



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2018
CORAM

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

W.P.(MD).No.487 of 2018
and
W.M.P.(MD).Nos.488 to 490 of 2018

K.Pandi ... Petitioner

Vs.

1.The District Collector,
Sivagangai District.

2.The Sub-Collector,
Devakottai Taluk,
Sivagangai District.

3.The Tahsildar,
Devakottai Taluk,
Sivagangai District.

4.M.Manimegalai ... Respondents

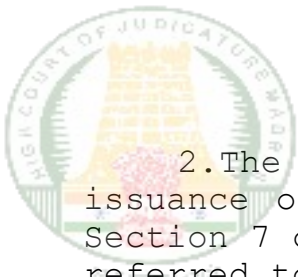
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the entire records pertaining to the impugned notice under Section 7 dated 28.01.2016, Section 6 notice dated 12.07.2016 and the consequential demolition order dated 04.01.2018, quash the same.

For Petitioner	: Mr.Niranjan S.Kumar
For R1 to R3	: Mr.D.Muruganantham
	Addl. Government Pleader
For R4	: Mr.S.Asai Thambi

O R D E R

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

Heard Mr.Niranjan S.Kumar, learned counsel appearing for the petitioner, Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondents 1 to 3 and Mr.S.Asai Thambi, learned counsel appearing for the fourth respondent.

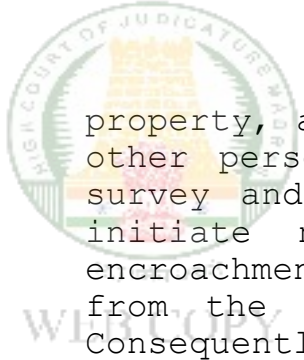


2.The petitioner has filed this writ petition praying for issuance of Writ of Certiorari to quash the notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1950 (hereinafter referred to as the Act), dated 28.01.2016 and the order passed under Section 6 of the Act, dated 12.07.2016 and the consequential proceedings dated 04.01.2018.

3.The petitioner's case is that his father one Kalimuthan, was issued patta in the year 1991, in respect of the lands comprised in Survey No.184/37, which was classified as 'Natham'. Further, in the patta, it is stated that the land, which was classified as 'Natham' has been reclassified as "Manai vari" After the demise of the petitioner's father in the year 2016, the petitioner stated to have inherited the property and in enjoyment of the same along with other legal heirs. Whiles, a notice was issued on 12.07.2016 by the Tahsildar in the name of the petitioner's father, who is no more. Subsequently, another notice was issued under Section 7 of the 'Act', stating that there is an encroachment in the public pathway. From the copy of the notice, it is seen that since the petitioner has refused to receive the same, it has been affixed on the property by the Revenue Inspector. On receipt of the said notice, the petitioner requested for a survey to be conducted in respect of the property in question and for which purpose a sum of Rs.200/- was remitted . However, without reference to the petitioner's request, an order under Section 6 of the Act, has been passed. Since no action was taken pursuant to the said order, the fourth respondent herein filed a writ petition before this Court in W.P.No.13198 of 2017. When the matter was heard by the Division Bench, the learned Special Government Pleader produced the details regarding the action taken by the authorities under Section 6 of the Act, Therefore, the Division Bench directed the Tahsildar, Devakottai Taluk, to take a follow up action. As a result of direction issued by the Division bench, the impugned notice, dated 04.01.2018 has been issued to the petitioner. The petitioner alleges that the fourth respondent is also an encroacher and only to save his property, the present attempt is being made and the petitioner is not an encroacher, as patta was issued in favour of his father.

4.In our considered view, the authorities before taking action for eviction should conduct a survey of the area. More so, when a request for survey to be conducted has been made and necessary fee has been remitted. Since the petitioner has not challenged the action initiated by the authorities under the Tamil Nadu Land Encroachment Act, at any earlier point of time, they cannot now question the order, at this belated stage. However, so far as, the notice dated 04.01.2018 directing the petitioner to vacate the property is concerned, we are inclined to interfere and issue necessary direction.

5.Accordingly, the writ petition is partly allowed and the notice dated 04.01.2018 alone is set aside and the third respondent is directed to conduct a survey of the area and measure the



property, after notice to the petitioner, fourth respondent and all other persons who are residing in that area and after conducting survey and marking boundary, the third respondent is directed to initiate necessary action and if it is found there is an encroachment, the same shall be removed within a period of 6 weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub-Assistant Registrar

To

1. The District Collector,
Sivagangai District.
2. The Sub-Collector,
Devakottai Taluk,
Sivagangai District.
3. The Tahsildar,
Devakottai Taluk,
Sivagangai District.

+One cc to M/s. Niranjan S. Kumar, Advocate, SR.No.50807

+One cc to The Special Government Pleader, SR>No.51299

Ns
RL/6C/2P/CVC/SAR1/4/4/2018

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