



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE **T.RAJA**

and

THE HONOURABLE MR. JUSTICE **KRISHNAN RAMASAMY**

W.P. (MD) No.21980 of 2018

and

W.M.P. (MD) No.19935 of 2018

Subramanian

... Petitioner

Vs.

1.The District Collector,
Ramanathapuram,
Ramanathapuram District.

2.The Revenue Divisional Officer,
Ramanathapuram,
Ramanathapuram District.

3.The Tahsildar,
Rajasinga Mangalam Taluk,
Ramanathapuram District.

... Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned eviction notice in RF-1-5,00,000,GBP-Mdu-2008 passed by the third respondent and to quash the same as illegal and consequently to direct the respondents that not to remove the petitioner's occupation from the land in Survey No.341/4 situating in Uppur south Kudiyiruppu, Rajasinga Mangalam Taluk, Ramanathapuram District - 623 525, except due process of law.

For Petitioner : Mr.M.S.Jeyakarthik

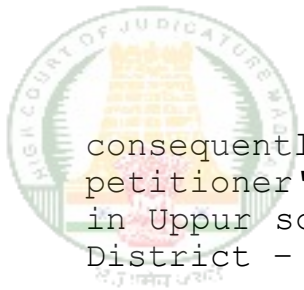
For Respondents : Mr.V.Anand

Government Advocate

ORDER

(Order of the Court was made by **T.RAJA, J.**)

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned eviction notice in RF X IV-1-5,00,000,GBP-Mdu-2008 passed by the third respondent and to quash the same as illegal and



consequently to direct the respondents that not to remove the petitioner's occupation from the land in Survey No.341/4 situating in Uppur south Kudiyiruppu, Rajasinga Mangalam Taluk, Ramanathapuram District - 623 525, except due process of law.

2. Mr. V. Anand, learned Government Advocate takes notice for the respondents.

3. By consent, this Writ Petition is taken up for final disposal.

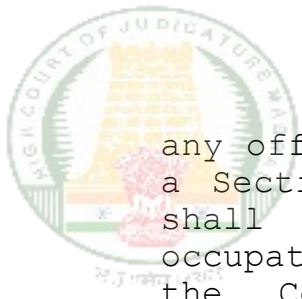
4. The learned Counsel appearing for the petitioner assailing the impugned order issued by the Tahsildar, Rajasinga Mangalam Taluk, Ramanathapuram District, third respondent herein, under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 submitted that it is well settled legal position that before any action initiated against any person/encroacher under the provisions of the Tamil Nadu Land Encroachment Act, 1905, a show-cause notice, as contemplated under Section 7 of the Act, should be issued calling upon the concerned person/encroacher to explain as to why he should not be removed from the encroachment. Only on receipt of the explanation or in failure to file any explanation by the encroacher, action can be taken under Section 9 of the Act. But, in the present case, all of a sudden, without issuing any show-cause notice calling upon the petitioner to give his explanation as to why he should not be removed from the alleged encroached area, notice under Section 6 has been issued. This could be seen from Section 7 of the Act which is given as under:

"7. Before taking proceedings under Section 6, the Collector or Tahsildar, or Deputy Tahsildar or Revenue Inspector or any authorised officer or any officer of the Highways Department not below the rank of a Section Officer and not being an authorised officer as the case may be shall cause to be served on the person reputed to be in unauthorised occupation of the land being the property of Government a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under Section 6.

Such notice shall be served in the manner prescribed in Section 25 of the Tamil Nadu Revenue Recovery Act, 1864, or in such other manner as the State Government by rules or orders under Section 8 may direct:

Provided that no such notice shall be necessary in the case of any person unauthorisedly occupying any land, if he has been previously evicted from such land under Section 6 or if he has previously vacated such land voluntarily after the receipt of a notice under Section 5B or under this Section:

Provided further that where the notice under this section is caused to be served by any Revenue Inspector or



any officer of the Highways Department not below the rank of a Section Officer and not being an authorised officer, he shall require the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction and shall also make a report in writing containing such particulars as may be specified in rules or orders made under Section 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction."

5. We also agree with the submission made by the learned Counsel appearing for the petitioner that the impugned notice has been issued under Section 6 of the Act. The learned Government Advocate appearing for the respondents also fairly submitted that the present notice is issued under Section 6 of the Act. Therefore, we direct both the petitioner and the respondents to treat the impugned notice as notice issued under Section 7 of the Act calling upon the petitioner to give his explanation. The petitioner is directed to give his explanation within a period of two weeks from today and on receipt of such explanation, the third respondent shall proceed further in accordance with law.

6. With the above direction, this Writ Petition is disposed of. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS-I)

To

1. The District Collector,
Ramanathapuram, Ramanathapuram District.
2. The Revenue Divisional Officer,
Ramanathapuram, Ramanathapuram District.
3. The Tahsildar, Rajasinga Mangalam Taluk,
Ramanathapuram District.

+1 CC To MR.M.S.JEYAKARTHIK, Advocate SR. NO. 92271

+1 CC TO The Special Government Pleader SR.NO. 92596

**W.P. (MD) No.21980 of 2018
and W.M.P. (MD) No.19935 of 2018**

26.10.2018