



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2017

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE M.VENUGOPAL
and
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD) No.1568 of 2016
and
W.M.P. (MD) Nos.1329 and 1330 of 2016

Nallathambi

.. Petitioner

vs.

1.The Tahsildar,
Palani Taluk Office,
Dindigul District.

2.The Executive Officer,
Neikarapatti Town Panchayat,
Palani Taluk,
Dindigul District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to impugned proceedings in Na.Ka.No.361/2015/Aa, dated 15.12.2015 on the file of the Second Respondent and quash the same as illegal and arbitrary and consequently direct the Second Respondent to impose the house tax on the Petitioner's house which is situated in Survey No.1155/8, 14th Ward, K.Vellore, Neikarapatti, Palani Taluk, Dindigul District with the time limit that may be stipulated by this Court.

For Petitioner : Mr.A.D.Ganeshamoorthi

For R1 : Mr.T.R.Janarthananan
Additional Government Pleader

For R2 : Mr.A.Muthukaruppan

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]
Heard both sides.

2.According to the Petitioner, the Second Respondent/Executive Officer of Neikarapatti Town Panchayat, Palani Taluk, Dindigul District had issued a notice, dated 15.12.2015 in



Na.Ka.No.361/2015/Aa, to the Petitioner stating that he had encroached the Poramboke Land situated in Survey No.1155/2 of K.Vellore, and in the said place, a public toilet was to be constructed, for which, necessary proposals were submitted and the said toilet was to be constructed with that of Government Financial support. As such, the Petitioner was directed to remove the encroachment voluntarily by himself within seven days from the date of receipt of copy of the notice, failing which, the Second Respondent/Administration would remove the said encroachment and would recover the expenses incurred thereto, as per law.

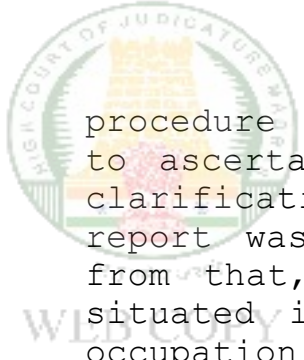
3.At this stage, the Learned counsel for the Petitioner submits that the Survey No.1155/8, measuring total extent of 0.00.80 Ares is classified as 'Natham Poramboke' in which, he had constructed a Thatched House before 30 years ago and enjoying the same. While that being the fact situation, he had applied for issuance of patta before the Revenue Department under the Landless People Scheme and on receipt of the same, the First Respondent was issued with an assignment patta on 23.11.1998. It appears that the Petitioner had obtained Family Ration Card, Voters Identity Card, Electricity Service Connection and enjoying the property in question till today.

4.The grievance of the Petitioner is that the impugned notice, dated 15.12.2015 of the Second Respondent was issued to the Petitioner, without providing necessary opportunity to the Petitioner to offer his explanation and in this regard, there is a Negation of the Principles of Natural Justice.

5.Per contra, it is the submission of the Learned counsel for the Second Respondent that after due verification of the Village records, there is ambiguous correction made in the Village Records in Survey No.1155/8 and the then Village Administrative Officer's signature finds a place nearer to the correction, that too, made in Pencil. It appears that after granting assignment patta, ordinarily, the copy of the same will be available in the Revenue Department, but there is no such document available on the file of the Revenue Department.

6.The stand taken on behalf of the Second Respondent is that the disputed property in Survey No.1155/8 is not assigned as 'Gramanatham' and the same was assigned in the Revenue Records as 'Government Poramboke'. Therefore, the authorities are empowered to initiate necessary action in regard to an encroachment process. That apart, the subject land was found to be an assigned land in Survey No.1155/8 measuring an extent of 0.01.0 Ares out of total extent of 87 cents containing several conditions.

<https://hcservices.ecourtservice.in/CaseDetails.aspx?CaseNo=Na.Ka.No.361/2015/Aa>
 7.The Learned counsel for the Second Respondent points out that the property is nothing but a 'Government Poramboke' pathway and therefore, the respondents are entitled to adopt necessary



procedure to remove the encroachment, if any. Moreover, in order to ascertain the nature of the property in Survey No.1155/8, a clarification was sought for from the Revenue Authorities and a report was forwarded by the First Respondent on 11.02.2016 and from that, it is clear that as on date, no house property is situated in Survey No.1155/8 and besides, these, no one is in occupation of the property.

8.It is the contention of the Learned counsel for the Petitioner that the impugned notice of the Second Respondent, dated 15.12.2015 was not served upon the Petitioner. Therefore, on the basis of Equity and Fair Play and even as a matter of Prudence, this Court, directs the Petitioner to treat the impugned notice of the Second Respondent, dated 15.12.2015 as show cause notice and further, the Petitioner is directed to offer his explanation, within two weeks from the date of receipt of a copy of this order. Soon after the receipt of explanation, submitted by the Petitioner, before the Second Respondent, the Second Respondent is directed to take into consideration, the contents of the objection/explanation/remarks of the Petitioner and further directed to pass necessary speaking orders on merits by providing necessary opportunity to the Petitioner and others concerned, by following the Principles of Natural Justice. It cannot be gain said that it is open to the Petitioner to raise all factual and Legal pleas before the authorities concerned and the Second Respondent shall meet out all the said points and to pass orders in question, within a period of four weeks thereafter. Till such time, the Respondent Nos.1 and 2 shall not disturb the possession of the Petitioner.

9.With the aforesaid observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

To:

- 1.The Tahsildar, Palani Taluk Office,
Dindigul District.
 - 2.The Executive Officer,
Neikarapatti Town Panchayat,
Palani Taluk, Dindigul District.
- +One cc to The Special Government Pleader, SR.No.83861
rj2
RL/4C/3P/MR/KKR/SAR4/6/11/2017