



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) No.4523 of 2018

and

W.M.P. (MD) No.4624 of 2018

Ganesan

... Petitioner

-vs-

1. The District Collector,
Tuticorin, Tuticorin District.
2. The Revenue Divisional Officer,
Tiruchendur,
Tuticorin District.
3. The Tahsildar,
Tiruchendur Taluk,
Tuticorin District.
4. The Executive Officer,
Special Grade Town Panchayat,
Tiruchendur,
Thoothukudi District.

5.T.Indira

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records pertaining to the impugned notice issued by the 3rd respondent dated 05.02.2018 issued under Section 6 of the Act III of 1905 and quash the same.

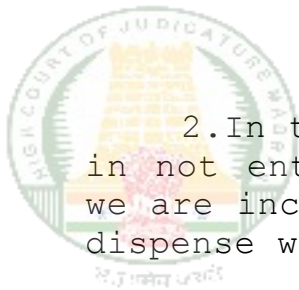
For Petitioner : Mr.R.J.Karthick

For Respondents : Mr.S.Dhayalan, G.A., for RR1 to 3
Mr.M.Karuppasamy for R4

O R D E R

(Order of the Court was made by T.S.SIVAGNANAM, J.)

Heard Mr.R.J.Karthick, learned counsel for the petitioner and Mr.S.Dhayalan, Government Advocate appearing for the respondents 1 to 3 and Mr.Karuppasamy, learned counsel for the fourth respondent.



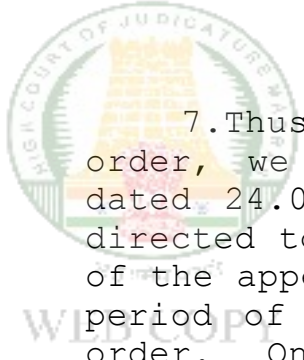
2. In the light of the error committed by the second respondent in not entertaining the appeal petition filed by the petitioner, we are inclined to issue direction in this regard and therefore we dispense with notice to the fifth respondent.

3. The third respondent initiated action against the petitioner, who is stated to be the President of a Committee which administers a local village temple stating that he has encroached into the government land. The petitioner submitted his objection on 10.01.2018 stating that there is no encroachment and he claimed that patta has also been granted in the name of temple. The matter was enquired into and an order under Section 6 of the Act has been passed on 05.02.2018, which is impugned.

4. After the receipt of impugned order, the petitioner has filed appeal petition before the second respondent and it is stated that the second respondent is not inclined to entertain the appeal on account of a direction issued by the Division Bench of this Court in W.P.(MD) No.8415 of 2017 dated 03.08.2017 filed by the fifth Respondent herein. In the said writ petition, the fifth respondent sought for direction upon the official respondents to remove the encroachment of illegal construction of brick wall on public street in S.No.1441/20 in East Tiruchendur village, Tiruchendur Taluk, Tuticorin District, restore and maintain the public street as per village revenue records.

5. It appears that the writ petition was disposed of at the admission stage and the President of Nadar community of the area, who is the petitioner herein was not served with any notice. However, the Court did not issue any positive direction for removal of encroachment, but, directed the Tahsildar to take appropriate action in accordance with law for removal of the encroachment after issuing notice to the affected parties. This direction has been complied with by the third respondent and the petitioner has also participated in the enquiry, which has now resulted in the impugned order.

6. As against the impugned order, the petitioner has an alternate remedy of appeal before the second respondent which in our opinion is not only effective but also an efficacious remedy. This is more so because, it is only the revenue authorities who will have to adjudicate as to whether the claim made by the petitioner is justified and the documents, which are relied upon are acceptable and such exercise cannot be done in a writ petition. Since there has been compliance of principles of natural justice before passing an order under Section 6 of the Act, we are not inclined to quash the impugned order, but would give opportunity to the petitioner to pursue his appeal before the second respondent. Since the petitioner has expressed certain ~~objections~~ ^{objections} the second respondent appears to have opined that he cannot entertain the appeal because the direction issued in the earlier petition, we issue necessary clarification in this regard.



7. Thus, while negating the challenge against the impugned order, we direct the petitioner to pursue his appeal petition dated 24.02.2018 and to avoid further delay, the petitioner is directed to appear before the second respondent and present a copy of the appeal petition along with the copy of this order, within a period of one week from the date of receipt of a copy of this order. On receipt of the appeal petition, the second respondent shall consider the same and verify the records and pass speaking order on merits and in accordance with law, within a period of two weeks there from. Till then, statusquo, which is prevailing as on date in respect of the wall in question shall be maintained.

8. This writ petition is disposed of with the above observation and direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Tuticorin, Tuticorin District.
2. The Revenue Divisional Officer,
Tiruchendur,
Tuticorin District.
3. The Tahsildar,
Tiruchendur Taluk,
Tuticorin District.

+1cc to Mr.R.J.Karthick, Advocate Sr.No.52854

+1cc to Spl.Government Pleader Sr.No.53345

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VB/SKN/RSK/SAR3/13/03/2018/3P/6C

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