

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.29426 of 2018 and

W.M.P.No.34387 of 2018

H.Jinnah

.. Petitioner

Vs.

- 1.The District Collector,
Thiruvarur District.
- 2.The Revenue Divisional Officer,
Mannargudi, Thiruvarur District.
- 3.The Assistant Engineer,
Public Works Department,
Vennaur Basin Section - 2,
Muthupet, Thiruvarur District.
- 4.The Tahsildar,
Thiruduraipondi,
Thiruvarur District.
- 5.The Executive Officer,
Town Panchayat, Muthupet,
Thiruvarur District.
- 6.The Revenue Inspector,
Muthupet, Thiruvarur District.
- 7.The Inspector of Police (Law & Order),
Muthupet Police Station,
Thiruvarur District.
- 8.The Chairman,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
George Town, Chennai - 600 001.

.. Respondents

(R8 impleaded vide order dated 03.12.2018 made in W.M.P.No.37167 of 2018)

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the records pertaining to the two impugned notices both dated 25.10.2018 vide Na.Ka.No.991/2018/A1 issued by the 5th respondent and impugned notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 vide Na.Ka.No.Nil/2018 issued by the 3rd respondent and to quash the same.

For Petitioner : Mr.R.Abdul Mubeen
For Respondents : Ms.Thanga Vadhana Balakrishnan,
Additional Government Pleader (R1 to R7)
R8 - no appearance

O R D E R
(Order of the Court made by M.DURAISWAMY,J.)

The petitioner has filed the above Writ Petition to issue a Writ of certiorari to call for the records pertaining to the two impugned notices both dated 25.10.2018 issued by the 5th respondent and impugned notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 issued by the 3rd respondent and to quash the same.

2.It is the case of the petitioner that the 3rd respondent issued a notice dated 25.10.2018 under Section 6 of the Tamil Nadu Land Encroachment Act for removing the encroachment made by the petitioner.

3.It is also brought to the notice of this Court that the 5th respondent also issued a notice dated 25.10.2018 for removing the encroachment within 15 days' time.

4.In the notice dated 25.10.2018 issued by the 5th respondent, he has not mentioned under what provision the notice has been issued to the petitioner. The 3rd respondent, the Assistant Engineer, Public Works Department cannot issue a notice under Section 6 of the Tamil Nadu Land Encroachment Act. It is also settled position that prior to issuance of Section 6 notice, a notice under Section 7 of the Tamil Nadu Land Encroachment Act should be given to the encroacher. Even assuming that the 5th respondent had issued the notice under Section 7 of the Act on 25.10.2018, Section 6 order was passed by the 3rd respondent on the very same day.

5.In these circumstances, both the notices dated 25.10.2018 issued by the respondents 3 and 5 are liable to be set aside. Accordingly, the same are set aside. However, we grant liberty to the concerned authority to issue notice under Section 7 of the Act to the petitioner and proceed in accordance with law.

6.With these observations, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Collector,
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Public Works Department,
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- 5.The Executive Officer,
Town Panchayat, Muthupet,
Thiruvarur District.
- 6.The Revenue Inspector,
Muthupet, Thiruvarur District.
- 7.The Inspector of Police (Law & Order),
Muthupet Police Station,
Thiruvarur District.

+1cc to Mr.R.Abdul Mubeen, Advocate, S.R.No. 87815

+1cc to Mr.Thanga Vadhana Blalakrishnan, Advocate, S.R.No.87817

W.P. No.29426 of 2018 and
W.M.P.No.34387 of 2018

AD(CO)
GN(22/01/2019)