



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MRS.JUSTICE R.THARANI**

**W.P. (MD) No.23593 of 2017
and
W.M.P. (MD) No.19853 of 2017**

V.Vellaisamy

: Petitioner

Vs.

1. The District Collector,
Sivagangai District,
Sivagangai.
2. The District Revenue Officer,
Sivagangai,
Sivagangai District.
3. The Tahsildar,
Karaikudi Taluk,
Sivagangai District.
4. The Assistant Divisional Engineer,
Highways Department (Ka) (Ma) (Pa),
Karaikudi,
Sivagangai District.

5.C.Muthan

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the fourth Respondent herein in his proceedings No.564/2017/EVaA/dated 14.12.2017 and quash the same and consequently, direct the Respondents 1 and 3 herein to issue patta to the Petitioner.

For Petitioner

: Mr.K.Hemakarthiskeyan

For Respondents 1to4

: Mr.M.Govindan,
Special Government Pleader

**O R D E R**

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

The Petitioner has come forward with the present Writ Petition seeking for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the fourth Respondent herein in his proceedings No.564/2017/EVaA/dated 14.12.2017, quash the same and consequently, direct the Respondents 1 and 3 herein to issue patta to the Petitioner.

2. Heard the Learned Counsel for the Petitioner and the Learned Special Government Pleader appearing for the Respondents 1 to 4.

3. To avoid an avoidable delay, issuance of notice to the fifth Respondent is dispensed with, in the interest of justice.

4. No counter is filed on behalf of the Respondents 1 to 4.

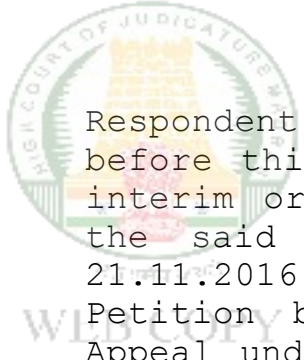
5. By consent, the main Writ Petition itself is taken up for final disposal at the stage of admission.

6. According to the Petitioner, he is residing at Kurunthampallam Village, Kalathur Group, Karaikudi Taluk, Sivagangai District and 50 years ago, his forefathers had constructed a house in Survey No.27/6 in Kurunthampallam Village, Kalathur Group, Karaikudi Taluk. He is paying property tax to Nattucherry/Kalathur Village Panchayat and he is residing in the said address without any hindrance from anywhere. He is paying 'B Memo' charges to the third Respondent. Also, he had made numerous applications for issuance of patta before the Respondents 1 to 3.

7. At this stage, the Learned Counsel for the Petitioner contends that the Government had issued an order in G.O.(D)No.854, Revenue Department, dated 30.12.2006, in which, it was stated that a person, who is in occupation of the Government for more than ten years, is entitled to obtain house patta and issued necessary guidelines for issuance of patta. Later, the Government had modified the earlier Government Order and reduced the eligibility criteria to 5 years from 10 years and issued G.O.Ms.No.34, dated 23.01.2008.

8. The Petitioner's case is that he is residing at the afore-stated address for more than 5 years and that he is entitled to obtain patta for the aforesaid land as per the above said Government Order. The third Respondent/Tahsildar, Karaikudi Taluk, Sivagangai District, had issued a notice under the provisions of the Tamil Nadu Land Encroachment Act, 1905, whereby and

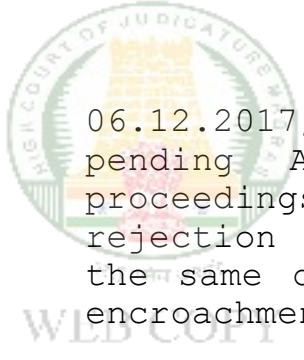
<https://hcservices.ecourt.gov.in/hcservices/writsecorder/> The Petitioner was directed to remove the encroachment and a final notice under Section 6 was issued by the third



Respondent on 19.11.2015 and in fact, he had questioned the same before this Court in W.P.(MD)No.21714 of 2015 and originally, an interim order of stay was granted by this Court and ultimately, the said Writ Petition was taken up for final disposal on 21.11.2016. Ultimately, this Court had disposed of the Writ Petition by issuing direction to the Petitioner to prefer an Appeal under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act 3 of 1905) within a period of 15 days from the date of receipt of copy of the order. Further, on receipt of the Appeal, the first Respondent therein was directed to pass necessary orders, within a period of eight weeks thereafter.

9. At this juncture, the Learned Counsel for the Petitioner proceeds to point out that the Petitioner had filed an Appeal against the order passed by the third Respondent under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 before the first Respondent/Appellate Authority, as per Section 10 of the Tamil Nadu Land Encroachment Act, 1905 on 19.12.2016 and after receipt of the same, the first Respondent had forwarded it to the second Respondent for issuance of patta. Indeed, the second Respondent had issued an Enquiry Notice to the Petitioner on 28.01.2017 and directed him to appear for an enquiry on 07.02.2017. The second Respondent, on appearance of the Petitioner, had completed the enquiry on 07.02.2017 and it appears that till date, no order was passed in this regard. In this connection, it is significant for this Court to make a relevant mention that the fifth Respondent (resident of Petitioner's Village) had enmity with the Petitioner and because of jealousy, he had filed a Writ Petition in W.P.(MD) No.16138 of 2017 and in the said Writ Petition, the Petitioner was arrayed as sixth Respondent and one Ganesan was shown as seventh Respondent. Before filing a Vakalat through his Learned Counsel, the said Writ Petition came to be disposed of by this Court with a direction being issued to the fourth Respondent to enquire into the matter and if any encroachment is noticed, the same shall be removed after notice to the Respondents 6 and 7 therein and other encroachers, if any and by following the statutory procedure and that the entire exercise was directed to be completed, within a period of three months from the date of receipt of copy of the order.

10. The first and foremost contention projected by the Petitioner is that without verifying the revenue records, the fourth Respondent/Assistant Divisional Engineer, Highways Department (Ka)(Ma)(Pa), Karaikudi, Sivagangai District, had issued a show cause notice dated 29.11.2017 to the Petitioner, wherein it was mentioned that he had encroached the District Main Road which runs Kottaiyur - Aranthangi (15/4) and an order was passed by this Court in W.P.(MD)No.16138 of 2017 and resting on the same, the Petitioner was directed to furnish his explanation to the notice, within seven days. Accordingly, the Petitioner furnished his explanation before the fourth Respondent on



06.12.2017, where he had narrated the afore-stated facts and the pending Appeal and further, prayed for dropping of the proceedings. Ultimately, the fourth Respondent passed the rejection order on 14.12.2017 and again, passed a final order on the same day, wherein the Petitioner was directed to remove his encroachment on or before 20.12.2017, etc.

11. The Learned Counsel for the Petitioner urges before this Court that the impugned notice/order dated 14.12.2017 of the fourth Respondent is an illegal one, besides, the same is in negation of the Principles of Natural Justice. It is represented on behalf of the Petitioner that the impugned notice/order dated 14.12.2017 was passed by rejecting the Petitioner's reply dated 06.12.2017 without offering any valid reason. The Learned Counsel submits that the fourth Respondent should have provided a personal hearing to the Petitioner before issuing the notice/order of encroachment and in this regard, the fourth Respondent has not adhered to the basic principle of '*Audi Alteram Partem*'.

12. The Learned Counsel for the Petitioner takes a stand that the Petitioner is entitled to patta in terms of the ingredients of G.O.Ms.No.34, dated 23.01.2008 issued by the Government and this aspect of the matter was not appreciated by the fourth Respondent in a proper and real perspective.

13. Per contra, it is the submission of the Learned Special Government Pleader appearing for the Respondents 1 to 4 that the action for removing the encroachment was taken by the fourth Respondent, in terms of the order dated 12.09.2017 in W.P.(MD) No.16138 of 2017 and in the impugned notice/order, it was specifically mentioned that the Petitioner had encroached upon the District Main Road (M-185) (Kalathur Group Kurunthampallam), which belongs to the Highways Department. As a matter of fact, in the impugned notice/order, it was mentioned that as per the order dated 14.12.2017 passed by the fourth Respondent, the Petitioner's representation/explanation dated 06.12.2017 was rejected by the fourth Respondent.

14. As far as the present case is concerned, the fourth Respondent has passed the impugned notice/order, only after considering the earlier order passed by this Court in W.P.(MD) No.16138 of 2017, dated 12.09.2017. Therefore, it is crystalline clear that the fourth Respondent has not taken any action in regard to the removal of encroachment on his own volition. When the Petitioner had encroached upon the District Main Road, which runs as Kottaiyur - Aranthangi (15/4), then the fourth Respondent, in the considered opinion of this Court, is entitled to take necessary action, of course, in accordance with law, as per Rules and Regulations. That apart, this Court, on going through the tenor and contents of the impugned notice/order dated 14.12.2017 passed by the fourth Respondent, is of the earnest opinion that



the fourth Respondent's order/notice dated 14.12.2017 is free from any legal infirmities. Viewed in that perspective, the Writ Petition fails.

15. In fine, the Writ Petition is dismissed leaving the parties to bear their own costs. Consequently, the connected miscellaneous petition is closed.

16. Before parting with the case, it is made quite clear that the dismissal of the present Writ Petition will not preclude the Petitioner to take such further course of action, soon after passing of the necessary orders by the second Respondent (in regard to the issuance of patta matter).

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Sivagangai District, Sivagangai.
2. The District Revenue Officer,
Sivagangai, Sivagangai District.
3. The Tahsildar,
Karaikudi Taluk,
Sivagangai District.
4. The Assistant Divisional Engineer,
Highways Department (Ka) (Ma) (Pa),
Karaikudi,
Sivagangai District.

+ 1 cc TO Mr.S.M.Sanjay , Advocate in SR No. 94271
+ 1 cc TO The Special Government Pleader in SR No. 94777

SML

AE/JC/SAR4/05.01.2018/5P/7C

**Order made in
W.P. (MD) No.23593 of 2017
Dated: 21.12.2017**