



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2018

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU  
AND  
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

W.P (MD) No.15144 of 2018

and

W.M.P. (MD) .No.13702 of 2018

T.Selvam

: Petitioner

**. vs .**

1. The District Collector,  
Tirunelveli District,  
Tirunelveli.
2. The Block Development Officer (Village Panchayat)  
Ambasamuthiram Panchayat Union,  
Ambasamuthiram Taluk,  
Tirunelveli District.
3. The Sivanthipuram Village Panchayat,  
rep. by Special Officer/BDO (Village Panchayat)  
Sivanthipuram,  
Ambasamuthiram Taluk,  
Tirunelveli District.

: Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for the records in pursuant to the impugned notice issued by the 2<sup>nd</sup> respondent in his proceedings Na.Ka.A3/3076/2005 dated 23.03.2018 and quash the same.

For petitioner : Mr.S.M.Mohan Gandhi  
For Respondent : Mr.A.K.Baskara Pandian  
Special Govt. Pleader for R-1  
Mr.M.Pandiarajan for RR-2 & 3

**ORDER**

**[ORDER of the Court was made by K.RAVICHANDRABAABU,J.]**

<https://hcservices.ecourts.gov.in/hcservices/> Mr. A.K.Baskara Pandian, learned Special Government Pleader takes notice for the first respondent. Mr.M.Pandiarajan, learned counsel, takes notice for the respondents 2 and 3.



2. By consent, the main writ petition itself is taken up for final disposal at the admission stage, as the issue involved in the writ petition is lying in a narrow campus.

3. The petitioner is aggrieved against the proceedings of the 2<sup>nd</sup> respondent, dated 23.03.2018, wherein and whereby, he was called upon to vacate and hand over vacant possession of the subject matter property within a period of 30 days by alleging that the petitioner has occupied a tank, which is a water course.

4. Heard both sides.

5. The main grievance of the petitioner before us is that he is not in occupation of the water course, as alleged, and on the other hand, he is in occupation of the subject matter land in pursuant to a sale deed executed on 26.06.1981 by one Saminathan Nadar. It is also contended that the petitioner has already filed a suit for bare injunction in O.S.No.12/95 on the file of the District Munsif Court, Ambasamudram against the Panchayat and another person as defendants and obtained a decree on 31.01.1996. Therefore, it is contended that the impugned proceedings straight away issued by calling upon the petitioner to vacate and hand over possession cannot be sustained, as it violates the principles of natural justice.

6. On the other hand, the learned counsel appearing for the respondents submitted that the impugned proceeding was issued in compliance of an earlier order passed in W.P.(MD).No.3639 of 2008. The learned counsel further contended that this Court in the said order, directed the removal of the encroachment in the said water course. It is claimed by the petitioner that he was not a party in the said writ petition.

7. Considering the above stated facts and circumstances and considering the fact that the petitioner disputes the claim of the respondent with regard to his status of possession, we are of the view that the petitioner should be heard first by receiving his objection and thereafter to proceed in accordance with law, if such objections are not sustainable in the eye of law.

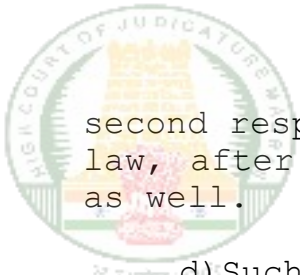
8. Therefore, without expressing any view on the merits and contentions raised by the parties, this writ petition is disposed of with the following directions:

a) The second respondent shall treat the impugned proceedings as a show-cause notice issued to the petitioner.

b) The petitioner, thus, shall give reply to the notice, within a period of two weeks from the date of receipt of copy of this order.

<https://hcservices.ecourts.gov.in/hcservices/>

c) On receipt of such explanation/reply from the petitioner, the



second respondent shall pass orders on merits and in accordance with law, after giving opportunity of personal hearing to the petitioner as well.

d) Such exercise shall be done by the second respondent within a period of four weeks from the date of receipt of copy of the explanation.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar (CS-II)

**To**

1. The District Collector,  
Tirunelveli District,  
Tirunelveli.
2. The Block Development Officer (Village Panchayat)  
Ambasamuthiram Panchayat Union,  
Ambasamuthiram Taluk,  
Tirunelveli District.
3. The Special Officer/BDO (Village Panchayat)  
Sivanthipuram Village Panchayat,  
Sivanthipuram,  
Ambasamuthiram Taluk,  
Tirunelveli District.

+ 1 CC TO Mr.S.M.MOHAN GANDHI, ADVOCATE IN SR No. 72742  
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 72905

VS

TE/SKN/SAR-2 : 24/07/2018 : 3P/6C

ORDER MADE IN  
W.P(MD)NO.15144 of 2018 and  
W.M.P.(MD).No.13702 of 2018  
13.07.2018