



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P(MD)No.4034 of 2017
and
W.M.P(MD)No.3209 of 2017

Pattan

.. Petitioner

Vs.

1. The District Collector,
Tirunelveli, Tirunelveli District.

2. The Tahsildar,
Manur Taluk,
Tirunelveli District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the notice issued by the second respondent in Na.Ka.A3/139/2017 dated 24.02.2017 and quash the same.

For Petitioner : Mr.R.Anand
for Mr.P.Samuel Gunasingh
For Respondents : Mr.K.Guru,
Additional Government Pleader

ORDER

[Order of the Court was made by A.SELVAM, J.]

This writ petition has been filed under Article 226 of the Constitution of India praying to call for records relating to the impugned order dated 24.02.2017 passed in Na.Ka.A3/139/2017 by the second respondent and quash the same, by way of issuing a writ of certiorari.

2.Mr.K.Guru, learned Additional Government Pleader, has taken notice for the respondents.



3.The learned counsel appearing for the petitioner has sparingly contended to the effect that the impugned notice dated 24.02.2017 has not been issued in accordance with law and under the said circumstances the present writ petition has been filed for quashing the same.

4.The learned Additional Government Pleader appearing for the respondents has contended to the effect that as per order passed in W.P(MD)No.16485 of 2015, the second respondent has issued the impugned notice and therefore the relief sought in the writ petition cannot be granted.

5.The learned counsel appearing for the petitioner has relied upon Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and the same reads as follows:

"Before taking proceedings under section 6 the Collector or Tahsildar or Deputy Tahsildar or Revenue Inspector or any authorised office or any other officer specified by the State Government in this behalf (not being an authorised office) (hereinafter referred to as the 'specified officer') as the case may be shall cause to be served on the person reputed to be in unauthorised occupation of land being the property of Government a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under section 6".

A mere reading of the provision of the said Section would clearly go to show that sufficient opportunity must be given to the petitioner. But the impugned notice is not in consonance with the provision of the said Section. Under the said circumstances, this Court is inclined to pass the following order.

6.In fine, this writ petition is allowed without costs and the notice dated 24.02.2017 passed in Na.Ka.A3/139/2017 by the second respondent is quashed. However the second respondent is at liberty to issue a fresh notice by invoking Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and take appropriate action. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar



To

1. The District Collector,
Tirunelveli, Tirunelveli District.

2. The Tahsildar,
Manur Taluk,
Tirunelveli District.

+ 1 CC TO Mr.P.SAMUEL GUNASINGH, ADVOCATE IN SR No. 13623
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 13762

SMN

TE/CM-MSA : 15/03/2017 : 3P/5C

ORDER MADE IN
W.P(MD)No.4034 of 2017 and
W.M.P(MD)No.3209 of 2017
09.03.2017