



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2017

CORAM:

WEB COPY

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

W.P.(MD)No.20950 of 2017
and WMP (MD)No.17238/2017

R.Paulraj

: Petitioner

.vs.

The Tahsildar,
Rajapalayam Taluk,
Virudhunagar District.

: Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorari Calling for records pertaining to the impugned order passed by the Respondent in his proceedings in Na.Ka.A4/28157/2017 dated 07.10.2017 and quash the same as illegal.

For Petitioner

: Mr.V.Sasikumar

For Respondent

: Mr.T.R.Janarthanan,
Additional Government Pleader

O R D E R

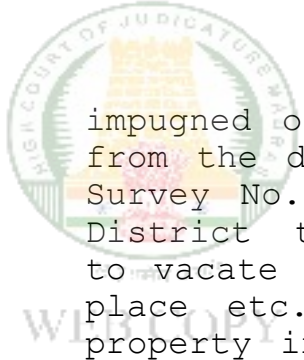
[Order of the Court was made by M.VENUGOPAL, J.]

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for records pertaining to the impugned order passed by the Respondent in his proceedings in Na.Ka.A4/28157/2017 dated 07.10.2017 and quash the same as illegal.

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

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

4.The Petitioner has questioned the Validity, Legality and Correctness of the impugned order/notice dated 07.10.2017 in Na.Ka.A4/28157/2017 passed by the Respondent/Tahsildar, Rajapalayam Taluk, Virudhunagar District, mainly contending that the said



impugned order/notice requires the Petitioner within fifteen days from the date of receipt of a copy of the notice, to vacate from Survey No.1074 of Puthur Village, Rajapalayam Taluk, Virudhunagar District the Government Temple Poramboke Land and in case, he fails to vacate from the subject property, he would be evicted from the place etc. The impugned order/notice also mentioned that the property in Survey No.1074 at Puthur Village would be confiscated and the same would be safeguarded and in this regard, Solapuram Firka Revenue Inspector is given the necessary powers thereto.

5. The Learned Counsel for the Petitioner refers to the earlier order passed by this Court in W.P(MD)No.9566 of 2017 dated 24.05.2017 (filed by the present Petitioner as Petitioner against the Tahsildar, Rajapalayam Taluk) Whereby and whereunder, this Court while setting aside the impugned order dated 13.05.2017 had remitted the subject matter in issue to the file of the Respondent for passing fresh order after considering the explanation submitted by the Petitioner dated 25.04.2017 and also the Petitioner was directed to provide with an opportunity of personal hearing, within a period of eight weeks from the date of receipt of a copy of the order.

6. The core plea taken on behalf of the Petitioner is that in spite of the fact that earlier, a direction was issued by this Court in W.P(MD)No.9566 of 2017, the Respondent had not considered the explanation of the Petitioner dated 25.04.2017, straightaway had passed the impugned order/notice requiring him to remove the encroachment at Puthur Village in Survey No.1074 and the notice also mentioned that the land as Government Temple Poramboke and from and out of the entire extent of 0.11.5 acres, the enjoyment portion is 120 sq. ft. and the encroachment is classified as 'bathroom attached with small tank'.

7. At this juncture, a perusal of the impugned order/notice of the Respondent dated 07.10.2017 issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, shows that the Petitioner was provided with a personal opportunity to air his personal views/grievances in the subject matter in issue and in this regard, earlier direction issued by this Court in W.P(MD)No.9566 of 2017 was violated by the Respondent.

8. At the risk of repetition, this Court points out that in W.P (MD)No.9566 of 2017 dated 24.05.2017, the Respondent was directed to pass fresh orders after consideration the explanation submitted by the Petitioner dated 25.04.2017 etc. However, the present impugned order dated 07.10.2017 issued by the Respondent suffers from legal infirmity viz., that the Respondent had not considered the explanation of the Petitioner dated 25.04.2017 and also not provided him with the opportunity of personal hearing as directed earlier by this Court in W.P(MD)No.9566 of 2017 dated 24.05.2017. Therefore, this Court on the simple ground alone interferes with the impugned order/notice of the Respondent dated 07.10.2017 and sets aside the same in furtherance of substantial cause of justice.



9. In fine, the Writ Petition is allowed and the impugned order dated 07.10.2017 is set aside by this Court for the reasons assigned in the present Writ Petition. Since the Petitioner's earlier explanation dated 25.04.2017 was not taken into account for consideration by the Respondent, before parting with the case, this Court directs the Petitioner to submit his fresh explanation in the subject matter in issue before the Respondent within a period of two weeks from the date of receipt of a copy of this order. Soon after the receipt of a copy of the fresh Representation/Explanation from the Petitioner, the Respondent shall look into the same and if he finds any substance in it, then, he has to advert to the factual and legal pleas raised in the said Representation/Objections/Remarks/Explanation and to pass a reasoned speaking order on merits, after affording opportunity of personal hearing to the Petitioner and others concerned if any concerning the subject matter in issue, of course, in the manner known to Law and in accordance with Law, within a period of four weeks thereafter. It is open to the Petitioner to raise all factual and legal pleas before the Respondent and to rely upon documentary evidence if any to support his claim. Till the fresh Representation/explanation of the Petitioner is disposed of, it is made clear that the Petitioner's possession shall not be disturbed in respect of the subject matter of land by anyone in whatsoever manner.

10. Accordingly, the present Writ Petition is allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

To

The Tahsildar,
Rajapalayam Taluk,
Virudhunagar District.

+One cc to Mr.V.Sasikumar, Advocate, SR.No.87368
+One cc to The Special Government Pleader, SR.No.87297

pm
RL/4C/2P/SV/MMS/SAR1/28/11/2017

ORDER MADE IN
W.P. (MD) No.20950 of 2017
14.11.2017