



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2018
CORAM

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND**

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) .No.2011 of 2018

and

W.M.P. (MD) .Nos.2231 and 2232 of 2018

Thavasipaul

.. Petitioner

Vs.

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Tahsildar,
Radhapuram Taluk,
Tirunelveli District.

3.Murugesan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the impugned order passed by the 2nd respondent in his proceedings Nil, dated 04.01.2018 and quash the same.

For Petitioner : Mr.K.Kulanthai Vikram

For R1 and R2 : Mr.V.R.Shanmuganathan
Spl. Government Pleader

O R D E R

[Order of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.K.Kulanthai Vikram, learned counsel appearing for the petitioner and Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents 1 and 2.

2.As per the direction of this Court dated 01.02.2018, the second respondent, viz., Mr.P.M.Mohamed Buhari, Tahsildar, Radhapuram, is present in Court and filed a status report. It is seen that the petitioner has encroached the water channel. However, there is no dispute that the petitioner owns patta land, but the allegation now appears to be that the water channel runs through the petitioner's land has been obstructed/blocked.



3. The petitioner would allege that the entire action initiated against him is on the basis of the third respondent, who is preparing a house lay-out and compelling to give a pathway. We do not wish to go into the controversy, at this juncture, as we are not satisfied with the manner in which, the second respondent has concluded the proceedings, despite pointed directions issued by the Division Bench in W.P.(MD).No.21356 of 2017, dated 21.11.2017, is wholly incorrect. The impugned proceedings issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, which is a printed format, does not disclose as to why the petitioner is termed as an encroacher. Therefore, the impugned proceedings calls for interference.

4. Accordingly, the writ petition is allowed. The impugned proceedings is set aside and the consequential notice issued under Section 7 of the Tamil Nadu land Encroachment Act, 1905, dated 01.11.2017 is also set aside and liberty is granted to the second respondent to proceed afresh strictly in accordance with the observations/directions issued by the Division Bench in its order dated 21.11.2017. It is open to the petitioner to raise all defences that are available to him on fact and law. As direction is issued to issue fresh notice by the second respondent, the petitioner should not put up any permanent construction in the land, which has been classified as water channel. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

To

1. The District Collector,
Tirunelveli District,
Tirunelveli.

2. The Tahsildar,
Radhapuram Taluk, Tirunelveli District.

+One cc to Mr.K.Kulanthai Vikram, Advocate, SR.No.51400

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RL/4C/2P/KK/SAR2/13/2/2018

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and
W.M.P. (MD).Nos.2231 and 2232 of 2018