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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD) No.20980 of 2017

and

W.M.P. (MD) No.17257 of 2017

P.Arumugam

: Petitioner

-Vs-

- 1.The District Collector,
Virudhunagar District,
Virudhunagar.
- 2.The District Revenue Officer,
Virudhunagar District.
- 3.The Tahsildar,
Thiruchuli Taluk,
Virudhunagar District.
- 4.The Block Development Officer,
Narikudi Panchayat Union,
Virudhunagar District.
- 5.The Panchayat President,
Alagapuri Panchayat,
Virudhunagar District.
- 6.S.Muthukannu

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the fourth Respondent in his proceedings in ந.க.எண்.ஆ.1/1981/2017, dated 20.10.2017 delivered to the Petitioner on 06.11.2017 and quash the same as illegal and without jurisdiction and further, direct the Respondents 1 to 5 herein not to interfere with the Petitioner's peaceful possession and enjoyment of Survey No.374/2 (occupied Natham) in M.Pudhukulam Village, Alagapuri, Thiruchuli Taluk, Narikudi Via., Virudhunagar District.



For Petitioner : Mr.V.Meenakshi Sundaram,
For Mr.D.Nallathambi
For Respondents 1to3 : Mr.T.R.Janarthanan,
Additional Government Pleader
For Respondents 4&5 : Mr.A.K.Baskarapandian

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O R D E R

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

Mr.T.R.Janarthanan, Learned Additional Government Pleader, takes notice for the Respondents 1 to 3. Mr.A.K.Baskarapandian, Learned Standing Counsel, takes notice for the Respondents 4 and 5.

2. Heard the Learned Counsel for the Petitioner, the Learned Additional Government Pleader for the Respondents 1 to 3 and the Learned Standing Counsel appearing for the Respondents 4 and 5.

3. No counter is filed on behalf of the Respondents 1 to 5.

4. To avoid an avoidable delay, notice to the sixth Respondent is dispensed with by this Court, in the interest of justice.

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

6. The main grievance of the Petitioner is that in the order dated 31.08.2017 in W.P.(MD)No.15951 of 2016, this Court had directed the third and Fourth Respondents therein (the Tahsildar, Thiruchuli Taluk, Virudhunagar District and the Block Development Officer, Narikudi Panchayat Union, Virudhunagar District) to remove the encroachment after issuing notice to the encroachers and further, the statutory procedure was directed to be followed and the entire exercise was directed to be completed, within a period of two months from the date of receipt of copy of the said order. However, the impugned order/notice in the present Writ Petition in W.P.(MD)No.20980 of 2017 has been issued by the fourth Respondent to the Petitioner requiring him to remove the encroachment in M.Pudhukulam Group Survey No.373/42 before 03.11.2017, failing which, he was informed that the encroachment would be removed with the aid of the Police. Admittedly, the present Writ Petitioner (P.Arumugam) was not provided with an opportunity, as per the direction issued by this Court in W.P.(MD) No.15951 of 2016, dated 31.08.2017. Therefore, he is very much handicapped in not projecting his objections/views in regard to the purported encroachment alleged by the fourth Respondent/Block Development Officer, Narikudi Panchayat Union, Virudhunagar District. On this score alone, this Court holds that the present impugned order/notice dated 20.10.2017 of the fourth Respondent is



per se illegal and accordingly, this Court sets aside the said notice, in the interest of justice.

7. Inasmuch as this Court has set aside the impugned notice/order dated 20.10.2017 issued by the fourth Respondent, the fourth Respondent is directed to adhere to the directions issued by this Court in W.P.(MD)No.15951 of 2016, dated 31.08.2017, wherein, at Paragraph No.2, it was observed as under:-

"This Court directs the third and fourth respondents herein to remove the said encroachment after issuing notice to the encroachers. Statutory procedure shall be followed. The entire exercise shall be completed within a period of two months from the date of receipt of a copy of this order."

in true letter and spirit and to issue notice to the Petitioner afresh by providing necessary opportunity to the Petitioner and others concerned. By obtaining the objections of the Petitioner, within a period of two weeks from the date of receipt of copy of this order, the fourth Respondent shall pass a fresh speaking order on merits, within a period of four weeks thereafter, of course, after adhering to the Principles of Natural Justice. It is open to the Petitioner to raise all factual and legal pleas (including the aspect of jurisdiction of the fourth Respondent) before the fourth Respondent, who shall advert to the same and meet out/answer the same at the time of passing the final orders in the subject matter in issue. Till such final orders are passed in the subject matter in issue, the Petitioner's possession in the subject property (house) shall not be disturbed in any manner by anyone whatsoever.

8. The Writ Petition stands allowed as indicated above. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The District Revenue Officer,
Virudhunagar District.

3.The Tahsildar,
Virudhunagar District.



4.The Block Development Officer,
Narikudi Panchayat Union,
Virudhunagar District.

5.The Panchayat President,
Alagapuri Panchayat,
Virudhunagar District.

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No. 87610

+1cc to Mr.D.NALLATHAMBI Advocate in SR. No. 87656

SML

JS/SKN.RSK/SAR.2/27.11.2017/4P-8C

Order made in
W.P. (MD) No.20980 of 2017
Dated: 15.11.2017