



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2017

CORAM:

**THE HONOURABLE MR.HULUVADI G.RAMESH,
THE ACTING CHIEF JUSTICE**

AND

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.(MD).No.4296 of 2017

and

W.M.P(MD)No.3450 of 2017

K.S.Ahmed : Petitioner

Vs.

1. The District Collector,
Tirunelveli District, Tirunelveli.

2. The Assistant Divisional Engineer,
State Highways,
Construction and Maintenance,
Senkottai, Tirunelveli District.

3. The Thasildar,
Senkottai,
Tirunelveli District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the impugned order made by the second respondent in Ku.No.128-1/2017/A2 dated 10.03.2017 and quash the same as illegal.

For Petitioner

: Mr.M.Ajmal Khan

Senior Counsel

for M/s.Ajmal Associates

For Respondents

: Mr.T.S.Mohammed Mohideen

Additional Government Pleader

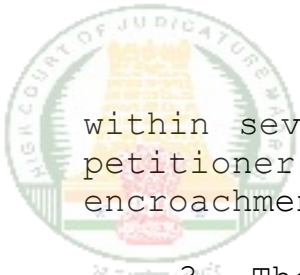
O R D E R

[Order of the Court was made by

The Hon'ble The Acting Chief Justice]

Heard the learned Senior Counsel for the petitioner and Mr.T.S.Mohammed Mohideen, learned Additional Government Pleader, who takes notice for the respondents.

2. Challenge in this Writ Petition is to the order dated 10.03.2017 passed by the second respondent herein, whereby and whereunder the second respondent herein directed the petitioner to submit his explanation regarding the encroachments made by him



within seven days, failing which, it would be construed that the petitioner does not have any objection for removal of encroachments.

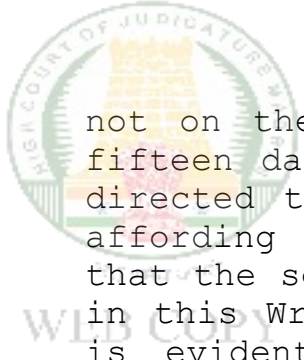
3. The case of the petitioner is that he is a resident of Vadakarai Keezhpidagai Village in Senkottai Taluk, Tirunelveli District. From the year 1974, he has been living in the said village by constructing a house in Survey Nos.660/1 and 654/1A. However, all of a sudden, without holding enquiry and without prior notice, by way of threat, the impugned notice has been issued by the second respondent, directing the petitioner to submit his explanation relating to encroachments made by him within seven days, failing which, it would be construed that the petitioner does not have any objection for removal of encroachments.

4. The learned Additional Government Pleader appearing for the respondents, on instructions, submitted that the property in question was measured and demarcated by the officials of the revenue and thereafter only, it came to know that the petitioner has encroached the land of the Highways and thus, the impugned notice has been issued directing the petitioner to show cause within seven days as to why the encroachments shall not be removed.

5. In our considered view, the question as to whether the petitioner has been in possession and enjoyment of the property in question is a matter to be determined by the second respondent herein.

6. Having regard to the rival contentions, we do not propose to go into the merits of the matter. Suffice it to direct the petitioner to treat the impugned notice dated 10.03.2017 as a show cause notice and to submit his explanation for the same.

7. Accordingly, the petitioner is directed to treat the impugned notice dated 10.03.2017 as a show cause notice and the petitioner shall submit his explanation to the second respondent within a period of fifteen days from the date of receipt of a copy of this Order, by enclosing a copy of this Order and also all the relevant documents, including the patta issued to him and on receipt of the same, the second respondent shall consider the same and pass appropriate orders on merits and in accordance with law within a period of three months from the date of receipt of explanation, after affording sufficient opportunity of hearing to the petitioner and also after earmarking boundaries, if need be. Till such time, no coercive steps shall be taken against the petitioner. The petitioner is also given liberty to submit a representation in this regard before the District Collector, Tirunelveli District, the first respondent herein, stating that he had constructed the house only on his own land and



not on the land of the Highways Department, within a period of fifteen days and on receipt of the same, the first respondent is directed to consider the same and pass appropriate orders, after affording sufficient opportunity to the petitioner. It appears that the second respondent has issued similar notices, as impugned in this Writ Petition, to several other persons as well and this is evident from the fact that the impugned notice contain a tabular column, giving names of individuals, the area and the type of encroachments made by them. Therefore, the above direction issued by this Court would equally apply to all the similarly situated persons, to whom such notices have been issued by the second respondent. The second respondent is directed to intimate the direction issued by this Court to the other individuals, to whom such notices have been issued, so that they will be in a position to submit their objections within the time stipulated.

8. The Writ Petition stands disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

sd/-

Assistant Registrar(RTI)

/ TRUE COPY /

Sub-Assistant Registrar

To

1. The District Collector,
Tirunelveli District, Tirunelveli.
2. The Assistant Divisional Engineer,
State Highways,
Construction and Maintenance,
Senkottai, Tirunelveli District.
3. The Thasildar,
Senkottai, Tirunelveli District.

+1 cc to M/S.Ajmal Associates, ADVOCATE, SR No. 14446

+1 cc to Special Government Pleader, ADVOCATE, SR No. 14705

ORDER MADE IN
W.P. (MD) .No.4296 of 2017
and
W.M.P (MD) No.3450 of 2017
14.03.2017

MKV-CM-MSA/17.3.2017/3P-6C