



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2017

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THE HON'BLE MR.JUSTICE A.SELVAM
and
THE HON'BLE MR.JUSTICE N.AUTHINATHAN

W.P (MD) No.4478 of 2017
WMP (MD) Nos.3599 and 3600 of 2017

R.Rajesh Kumar

... Petitioner

-vs-

1.The District Collector,
Kanyakumari District, Nagercoil.

2.The Tahsildar,
Kalkulam Taluk, Thuckalay,
Kanyakumari District.

3.The Executive Engineer,
PWD/WRO,
Gothaiyar Basin Division,
PWD Road, Nagercoil,
Kanyakumari District.

4.The Assistant Engineer,
W.R.O., Irrigation,
PWD, Nagercoil,
Kanyakumari District.

5.Consort Dias Jacobs

6.Saroja Jacobs

... Respondents

Writ Petition 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 bearing No.K013/132/2017 dated 27.02.2017 issued by the 4th respondent and quash the same.

For Petitioner

: Mr.G.R.Swaminathan for
Mr.T.Antony Arulraj

For RR - 1 to 4

: Mr.M.Govindan
Special Government Pleader

O R D E R

[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 27.02.2017 passed in No. K013/132/2017 by the fourth respondent and quash the same by way of issuing a Writ of Certiorari.

2.Mr.M.Govindan, learned Special Government Pleader has taken notice for the respondents 1 to 4.

3.Considering the nature of relief sought in the Writ Petition, notice need not be sent to the respondents 5 and 6.

4.The learned counsel appearing for the petitioner has contended that Survey Nos.85/1 and 84/10, Kalkulam village have been classified as mixed commercial/residential zone. But in the impugned notice, the same has been erroneously classified as water bodies and further the fourth respondent without issuing Form - II notice, has directly issued Form - III notice. Under the said circumstances, the present Writ Petition has been filed for getting the relief sought therein.

5.The learned Special Government Pleader appearing for the respondents 1 to 4 has contended to the effect that Survey Nos.85/1 and 84/10 have been classified as water bodies and the same have been surveyed and found certain encroachments. But the fourth respondent has erroneously issued the impugned notice (Form III), instead of issuing Form II notice.

6.Considering the rival submissions made on either side, this Court is of the view that the impugned notice has been erroneously issued in Form No.III instead of Form No.II. Since the impugned notice has been erroneously issued, the same is liable to be quashed.

7.In fine, this Writ Petition is allowed without cost. The impugned notice dated 27.02.2017 passed in No. K013/132/2017 by the fourth respondent is quashed. However, the fourth respondent is directed to issue a fresh notice as contemplated under law. Consequently, WMP(MD)Nos.3599 and 3600 of 2017 are closed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar



To

1.The District Collector,
Kanyakumari District,
Nagercoil.

2.The Tahsildar,
Kalkulam Taluk,
Thuckalay,
Kanyakumari District.

3.The Executive Engineer,
PWD/WRO,
Gothaiyar Basin Division,
PWD Road, Nagercoil,
Kanyakumari District.

4.The Assistant Engineer,
W.R.O., Irrigation,
PWD, Nagercoil,
Kanyakumari District.

+One cc to The Special Government Pleader, SR.No.15806

+One cc to Mr.T.Antony Arul Raj, Advocate, SR.No.15562

mj

RL/7C/3P/SKN/27.3.2017

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