

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2018

CORAM:

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

W.P.No.18740 of 2017
and
W.M.P.No.20266 of 2017

Srinivasu ... Petitioner
Vs.

1. The Tahsildar,
Taluk Office,
Sulagiri Taluk,
Krishnagiri District.

2. Thimma Reddi ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to the impugned Notice, dated 12.07.2017 issued by the first respondent herein under Section 6 of the Act 3 of 1905 and quash the same.

For petitioner: Mr.K.Yasar Arafath
for Mr.K.Govi Ganesan

For respondents: Mr.A.N.Thambidurai, Spl.G.P. for R-1
M/s.V.Nicholas and N.E.A.Dinesh for R-2

ORDER

(The Order of the Court was made by M.Venugopal, J)

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Certiorari to call for the records relating to the impugned Notice, dated 12.07.2017 issued by the first respondent herein under Section 6 of the Act 3 of 1905 and quash the same.

2. By consent of the learned counsel appearing for the parties, the Writ Petition is taken up for final disposal. Heard both sides and perused the materials available on record.

3. According to the petitioner, the land in Old S.F.No.81 Part, New S.F.No.106 situated in Vanamangalam Village, Sulagiri Taluk, Krishnagiri District, is a "Grama Natham" land and he had put up a small house measuring nearly 80 Sq.Ft. 30 years ago and residing there with his family consisting of one son and one daughter. It is further stated that the petitioner is a physically handicapped person and unable to do any work and he runs a small petty shop.

4. The stand of the petitioner is that during December 2016, because of heavy rains, trees fell down over his house and all of them were injured. As a matter of fact, the petitioner's house is assessed to property tax and he is promptly paying the said tax. Further, the electricity service connection is also granted to the said house.

5. Learned counsel for the petitioner pointed out before this Court that the petitioner, with a view to re-construct his house, had borrowed money from his well-wishers. When the petitioner started putting up construction, the second respondent had lodged a complaint before the Inspector of Police, Perigai Police Station to prevent the petitioner from putting up construction of his house.

6. The clear-cut plea of the petitioner is that "Grama Natham Lands" never vest with the Government and it is a community land specially for the purpose of putting up houses by the poor, most downtrodden people, etc. Furthermore, the second respondent is an affluent person and his main aim/intention is to grab the said land from the petitioner's physical possession. Indeed, the petitioner had addressed a representation, dated 04.02.2017 to the Chief Minister, Director General of Police, Tamil Nadu State Human Rights Commission, Deputy Superintendent of Police, Krishnagiri, the first respondent herein (Tahsildar), etc., and while reiterating the above facts, he requested them to take necessary action. The petitioner filed a Writ Petition in W.P.No.10096 of 2017, praying to consider his representation, dated 04.02.2017 and this Court, by order dated 24.04.2017, ordered "Notice of Motion" returnable in three weeks and the said Writ Petition is pending.

7. When that being the aforesaid position, the first respondent had issued the impugned notice, dated 12.07.2017, directing the petitioner to vacate from the aforesaid "Grama Natham". In fact, the petitioner's name is Srinivasu, however, in the said notice, his name was wrongly mentioned as Seenappa (a) Srinivasan. Besides this, the petitioner comes out with a stand that the impugned notice has been ordered without jurisdiction and there is no power for the first respondent/Tahsildar, Sulagiri to issue the impugned notice. Hence, the petitioner has filed the present Writ Petition before

this Court for the relief stated supra.

8. It is to be noted that as per Section 7 of the Tamil Nadu Land Encroachment Act, 1905, prior notice to a person in occupation is to be issued to a person/petitioner before initiating proceedings under Section 6 of the said Act.

9. In the instant case on hand, the first respondent/Tahsildar had only issued notice under Section 6 of the said Act. Although the petitioner's name was wrongly mentioned as aforesaid in the impugned notice, in reality, the authorities should issue only in the first place, the notice under Section 7 of the said Act to the petitioner, but in the instant case, such a procedure was not resorted to. Even though this Court is of the considered view that the impugned notice purportedly issued under Section 6 of the said Act, is construed to be a case of one issued under Section 7 of the said Act and for this impugned show cause notice, the petitioner is directed to offer/submit his explanation before the first respondent-Tahsildar within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the first respondent/Tahsildar is directed to look into such representation of the petitioner and after providing necessary opportunities of hearing to the petitioner and others concerned, if any, including the second respondent, who are involved in the subject matter in issue, reasoned speaking orders are to be passed on the merits of the matter, after adhering to the principles of natural justice. It is open for the petitioner to raise all factual and legal pleas that are available to him before the first respondent-Tahsildar, who is directed to meet out every point adverted to by the petitioner in his representation and thereafter, the first respondent shall pass the final orders in the subject matter in issue, within a period of two weeks thereafter. It is also open for the respective parties to produce necessary documentary evidence and the same may be taken into account by the first respondent at the time of passing the final orders.

10. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

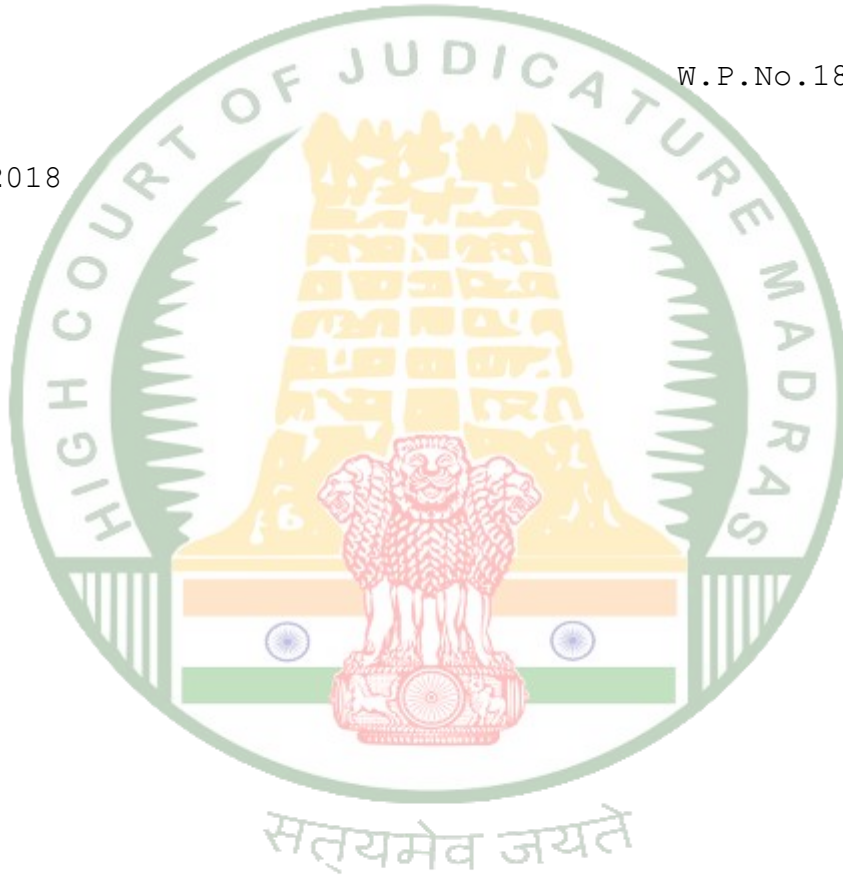
cs

To
The Tahsildar,
Taluk Office, Sulagiri Taluk,
Krishnagiri District.

+1 cc to M/s.K.Govi Ganesan Advocate sr 733
+1 cc to M/s.V.Nicholas Advocate sr 956
+1 cc to Govt Pleader sr 807

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