



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD) No.22100 of 2017

and

W.M.P (MD) No.18413 of 2017

Balasubramani

: Petitioner

.vs.

1.Tiruchirappalli Corporation,
represented by its Commissioner
Tiruchirappalli.

2.The Assistant Commissioner,
Srirangam Division,
Tiruchirappalli Corporation,
Tiruchirappalli.

: 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 pertaining to the impugned notice issued by the Second Respondent in Na.Ka.No.6399/2017/F1(Sri), dated 6.11.2017 and to quash the same.

For Petitioner

:M/s.R.Subramaniyan

For Respondents

:Mr.N.S.Karthikeyan

Standing Counsel

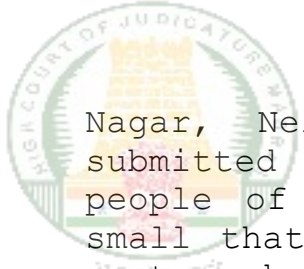
O R D E R

[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 pertaining to the impugned notice issued by the Second Respondent in Na.Ka.No.6399/2017/F1 (Sri), dated 6.11.2017 and to quash the same.

2.Heard both sides. No counter is filed on behalf of the respondents 1 and 2.

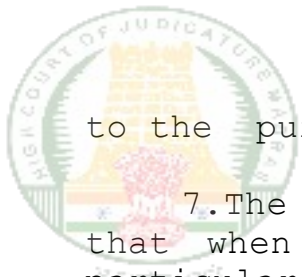
3.By consent, the main Writ Petition itself is taken up for final disposal.



Nagar, Nelson Road, Thiruvanaikovil, Trichy.. It is further submitted that 50 years back, the Petitioner and downtrodden people of that locality settled in the above place and put up small thatched construction in a piece of land measuring once cent each. They have also obtained electricity connection and has also paying the electricity charges. The authorities have also issued Ration Card, Aadhaar Card, Gas connection, Voter's Identity Card by mentioning the Door Number of their house at Sakthi Nagar, Anna Nagar, Nelson Road, Thiruvanaikovil. The Petitioner's father Palanichamy had also put up a small house in the same area and they are residing in the same place for several decades. Earlier in the year 1989, the Tamil Nadu Slum Clearance Board has promoted a Scheme to develop the area with the assistance of the World Bank Loan in order to provide basic amenities and the Petitioner's father had also availed the above benefit and paid his contribution and the Board has also issued receipt for the same. The petitioner's father has also obtained Ration Card, Aadhaar Card, Gas connection, Voter's Identity Card from the authorities concerned. It is further averred that behind Sakthi Nagar, there is an area called M.R.S.Nagar, where, politically influenced people are having vacant land and bungalows and they have also threatened the Petitioner and others to vacate their slum area. While so, on 6.11.2017, the Second Respondent has issued the present impugned notice directing the Petitioner and others to vacate the premises within seven days from the date of receipt of a copy of the impugned notice. Further, the land in which the Petitioner and others who had put up their constructions are not belonging to the Respondents/Corporation. However, on 16.11.2017 the Respondents threatened the Petitioner and others to evict from their premises within a period of one week, failing which, they will demolish their buildings.

5. When that be the fact situation, the Second Respondent /The Assistant Commissioner, Sri Rangam Division, Tiruchirappalli Corporation, Tiruchirappalli had served the impugned notice, dated 6.11.2017 directing the Petitioner to remove the encroachment within a period of seven days, failing which, the encroachment will be removed by the Corporation saddled with the expenses for removal.

6. The Learned Counsel for the Petitioner contends that the impugned notice/order, dated 6.11.2017 passed by the Second Respondent is illegal and arbitrary one because of the reason that there has been negation of Principles of Natural Justice. Indeed, the Petitioner was not provided with an opportunity to submit his explanation for the impugned notice, dated 6.11.2017 and as such, it is the plea of the petitioner that Section 258(2) of the Coimbatore City Municipal Corporation Act, 1981 which provides for an opportunity to the owner or occupier of the premises to make his objections in regard



to the purported encroachment.

7.The Learned Counsel for the Petitioner emphatically submits that when the power is vested with the authority under the particular 'Act' or Statute, then such power is to be exercised by the said authority in accordance with the procedure prescribed thereunder and in the departure from the prescribed procedure is impermissible one, in the eye of Law.

8.At this stage, this Court perused the impugned notice, dated 6.11.2017 of the Second Respondent/ The Assistant Commissioner, Sri Rangam Division, Tiruchirappalli Corporation, Tiruchirappalli addressed to the Petitioner, wherein, it was mentioned that the Petitioner had encroached an extent of 19 ft x 14ft by putting up construction in No.C.10, Sakthi Nagar, Anna Nagar, Nelson Road, Thiruvanaikovil, Trichy and further from the date of receipt of notice, within seven days, on his own responsibility, the encroachment will have to be removed and information will have to be furnished to the Office, failing which, the Second Respondent/Municipality would remove the same and recover the cost from him, since the encroachment was a hindrance to the Pedestrians and for traffic.

9.It is to be pertinently pointed out by this Court that the impugned notice, dated 6.11.2017 of the Second Respondent was issued straight-away by the second Respondent to the petitioner without providing an opportunity to the petitioner to submit his remarks/objections/response to the impugned notice, dated 6.11.2017 and in this connection, this Court pertinently points out that the Principles of Natural Justice are not 'edicts of a Statute in its abstract sense' by providing an opportunity to the Petitioner to put-forth his views will amount to a fair hearing. After receipt of reply/objections from the purported encroacher or from the concerned person, it is incumbent on the concerned authority to look into the said objections both in substance and in form and to consider the same by adhering to the points raised and to pass necessary orders in the manner known to Law and in accordance with Law. However, by a mere running of the eye on the impugned notice, dated 6.11.2017 passed by the second Respondent, latently and patently, the Second Respondent had not adverted to the Principles of Natural Justice of providing an opportunity of fair hearing to the Petitioner namely, in receiving his objections.

10.Per contra, the impugned order, dated 6.11.2017 was passed by the Second Respondent straight-away which in the considered opinion of this Court is *per se* an illegal one in the eye of Law

<https://hcservices.courts.gov.in> In that perspective, this Court interferes with the impugned order in Na.Ka.No.6399/2017/F1(Sri), dated 6.11.2017, and sets aside the same. Consequently, the Writ Petition succeeds.



12. In fine, the Writ Petition is allowed. The impugned Order dated 6.11.2017 passed by the Second Respondent is hereby set aside by this Court for the reasons assigned in this Writ Petition. Further, the Second Respondent is directed to issue fresh show -cause notice to the petitioner in regard to the purported encroachment of 19ft x 14ft in respect construction in No.C.10, Sakthi Nagar, Anna Nagar, Nelson Road, Thiruvanaikovil, Trichy within a period of two weeks from the date of receipt of a copy of this order. Soon after the receipt of a show-cause notice issued by the Second Respondent, then the Petitioner is directed to give a reply to the Second respondent within a period of two weeks thereafter. Thereupon, the Second Respondent is directed to look into the representation/reply of the petitioner within a period of ten days and later to pass a reasoned speaking order on merits, of course, after providing necessary opportunity to the petitioner and others concerned, if any, by following the Principles of Natural Justice. It is open to the Petitioner to produce necessary and relevant documents in support of his claim in respect of the property in issue and also to raise all factual and legal pleas and to seek appropriate remedy before the Second Respondent in accordance with Law. It is needless for this Court to make a mention that the Second Respondent is to pass the final orders in a just, fair, unbiased, impartial order and that too, in dispassionate manner within a period of two weeks thereafter, without being influence and untrammelled by any of the observations made by this Court in this Writ Petition.

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

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1. Tiruchirappalli Corporation,
represented by its Commissioner
Tiruchirappalli.
 2. The Assistant Commissioner,
Srirangam Division,
Tiruchirappalli Corporation, Tiruchirappalli.
- +1cc to Mr.R.SUBRAMANIAN, Advocate, SR. 90449

W.P. (MD) No.22100 of 2017
and

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