



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2018

CORAM:

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

W.P.(MD) No.6517 of 2018

and

W.M.P.(MD) No.6334 of 2018

B.Suresh

... Petitioner

-vs-

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Revenue Divisional Officer,
Sivakasi, Virudhunagar District.

3.The Tahsildar,
Sivakasi Taluk,
Sivakasi,
Virudhunagar District.

4.The Block Development Officer,
Sivakasi Panchayat Union,
Sivakasi, Virudhunagar District.

5.The Executive Engineer,
Public Works Department,
Sivakasi, Virudhunagar District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 3rd respondent in his proceedings in culminate with the show cause notice in Na.Ka.B1/134/2018 dated 06.03.2018 and quash the same as illegal and consequently direct the 3rd respondent to consider the petitioner's representation dated 16.03.2018.

For Petitioner : Mr.D.Dhana Chandra Prakash

For Respondents : Mr.M.Pandiarajan, AGP for RR1-3
and 5
M/s.V.P.M.Vaishnavi for R4

O R D E R

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

Heard Mr.D.Dhana Chandra Parkash, learned counsel for the petitioner and Mr.M.Pandiarajan, learned Additional Government Pleader appearing for the respondents 1 to 3 and 5 and Ms.V.P.M.Vaishnavi, learned counsel appearing for the fourth respondent.

2.With the consent on either side, the writ petition itself is taken up for disposal.

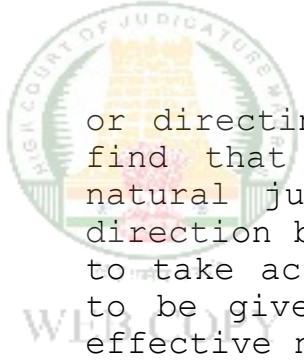
3.The petitioner has filed this writ petition, challenging the notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. Under normal circumstances, the Court will not interdict the proceedings initiated under Section 7 of the Act. However, in the light of the glaring errors committed by the revenue department, we are inclined to entertain this writ petition.

4.The reason for issuance of the impugned notice is on account of a writ petition filed by one George Stephen Jeyarajan in W.P. (MD) No.13361 of 2017. The said individual sought for a writ of mandamus to remove the encroachment across a rivulet (நீர்வாழை) in S.No.844 in Grace Colony, Chengamalanachiyarpuram village, Sivakasi Taluk, Virudhunagar District by considering his representation. In the said writ petition, the petitioner herein Mr.B.Suresh was impleaded as sixth respondent. However, in the writ petition, the Court directed the third respondent viz., Tahsildar, Sivakasi Taluk to take action in accordance with law for removal of the encroachment within a time frame. The impugned notice has been issued by the Revenue Inspector, Thiruthangal, who has not directed to take action. But, it is the third respondent, who should have initiated action. Therefore, there is an error committed by the revenue authorities by issuing the impugned notice by a person, who was not authorised by the Court to do so.

5.The second error committed by the revenue authorities is in not acceding to the petitioner's request in furnishing the requisite information, so that he would be in a position to give an effective reply.

6.The petitioner would state that unless and until measurement is taken on the entire area in the East West direction, the authorities cannot ascertain as to whether there is an encroachment or not and the petitioner would not be able to give his objections.

7.We find that in the impugned notice, the total extent of the property has been left blank. The representation given by the petitioner to the third respondent dated 13.01.2018 has been received by the third respondent on 16.01.2018 as could be seen from the postal acknowledgement card. Therefore, the third respondent ought to have considered the representation before initiating action



or directing the Revenue Inspector to issue notice. Therefore, we find that to that extent, there is violation of principles of natural justice. The Division Bench was cautious while issuing direction by its order dated 09.08.2017 as it directed the Tahsildar to take action in accordance with law, which means that notice has to be given to the alleged encroacher. The notice should be an effective notice containing all particulars. Even before the notice could be issued, the petitioner has made a request to measure the disputed property. This request would have been acceded to, since direction for removal of encroachment was issued by the Writ Court, without going into the merits of the claim made by the said George Stephen Jeyarajan.

8.Thus, for all the above reasons, we find that the impugned notice is flawed. In the result, the writ petition is allowed and the impugned notice is quashed and the third respondent is directed to depute his officers to measure the entire extent of property, so as to find out as to whether there is any encroachment in the water body as alleged by the said George Stephen Jeyarajan. Before measuring the properties, notice shall be issued to the petitioner as well as Mr.George Stephen Jeyarajan and the measurement would not be restricted to the area in question, but the entire length should be measured and after measurement is taken in the presence of the individuals, notice should be issued in accordance with the Tamil Nadu Land Encroachment Act and action shall be proceeded after affording adequate opportunity to the petitioner/encroachers in accordance with law.

9.This writ petition is allowed with above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

- 1.The District Collector, Virudhunagar District, Virudhunagar.
- 2.The Revenue Divisional Officer,
Sivakasi, Virudhunagar District.
- 3.The Tahsildar, Sivakasi Taluk, Sivakasi,
Virudhunagar District.
- 4.The Block Development Officer,
Sivakasi Panchayat Union,
Sivakasi, Virudhunagar District.



5.The Executive Engineer,
Public Works Department,
Sivakasi, Virudhunagar District.

+1cc to M/S.D.Dhana Chandra Prakash, Advocate SR.No. 57846
+1cc to Special Government Pleader, SR.No. 59010

W.P. (MD) No.6517 of 2018

and

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26.03.2018

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JM/SKN RSK/SAR 3/12.04.2018/4P/8C