale level. He is carrying on business in the land situated in S.No.73, measuring an extent of 2 cents at Thondi, Thiruvadanai Taluk, Ramanathapuram District and he had constructed an asbestos shed in the said land. Even though the said land is classified as 'Sea-shore Poramboke', Electricity Service Connection is provided in his name. He is also assessed with property-tax levied by the Town Panchayat, Thondi.

5.According to the Learned Counsel for the Petitioner, the Village Administrative Officer of 53, Thondi Group, Thiruvadanai Taluk, Ramanathapuram District had issued a Section 5 notice under the Tamil Nadu Land Encroachment Act, 1905 to the Petitioner requiring him to evict from S.No.73, Seashore Poramboke, measuring an extent of 3.00.80 Sq.mts. In the said notice, dated 07.11.2017, it is mentioned as 'Craft Company'. The Learned Counsel for the Petitioner vehemently contends that the Village Administrative Officer of 53, Thondi Group, Thondi, Thiruvadanai Group, Ramanathapuram District, in Law, has no jurisdiction or authorized to issue the impugned notice, dated 7.11.2017(issued under Section 5 of the 'Act', 1905) and as such, the said impugned notice is issued to the Petitioner by the Village Administrative Officer concerned without applying his mind in real and proper perspective.



6. In short, it is the submission of the Learned Counsel for the Petitioner that the Village Administrative Officer concerned has exceeded his jurisdiction and had issued the impugned notice, dated 7.11.2017 to the Petitioner without following the due process of Law.

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7. At this juncture, this Court, on perusal of Section 5 of the Tamil Nadu Land Encroachment Act, 1905, is of the considered view that the said Section under the caption of '**Liability of person unauthorisedly occupying land to penalty after notice**' mentioned only of the Collector, Tahsildar or Deputy Tahsildar for better appreciation of the subject-matter in issue. It is worthwhile for this Court to extract the ingredients of Section 5 of the Tamil Nadu Land Encroachment Act, 1905, which reads as under:

'Liability of person un-authorisedly occupying land to penalty after notice:

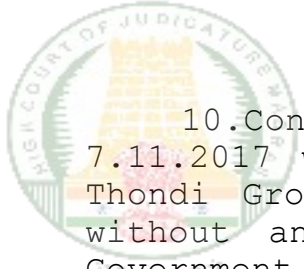
5. (Any person in any area other than the transferred territory liable to pay assessment under Section (shall also be liable at the discretion of the Collector, or subject to his control, the Tahsildar) to pay in addition by way of penalty--

(i) if the land be assessed land, a sum not exceeding five rupees, or when ten times the assessment payable for one year under Section 3 exceeds five rupees, a sum not exceeding ten times such assessment, provided that no penalty shall ordinarily be imposed in respect of the un-authorised occupation of such land for any period not exceeding one year;

(ii) if the land be un-assessed, a sum not exceeding ten rupees, or when twenty times the assessment payable for one year under section 3 exceeds ten rupees, a sum not exceeding twenty times such assessment.'

8. Section 5-B of the 'Act' refers to notice before proceeding under Section 5 or under Section 5-A of the Tamil Nadu Land Encroachment Act, 1905, Section 6 of the Act deals with 'Liability of person un-authorisedly occupying land to summary eviction, forfeiture of crops etc., 'Section 7 of the 'Act' pertains to 'prior notice to person in occupation'.

9. As far as the present case is concerned, it is not established on the side of the Respondents that the Village Administrative Officer of 53, Thondi Group, Thondi, Thiruvadanai Taluk, Ramanathapuram District is empowered by the State Government to issue Section 5 notice under the Tamil Nadu Land Encroachment Act, 1905. In reality, Section 5 of the said Act does not in anyplace refer to the Village. Even the reference made by the State Government in this behalf to the concerned Village Administrative Officer has not been produced before this Court on behalf of the Respondents.



10. Considering the fact that the impugned notice, dated 7.11.2017 was issued by the Village Administrative Officer of 53, Thondi Group, Thondi, Thiruvadanai Taluk, Ramanathapuram District without any authority or under any authorization by the State Government, this Court un-hesitantly comes to a resultant conclusion that the impugned notice, dated 7.11.2017 under Section 5 of the Tamil Nadu Land Encroachment Act, 1905 bristles with legal infirmity in the eye of Law. Therefore this Court to prevent aberration of justice and in furtherance of substantial cause of justice interferes with the said order, dated 7.11.2017 and sets aside the same.

11. In the result, the Writ Petition is allowed and the impugned order, dated 7.11.2017 passed by the 5th Respondent/The Village Administrative Officer of 53, Thondi Group, Thondi, Thiruvadanai Taluk, Ramanathapuram District is hereby set aside by this Court, for the reasons assigned in the present Writ Petition.

12. Before parting with the case, it is abundantly made quite clear that the allowing of the present Writ Petition by this Court will not preclude the Respondents to initiate necessary action against the Petitioner, of course, in the manner known to Law and in accordance with Law, after adhering to the Principles of Natural Justice. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

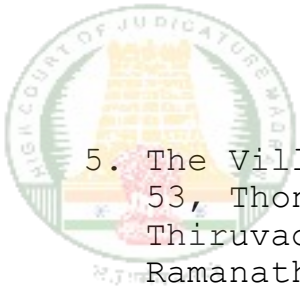
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Ramanathapuram District,
Ramanathapuram.
2. The Revenue Divisional Officer,
Revenue Divisional Office,
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Taluk Office,
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4. The Executive Officer,
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Thondi, Ramanathapuram District.



5. The Village Administrative Officer,
53, Thondi Group, Thondi,
Thiruvadanai Taluk,
Ramanathapuram District.

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+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 86852
+ 1 CC TO Mr.T.S.MOHAMED MOHIDEEN, ADVOCATE IN SR No. 86990
+ 1 CC TO Mr.S.MUTHUKUMAR, ADVOCATE IN SR No. 86838

VSN

TE/KP/SAR-4 : 24/11/2017 : 5P/9C

ORDER MADE IN
W.P.(MD)No.20836 of 2017 and
W.M.P(MD)Nos.17120 and 17121 of 2017
13.11.2017