



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.02.2018

CORAM:

THE HONOURABLE MR.JUS TICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

W.P (MD) No.3350 of 2018
and W.M.P (MD) No.3506 of 2018

Srinivasan

.. Petitioner

Vs.

1.The District Collector,
Trichy District,
Trichy.

2.The Tahsildar,
Musiri Taluk,
Trichy District.

3.A.Ganesan

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order of the second respondent made in A6/4546/2016 dated 09.02.2018 and quash the same.

For Petitioner	: Mr.K.Govindarajan
For R1 and R2	: Mr.Dhayalan
	Government Advocate

O R D E R

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

Heard Mr.K.Govindarajan, learned counsel appearing for the petitioner and Mr.Dhayalan, learned Government Advocate appearing for the respondents 1 and 2.

2. In the light of the glaring error, which has occurred on account of non-compliance of the directions issued by this Court in W.P.(MD)No.2730 of 2018, dated 12.02.2018, we are inclined to take up the writ petition for disposal, dispensing with notice to the third respondent.

3. The petitioner earlier approached this Court and filed W.P.(MD)No.2730 of 2018, challenging the notice issued by the second respondent dated 24.01.2018, under the provisions of the Tamil Nadu Land Encroachment Act. The said writ petition was disposed of by

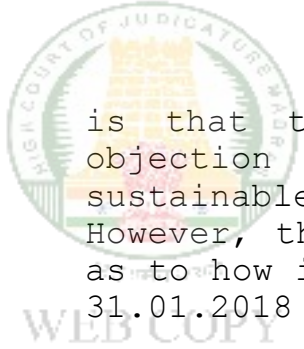


order dated 12.02.2018 and the operative portion is as follows:

"3.The petitioner is aggrieved by a notice issue under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. The petitioner would state that the impugned notice is without jurisdiction as the property in question is a Grama Natham property and therefore, the provisions of the Tamil Nadu Land Encroachment Act will not be applicable. Earlier, the petitioner had filed a writ petition in W.P.(MD)No.18795 of 2016, challenging the similar proceedings issued by the Tahsildar, Musiri Taluk, Karur District dated 14.09.2016. The said writ petition was disposed of by the Division Bench of this Court, by order dated 29.09.2016, directing the petitioner's representation to be taken up as an appeal under Section 10 of the Tamil Nadu Land Encroachment Act by the District Collector. However, the said order appears to have become unworkable, because the District Collector is not a party to the writ petition and the petitioner did not take any further steps in this regard. Now, the petitioner is aggrieved by the impugned notice.

4.In our considered view, the question of jurisdiction can very well be raised before the second respondent. The learned counsel for the petitioner has drawn our attention to the copy of the 'A' Register. Therefore, it is submitted that the second respondent cannot invoke the provisions of the Land Encroachment Act. All these contentions can very well be raised before the second respondent. More so when the impugned proceedings is only a show cause notice. Accordingly, while rejecting the prayer to quash the impugned notice, we direct the petitioner to submit his objection/reply to the notice to the second respondent within a period of 15 days from the date of receipt of a copy of this order and on receipt of the objection, the second respondent shall afford an opportunity of personal hearing to the petitioner, verify the records, which he may produce and pass orders on merits and in accordance with law, within a period of two weeks thereafter. Till then, the status quo which is prevailing as on today shall be maintained."

4. However, on the very same day, i.e. 12.02.2018, the impugned order has been passed, which is an order under Section 6 of the Land Encroachment Act, directing the petitioner to vacate and hand over possession of the land in question within a period of seven days. The impugned order has been passed without taking into consideration the order passed in the earlier writ petition and that will be sufficient to set aside the impugned order. One more aspect



is that the impugned notice does not disclose as to how the objection given by the petitioner dated 31.01.2018 is not sustainable. The impugned order is a statutory form under the Act. However, the second respondent is required to pass a speaking order as to how in his opinion the objection given by the petitioner dated 31.01.2018 is not sustainable.

5. Mr.Dhayalan, learned Government Advocate appearing for the respondents 1 and 2 produced copies of the concerned file, from which, we find that there is a very detailed report sent by the second respondent to the District Collector dated 26.12.2017. Those reasons do not find place in the impugned notices and the petitioner is at dark as to why the objection given by him is not sustainable. One more question would be whether the petitioner is also known as Mottaiyan or not. The petitioner emphatically denies that he is only Ganesan and not Mottaiyan. The Tahsildar issued a Certificate that they are one and the same person. This fact needs to be enquired into. If there is a false statement, necessary action should be initiated against the person, who has impersonated. It is further submitted by the learned counsel appearing for the petitioner that the impugned notice gives only 7 days time to vacate and hand over the possession when the petitioner has an appeal remedy under Section 10 of the Act before the District Collector, for which, the period of limitation is 30 days.

6. In the light of the above, we are of the view that the impugned notice requires to be set aside and the second respondent has to comply with the direction issued in W.P.(MD)No.2737 of 2018 dated 12.02.2018 referred (supra).

7. On the above technical ground alone, the writ petition is allowed and the impugned notice is set aside and the matter is remanded back to scrupulously comply with the direction issued in W.P.(MD)No.2730 of 2018 dated 12.02.2018 and to pass an appropriate speaking order on merits and in accordance with law within a period of 15 days from the date of receipt of a copy of this order. Till then, status quo, which is prevailing as on today (19.02.2018) shall be maintained.

8. The learned counsel appearing for the petitioner raised a plea that the petitioner alone has been victimized on account of certain personal animosity for which the third respondent harassed him and it appears that there are several other persons, who are also to be termed as alleged encroachers. The second respondent, being the Tahsildhar in charge of the area, should take an appropriate action against all concerned. If it is found that there is an encroachment, no person should be singled out, which would violate Article 14 of the Constitution of India. The second respondent shall bear in mind this observation and proceed in



accordance with law. No costs. Consequently, connected W.M.P. (MD) No.3506 of 2018 is closed.

Sd/-
Assistant Registrar (CO)

/True copy/

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Sub Assistant Registrar

To

- 1.The District Collector, Trichy District, Trichy.
- 2.The Tahsildar, Musiri Taluk, Trichy District.

+1cc to Mr.K.GOVINDARAJAN, Advocate, SR. 49473

+1cc to M/S.Special Government Pleader, SR. 50228

W.P (MD) No.3350 of 2018
and

W.M.P (MD) No.3506 of 2018
19.02.2018

RMI/CM

KK/SKN RSK/SAR 2/28.02.2018/ 4P- 5C/