

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.4465 of 2018 and
W.M.P.Nos.5481 and 5482 of 2018

C.Shanmugam

.. Petitioner

Vs.

- 1.The District Collector,
Thiruvannamalai District,
Thiruvannamalai
2. The Rural Development Officer,
Thiruvannamalai District,
Thiruvannamalai
3. The District Revenue Officer,
Thiruvannamalai District
Thiruvannamalai
4. The Block Development Officer,
Thiruvannamalai District
Thiruvannamalai
5. The Deputy Superintendent of Police,
Thiruvannamalai District
Thiruvannamalai.
6. The Tahsildar,
Tahsildar Office,
Kilpenathur Taluk,
Thiruvannamalai District
7. The Village Administrative Officer,
Annadampallam Village & Post,
Kilpenathur (TK)
Thiruvannamalai District

..Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of Writ of
Certiorari to call for the records pertaining to the impugned
Order of the 4th respondent herein passed in Information Letter

in Na.Ka.1711/2015/VOO.A3, dated 16.02.2018 and quash the same.

For Petitioner : Mr.K.Gangadaran

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader

O R D E R

[Order of the Court was made by S.VAIDYANATHAN, J.]

The petitioner, has come forward with this Writ Petition for the second time seeking the prayer mentioned supra.

2. According to the petitioner, he has been paying necessary water tax charges and other dues to the authorities, but, however, the respondents' official are bent upon the removal of encroachment.

3. Earlier, the petitioner has come forward with the Writ Petition, viz., W.P.No.4859 of 2017 contending that the 3rd respondent has passed an order dated 30.01.2017 for the removal of the encroachment and sought a direction to quash the same. On the earlier round of litigation, it was contended by the petitioner that before the issuance of notice under Section 6 of Tamil Nadu Encroachment Act, 1905, [hereinafter referred to as 'Act, 1905'], notice under Section 7 of the Act, 1905 has been issued.

3. On a reading of the provisions of the Act, 1905, it is very clear that notice have got to be issued under Section 7 of the Act, 1905 and if there is no reply, orders will have to be passed under Section 6 Act, 1905. Taking note of the rival contention raised by the Learned Special Government Pleader to the effect that petitioner is having an effective alternate remedy under Section 10 of the Act, 1905 with a provision for Stay under Section 10-B of the Act, this Court, passed an order 18.08.2017 stating that the petitioner has got alternate remedy with provision to obtain interim order, the said Writ Petition was disposed of further holding that the writ petition was not maintainable and that liberty was given to the petitioner to file an Appeal under Section 10 of the Act, before the Appellate authority within a period four weeks and till such time, the respondents therein were directed to defer further decision in terms of the impugned notice dated 30.01.2017.

4. Admittedly, since there was no appeal preferred, the present impugned notice has been issued. Challenging the same, the petitioner contended that the notice has been issued on 16.02.2018 which has been served on him only on 20.02.2018 at

3.00 P.M. and that without affording sufficient time / opportunity, the petitioner was asked to remove the residential building. The petitioner cannot contend that he was not given time, the reason is, the petitioner has not preferred an Appeal and hence the respondent has issued notice, which is impugned in the Writ Petition asking the petitioner to remove the encroachment, failing which, the encroachments will be removed by the authority.

5. The petitioner, who is a violator and not used the opportunity, which was earlier granted by this Court, cannot come forward and contend that he was not heard and seek protection contending that within 24 hours steps are taken to demolish the building.

6. Considering the facts and circumstances of the case, this Court, is of the view that 'Principles of Natural Justice' has been complied with, more so, this Court has granted four weeks time, and the earlier order is dated, 18.08.2017, therefore, this Court, is of the view that the petitioner will not be entitled to any relief in this Writ Petition and the same is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

7. Before parting with the case, it is made clear that the officials are directed to remove the encroachment within a period of one week from the date of receipt of copy of this Order, if not already removed. If the Concerned Officer fail to take action within the time stipulated, it is open to the Government to initiate disciplinary action against the Officials, who are responsible for not taking action with regard to removal of encroachment.

-Sd/-

Assistant Registrar

// True Copy // सत्यमेव जयते

Sub Assistant Registrar

To

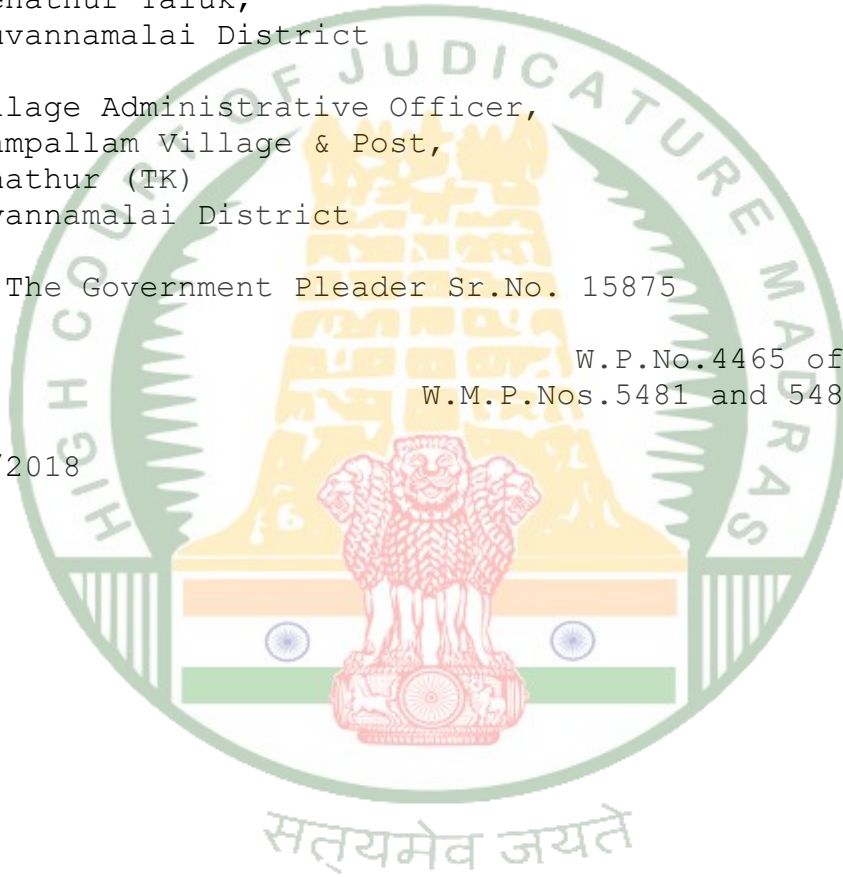
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+ 1 cc to The Government Pleader Sr.No. 15875

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CO (GMI)
RRI 26/03/2018



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