

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 19.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**
AND
THE HONOURABLE MRS.JUSTICE **R.THARANI**

W.P.[MD].No.3319 of 2018
and
W.M.P(MD) Nos.3477 & 3478 of 2018

Chellapandi

: Petitioner

vs.

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Revenue Divisional Officer,
Sivakasi,
Virudhunagar District.
3. The Tahsildar,
Sivakasi Taluk,
Virudhunagar District.
4. The Revenue Inspector,
Sivakasi,
Virudhunagar District.
5. The Village Administrative Officer,
Viswanatham Village Panchayat,
Virudhunagar District.

6.Mr.S.Subburaj

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the third respondent in his Proceedings in Na.Ka.B1/2724/2016, dated 00.01.2018 and quash the same as illegal, arbitrary, violation of law.

For Petitioner

: No appearance

For R1 to R5

: Mr.V.R.Shanmuganathan
Special Government Pleader

**O R D E R**

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

Heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents 1 to 5.

2. The petitioner has filed this writ petition challenging the notice issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905. The primary objections raised by the petitioner are two fold. The impugned notice has been issued upon the direction issued by the Hon'ble Division Bench in W.P.(MD)No.12252 of 2016, in which the petitioner herein was impleaded as the sixth respondent and without notice to the writ petitioner, the writ petition was disposed of by order, dated 25.07.2017, issuing a positive direction to the Tahsildar, Sivakasi, to remove the encroachment. Therefore, it is submitted that the writ petitioner's valuable right to submit an objection to the proposed eviction, has been denied. Secondly, it is contended that without following the procedure under the Tamil Nadu Land Encroachment Act, 1905, and without issuing a notice under Section 7 of the Act, straightaway the third respondent has issued the notice under Section 6 of the Act, which is unsustainable. As could be seen from the order of the Hon'ble Division Bench, a positive direction was issued to the Tahsildar to get the encroachment removed forthwith, in any case, within one month from the date of communication of the order. The Court did not state that the Tahsildar to throw the encroachers out of the lands in question and it is incumbent upon the Tahsildar to resort to the procedure under the relevant Statute and then implement the direction. This having been not done and presumably, the Tahsildar was of the opinion that he should immediately take action and without issuing a notice under Section 7 of the Act, has issued the impugned order under Section 6 of the Act. Thus, the entire proceedings as done by the third respondent is flawed.

3. For the above reasons, the writ petition is allowed and the impugned notice dated 00.01.2018 is set aside and the third respondent is directed to issue a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, to the petitioner, within a period of one week from the date of receipt of a copy of this order, grant fifteen days time to the petitioner to submit his objection and considering the objection, pass a speaking order and proceed in accordance with law. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/



To

1. The District Collector,
Virudhunagar District,
Virudhunagar.

2. The Revenue Divisional Officer,
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Virudhunagar District.

3. The Tahsildar,
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4. The Revenue Inspector,
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Virudhunagar District.

5. The Village Administrative Officer,
Viswanatham Village Panchayat,
Virudhunagar District.

+ 1 cc TO M/S.G.M.Law Officer , Advocate in SR No. 49930

+ 1 cc TO The Special Government Pleader in SR No. 50274

akv

AE/KK/SAR4/09.04.2018/3P/8C

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