



WEB COPY

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.21030 of 2017
and
W.M.P.(MD)No.17283 of 2017

M.Mareeshwaran : Petitioner

-Vs-

The Assistant Engineer,
PWD-WRO,
Vaipparu Basin Irrigation Section,
Virudhunagar,
Virudhunagar District. : Respondent

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 of the Respondent impugned order dated 03.11.2017 and quash the same and consequently, forbearing the Respondent in interfering with the running of two wheeler stands by the Petitioner in the premises of land belongs to Sri Maruthoor Ayyanaar Kovil in T.S.No.460/1 and T.S.No.459/1 in TTK.Krishnamatchari Road, Ward No.4, Fatima Nagar, near Aathupalam, Virudhunagar.

For Petitioner : Mrs.S.Mahalakshmi,
For Mr.P.Santhosh Kumar
For Respondent : Mr.T.R.Janarthanan,
Additional Government Pleader

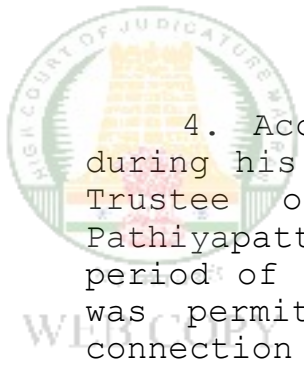
O R D E R

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

Mr.T.R.Janarthanan, Learned Additional Government Pleader, takes notice for the Respondent.

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

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



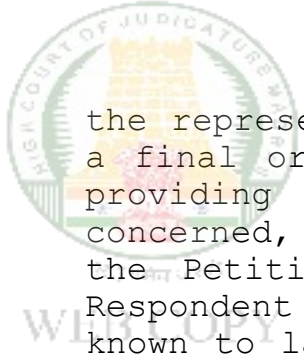
4. According to the Petitioner, his father (since deceased), during his life time, had entered into a lease agreement with the Trustee of 'Virudhunagar Poorviga Rajakula Agampadiyarkalluku Pathiyapatta Sri Maruthoor Ayyanaar Temple', dated 08.06.2012, for a period of 12 years. At the time of lease, the Petitioner's father was permitted to put up superstructure, to obtain electricity connection and to secure licence from the Municipality.

5. At this juncture, the Learned Counsel for the Petitioner proceeds to point out that the Petitioner's father (since deceased) had paid the licence fee and advance and the period of licence was one year from the date of 01.06.2016 to 31.05.2017 and the authority had directed to pay a fee of Rs.12,720/- and to deposit 50% of fee for running two wheeler stands, which was paid and deposited by him. In short, the Petitioner's father (since deceased) is running 'two wheeler stands' without any hindrance.

6. It comes to be known that the Petitioner, after the death of his father, paid the fees to renew the licence and subsequently, the licence was renewed for a further period from 01.06.2017 to 31.05.2018. The ground of attack made by the Learned Counsel for the Petitioner is that the impugned notice/order dated 03.11.2017 issued by the Respondent/Assistant Engineer, PWD-WRO, Vaipparu Basin Irrigation Section, Virudhunagar, Virudhunagar District, is an illegal one, because of the simple reason that the Petitioner was directed to remove the encroachment on the footing that such encroachments were made at 'Gowshika river bank' and within one week, the said encroachment was directed to be removed, failing which, on 14.11.2017, the Public Works Department/Water Resources Organization would remove the encroachment, etc.

7. In the instant case, the Petitioner had not submitted his objections before the Respondent, within one week from the date of impugned notice/order dated 03.11.2017. But the prime plea taken on behalf of the Petitioner is that the Petitioner was not provided with an adequate or enough opportunity to put forward his case and in fact, the clear-cut case of the Petitioner is that he has not made any encroachment in T.S.No.459/1.

8. Considering the fact that the Petitioner takes a plea that he was not provided with adequate/sufficient opportunity to put forward his grievances/objections before the Respondent for the impugned notice/order dated 03.11.2017, without traversing upon the merits of the matter and also not delving deep into the subject matter in issue and also bearing in mind that the Petitioner's father had entered into a lease agreement between himself and the Temple on 08.06.2012, at this stage, this Court directs the Petitioner to treat the notice of the Respondent dated 03.11.2017 as a show cause notice and to offer his explanation, within a period of two weeks from the date of receipt of copy of this order. The Respondent, after receiving the explanation of the Petitioner, within the time determined by this Court, is directed to look into



the representation with all seriousness and earnestness and to pass a final order, based on the merits of the case, of course, after providing necessary opportunity to the Petitioner and others concerned, 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 seek redressal of his grievances in the manner known to law and in accordance with law. Liberty is granted to the Petitioner to submit necessary documents to support his claim that he has not encroached in T.S.No.459/1, because of the reason that the lease agreement dated 08.06.2012 only refers to Survey No.460 alone [vide the lease agreement dated 08.06.2012 entered into between the Petitioner's father (during his life time) and the Temple]. Till final orders are passed by the Respondent in a fair, just, impartial and dispassionate manner, it is abundantly made clear by this Court that the possession of the Petitioner in the subject land shall not be disturbed by anyone by any means whatsoever.

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

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

The Assistant Engineer,
PWD-WRO,
Vaipparu Basin Irrigation Section,
Virudhunagar,
Virudhunagar District.

+One cc to M/s.S.Mahalakshmi, Advocate, SR.No.87355

+One cc to The Special Government Pleader, SR.No.87613

SML

RL/4C/3P/KK/SAR1/27/11/2017

Order made in

W.P. (MD) No.21030 of 2017

15/11/2017