



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2017

CORAM:

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

W.P. (MD) No.22003 of 2017

and

W.M.P (MD) No.18308 of 2017

Karuppasamy

: Petitioner

.vs.

1. The Commissioner,
Karungulam Panchayat Union,
at Seithunganallur,
Thoothukudi District.

2. Alantha Village Panchayat,
Rep. by Special Officer/President,
Karungulam Panchayat Union,
Thoothukudi District.

: Respondents

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 final notice issued by the 1st Respondent in A4/2092/2016 dated 24.11.2017 insofar as the Petitioner is concerned and quash the same as illegal.

For Petitioner	: Mr.K.Gurunathan for M/s.G.Thalaimutharasu
For Respondents	: Mr.G.Muthukannan, Government Advocate

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 the records relating to the impugned final notice issued by the First Respondent in A4/2092/2016 dated 24.11.2017 insofar as the Petitioner is concerned and quash the same as illegal.



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

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

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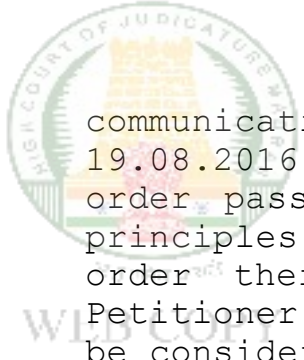
4. The Petitioner comes with a plea that he is having a building at Survey No.907/1A measuring an extent of 0.01.67 Hectares of land in the limits of the Second Respondent/Panchayat. He had put up a construction in the said property and in which, he is running shops like Tea Shop, Fresh Juices Shop, Cut Piece Cloth Shop, Audio Cassettes Shop and vacant land is also there. His property is situated in South-West direction in Survey No.907/1A and lying South-North. He had constructed a building and in fact, the said building is assessed to property tax by the Second Respondent Panchayat from the year 2014 - 2015 and Door Number was also assigned to his property viz., Door Nos.6/146 to 6/150. Right from the day of assessment of property tax, he is paying property tax to the Second Respondent/Panchayat.

5. The grievance of the Petitioner is that the building is not causing any hindrance to other users or public in general in the village. In fact, on 19.08.2016, the Block Development Officer/Commissioner, Karungulam Panchayat Union, Seithunganallur, Thoothukudi District, sent a communication to the Petitioner wherein he was directed to remove the encroachment put up over Survey No.907/1A within seven days from the date of receipt of communication. Also, on the very same day, the First Respondent issued a communication to the Second Respondent, to cancel the property tax assigned to the Petitioner's properties. In the said notice, names of two other persons were also mentioned viz., Chinnadurai and Shanmugaraj.

6. The Learned Counsel for the Petitioner submits that the Second Respondent invoked its power under Section 131(2) of the Tamil Nadu Panchayats Act, 1994, to remove the alleged encroachment over Survey No.907/1A. The Petitioner appeared before the Block Development Officer, who is the present First Respondent and submitted an explanation, even though no explanation was sought for in the proceedings dated 19.08.2016.

7. The grievance of the Petitioner is that the order of the First Respondent dated 24.11.2017 in straightaway requiring the Petitioner to remove the encroachment from Survey No.907/1A without providing any opportunity to him, is nothing but clear abuse of power and also a colourable exercise of power.

8. At this stage, the Learned Counsel for the Petitioner <https://hcservicescourtsiv.in/hcservices/> draws the notice of this Court that on earlier occasion, the Petitioner filed W.P(MD)No.17011 of 2016, where he challenged the notice of the First Respondent dated 19.08.2016 and the



communication sent by him to the Second Respondent dated 19.08.2016. In fact, this Court on 31.08.2017 held that the order passed by the First Respondent was without compliance of principles of natural justice and permitted to treat the impugned order therein as a show-cause notice and gave time to the Petitioner till 20.10.2017, to submit his explanation, which shall be considered by the First Respondent.

9. The core contention advanced on behalf of the Petitioner is that the final notice dated 24.11.2017 (in regard to the removal of encroachment) had not taken into account the objection of the Petitioner dated 16.10.2017 and the earlier order passed by this Court in W.P(MD)No.17011 of 2016 dated 31.08.2017 and as such, there is a violation of principles of natural justice. On this score alone, it is represented on behalf of the Petitioner that the impugned order dated 24.11.2017, is liable to be interfered with by this Court in furtherance of substantial cause of justice.

10. Admittedly, the Petitioner had submitted his detailed representation/objection dated 16.10.2017 addressed to the Block Development Officer, Karungulam Panchayat, Thoothukudi District and he had also under the caption 'Subject' made mention of the order passed by this Court in W.P(MD)No.17011 of 2016 dated 31.08.2017. In this connection, a cursory perusal of the contents of the Objection/Representation of the Petitioner dated 16.10.2017 addressed to the First Respondent indicates that the Petitioner had taken a plea that he is in enjoyment of the shops in question for more than fifty years and that, in respect of the said shops, he is paying tax to the Panchayat Union etc.

11. Per contra, it is the submission of the Learned Government Advocate for the Respondents that the village public of Savalaperi Village, Aalantha Panchayat, Srivaigundam Taluk, Thoothukudi District, had addressed a communication to the Honourable Chief Minister's Cell on 11.08.2016 praying for removal of encroachment in Government land and also, they have prayed for restoring the common pathway so as to enable the villagers to proceed to their land. In the said Representation, they had pointed out that since a Commercial Complex was constructed, for laying of the water pipeline, hindrance was caused and also they had taken a plea that the place/Land belongs to Highways Department was encroached and a Commercial Complex was constructed.

12. Added further, the Learned Government Advocate brings it to the notice of this Court that apart from the Petitioner, there are two other persons, who had encroached the Survey No.907/1A and had constructed a Hotel, Cement Shop, Coconut Shop, Saloon Shop, Cell-phone Recharge Shop, Cable Office and another Hotel etc.

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

13. A mere glance of the impugned final notice dated 24.11.2017 of the First Respondent issued to the Petitioner and



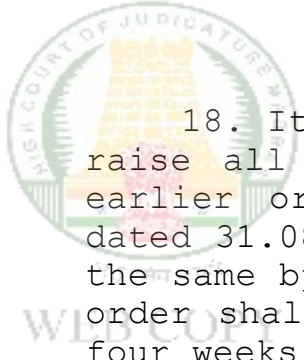
two others shows that there is a reference to Section 131(2) of the Tamil Nadu Panchayats Act, 1994.

14. At this stage, this Court aptly points out that a reading of Section 131(2) of the Tamil Nadu Panchayats Act, 1994 lucidly makes it clear that not only a power to remove the encroachments made in or over the properties vested with or belonging to the panchayat is conferred on the Executive Authority of the panchayat, but also a duty is severed upon the Executive Authority of the panchayat to obtain removal of such encroachments. To put it precisely, the encroachments under Section 131(2) of the Tamil Nadu Panchayats Act, 1994, candidly provides that it shall be 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 to remove such encroachments and secure the removal of encroachments.

15. Apart from the above, the latter part of Section 131(2) of the Tamil Nadu Panchayat Act, 1994, confessed a duty on the Revenue Officials concerned to initiate proceedings under the Tamil Nadu Land Encroachment Act, 1905, to secure the removal of such encroachments, if there is a failure on the part of the Executive Authority to secure the removal of encroachment within the period prescribed by the State Government by the general or special notification.

16. It is to be borne in mind that the Revenue Officials owe a duty to commence proceedings under the Tamil Nadu Land Encroachment Act, 1905 on the failure of Executive Authority to secure removal of encroachments within the time specified. By any stretch of imagination, it cannot be imagined to mean or to consider the extinguishment of such a power or obligation of the Executive Authority of the village panchayat to obtain the removal of encroachment in or over the properties vested with the panchayat.

17. Be that as it may, in view of the fact that the Petitioner had submitted his detailed Representation/Objection dated 16.10.2017 and admittedly, the same was not taken into account by the First Respondent at the time of passing of the final order, dated 24.11.2017, at this stage, this Court without going into the merits and demerits of the contents of the Representation/Objection of the Petitioner dated 16.10.2017 and also not expressing any opinion one way or other in respect of the subject matter in issue, simpliciter, directs the First Respondent to look into the Representation/Objection of the Petitioner dated 16.10.2017 in substance and in form and to proceed further in regard to the passing of final orders based on the Representation/Objection of the Petitioner afresh, of course, after providing necessary opportunity to the Petitioner and others concerned by adhering to the principles of natural justice.



18. It cannot be gainsaid that it is open to the Petitioner to raise all factual and legal pleas and also to make use of the earlier order passed by this Court in W.P(MD)No.17011 of 2016 dated 31.08.2017, before the First Respondent, who shall meet out the same by answering in a complete and comprehensive manner. The order shall be passed by the First Respondent within a period of four weeks from the date of receipt of a copy of this order.

19. Before parting with the case, liberty is granted to the Petitioner to furnish a copy of the Representation/Objection dated 16.10.2017 before the First Respondent and if the Petitioner submits a copy of the said Representation/Objection dated 16.10.2017, the same shall be received by the First Respondent without any haziness or hesitation and to pass the order in question within the time adumbrated by this Court as state supra. Till such time, possession of the Petitioner shall not be disturbed by anyone in whatsoever manner.

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

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner,
Karungulam Panchayat Union,
at Seithunganallur,
Thoothukudi District.
2. The Special Officer/President,
Alantha Village Panchayat,
Karungulam Panchayat Union,
Thoothukudi District.

+ 1 cc TO Mr.G.Thalaimutharasu , Advocate in SR No. 90774

pm

AE/MR KKR/SAR3/26.12.2017/5P/4C

**ORDER MADE IN
W.P. (MD) No.22003 of 2017
29.11.2017**