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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.BASKARAN**

W.P.(MD)No.21301 of 2017

and

W.M.P(MD)No.17567 of 2017

S.Murugesan

: Petitioner

.vs.

The Executive Officer,
Alangudi Town Panchayat,
Pudukkottai 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 the records relating to the impugned order in Na.Ka.No.58/2014 A2, dated 7.11.2017 passed by the Respondent and to quash the same as illegal.

For Petitioner : Mr.A.N.Ramanathan
for M/s.M.Suresh
For Respondent : Mr.M.Rajarajan
Govt.Advocate

O R D E R

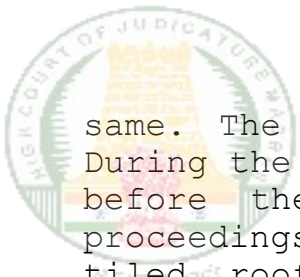
[Order of the Court was made by M.VENUGOPAL, J.]

This Writ Petition has been filed seeking issuance of a Writ of Certiorari calling for the records relating to the impugned order in Na.Ka.No.58/2014 A2, dated 7.11.2017 passed by the Respondent and to quash the same as illegal.

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.

4. According to the Petitioner, S.No.980 at Alangudi Taluk, Pudukkottai District, during the year 1970, his father who was in possession of the land had put up a hut and was residing in the



same. The Petitioner was born and brought up in the said hut. During the year 1987, his father had applied for planning permission before the Respondent and obtained planning permission in proceedings in Na.Ka.Vu.No.9/86-87, dated 23.6.1986 and put up a tiled roof house and they are residing in the said house.

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5.As a matter of fact, the Petitioner's father expired on 22.09.2001 and thereafter, all the revenue documents such as house-tax etc., stands in his name. The electricity connection was also mutated in favour of the Petitioner and from the year 1974 taxes are assessed and paid in their name.

6.The plea of the Petitioner is that there is a vacant land in their possession from time immemorial. In the said land, the Petitioner is running a small ice plant, which is a cottage industry and one Arunachalam asked the Petitioner to sell his land and house to him, so that he could promote the land behind his house for real estate, which was not acceded to by the Petitioner. Therefore the said Arunachalam developed enmity with the Petitioner. Since the said Arunachalam started to threaten the Petitioner to evict him from the house and land, the Petitioner was constrained to file a suit and in the meantime, the said Arunachalam filed W.P.No.10864 of 2014 for removal of encroachment claiming the Petitioner's property to be a public pathway and the said Writ Petition was disposed of on 31.08.2015 and in the said order, paragraph 5 runs as under:

'5.In such view of the matter, the Petitioner has to approach the competent authority, as per the said Government Order, for redressal of his grievance for eviction of encroachments. Accordingly, the Petitioner is directed to file a petition before the competent authority viz., the Tahsildar, Alangudi Taluk, Pudukkottai District, the third respondent herein. On receipt of such petition, the third respondent shall consider the same and pass appropriate orders, on merits, and in accordance with the said Government Order, within the time limit, as prescribed. '

7.At this juncture, the Learned Counsel for the Petitioner comes out with a plea that the plea in W.P.(MD)No.10864 of 2014, the present Writ Petitioner(S.Murugesan) was shown as R6 and in the preamble portion of the said W.P(MD)No.10864 of 2014, in order dated 31.8.2015, in respect of R6 and R7, it was mentioned as 'No Appearance'. Therefore, the present Writ Petitioner(in W.P.No.21301 of 2017) projects a legal argument that since this Court in W.P(MD) No.10864 of 2014, on earlier occasion, had not taken the objection of the present Writ Petitioner, who is figured as 6th Respondent in W.P(MD)No.10864 of 2014, the present Writ Petitioner is very much prejudiced because of the fact that the impugned final notice, dated 07.11.2017 was issued by the Executive Officer, Alangudi Town Panchayat, Pudukkottai District in and by which, the present Writ



Petitioner was required to remove the encroachment on or before 20.11.2017, in default, he was informed that in the presence of Revenue Department Officials and also with the assistance of the Police Department, the encroachment would be removed on or before 21.11.2017.

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8.The Learned Counsel for the Petitioner points out that the impugned order, dated 07.11.2017 passed by the Respondent is not in accordance with the statutory procedures prescribed under Encroachment Act and if the said procedures were adhered to, then the Petitioner would have demonstrate that he is in original possession of his land and by any means he cannot be termed as an 'encroacher'.

9.In this connection, the Learned Counsel for the Petitioner seeks in aid of the decision of the Learned Single Judge in **Tiruchirappalli City Municipal Corporation, represented by its Executive Authority Commissioner, Tiruchirappalli -vs. Senthilkumari reported in 2012-1-L.W 834** at Special Page 841 and 842 whereby and where-under at Para 22, it is observed as under:

"22. I would like to make a distinction between the summary eviction contemplated under Section 182 of the District Municipalities Act, with that of the legal action envisaged under the Tamil Nadu Land Encroachment Act, 1905. If there is any small encroachment of the road or there is any projection over the road, then Section 182 of the District Municipalities Act can be invoked and at that time also necessarily prior notice should be issued. However, in this case, the suit property is measuring an extent of 10.6 cents and in such a case, in my opinion, the proper course would be to resort to the provisions of the Tamil Nadu Land Encroachment Act, 1905, but that was not adhered to."

10.Finally, it is the submission of the Learned Counsel for the Petitioner that if the dwelling house of the Petitioner is directed to be removed by the Respondent on or before 21.11.2017, then it would cause undue hardship and irreparable loss to him and prays for allowing the Writ Petition on the simple ground that there has been a violation of Principles of Natural Justice, since the impugned order, dated 7.11.2017 was passed without issuing notice to him.

11.Per contra, it is the submission of the Learned Standing Counsel for the Respondents/Panchayat that the Executive Officer of the Respondent/Panchayat is empowered under Section 131 of the Tamil Nadu Panchayat Act, 1994 against the Petitioner. Further more, as per the decision taken in the Peace Committee Meeting, the encroachments would be removed on or before 20.11.2017 and furthermore, final notice was issued to the concerned persons.

<https://hcservices.ecourts.gov.in/hcservices/>

12.By way of reply, the Learned Counsel for the Petitioner contends that Section 131 of the Tamil Nadu Panchayat Act, 1994 is

not applicable to the present case and only Tamil Nadu District Municipalities Act, 1920 will apply.

13. It cannot be brushed aside that Section 131(2) of the Tamil Nadu Panchayats Act, 1994, prohibits obstructions in or over public roads etc., In reality, as per G.O.Ms.No.225, Rural Development(C-1), dated 15.10.1996, the Government had appointed Presidents of Village Panchayats to perform the functions of executive authority. Therefore, it is crystalline clear that the Village Panchayat is an Executive Authority and has got power to issue notice to the encroachers. However, it has not authorized to take physical possession of the property. Therefore, the Petitioner can invoke the ingredients of Sections 201, 202 and 219 of the Tamil Nadu Panchayat Act, 1994 and also competent to file a suit in Civil Court as per the decision in the case of **G.Radhakrishnan .vs. President, Edayakkottai Panchayat, Dindigul District** reported in **2008(1) MLJ 1132**.

14. Section 131 of the Tamil Nadu Panchayat Act can be pressed into service only when the construction was without any valid permission from the competent authority. As per Section 131(2) of the Act, 1994, it is the duty of the Executive Authority to initiate proceedings under the Act either suo-motu or on obtaining a report from the Village Administrative Officer in this regard to initiate proceedings under this 'Act' and to secure the removal of the encroachments. The later part of Section 131(2) of the Tamil Nadu Panchayat Act, 1994 assures the duty on the Revenue Officials designated therein to commence proceedings under the Tamil Nadu Land Encroachment Act, 1905 to remove the encroachment. Further, if there is failure on the part of the Executive Authority to secure the removal of encroachment within the period specified by the State Government by general or special notification. Apart from the above, the mere fact that the Revenue Officials are bestowed with a duty to initiate proceedings under the Tamil Nadu Land Encroachment Act, 1905 on the failure of the Executive Authority to secure the removal of encroachments within the prescribed period and by no stretch of imagination, it can be interpreted to mean that establishment of such power or obligation of the Executive Authority of the failure to secure the removal of encroachment in or over the properties vested in the Panchayat.

15. In this connection, it may not be adverse to make a significant mention that in the decision of **U.Angamuthu .vs. The Commissioner, Tiruchirappalli** reported in **2006 (4) MLJ 517 Madras**, it is inter-alia observed that all roads are to be public streets and will vest with the Municipality and therefore the Commissioner has got powers to order eviction.

16. As far as the present case is concerned, it is quite evident that the present Writ Petitioner (in W.P(MD)No.21301 of 2017) was shown as Sixth Respondent in W.P.No.10864 of 2014 where this Court had ultimately passed orders. Unfortunately, in W.P(MD)No.10864 of



2014, no notice was issued to the Respondents 6 and 7 therein, which had resulted in miscarriage of justice, according to the plea taken by the Learned Counsel for the Petitioner.

17. Considering the fact that present Writ Petitioner, on earlier occasion, in W.P(MD)No.10864 of 2014, was not issued with notice(R6 and R7), this Court considering the impugned notice dated 07.11.2017 of the Respondent, is of the earnest opinion that the Petitioner ought to be heard by the Respondent/The Executive Officer, Alangudi Town Panchayat, Pudukkottai District by putting forward his representations/objections/remarks raising all factual and legal pleas and it is the duty of the Respondents to pass necessary final orders on merits by applying his judicial thinking mind, of course, in the manner known to Law and in accordance with Law. For submitting the representation/objection, ten days time was granted to the Petitioner from the date of receipt of a copy of this order. Soon after the copy of the representation/objection / remarks of the Petitioner within the time adumbrated by this Court as stated supra, the Respondents thereafter is directed to pass necessary orders in the subject matter in issue within a period of three weeks thereafter, after affording an opportunity of hearing to the Petitioner and others concerned, if any, by following the Principles of Natural Justice and till final orders are passed in the subject-matter in issue, the Petitioner shall not be disturbed from the possession of the subject-matter property, in any manner whatsoever by any one.

18. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Executive Officer,
Alangudi Town Panchayat,
Pudukkottai District.

+ 1 CC TO Mr.M.SURESH, ADVOCATE IN SR No. 88102

VSN

TE/KP/SAR-3 : 04/12/2017 : 5P/3C