



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.15143 of 2018
and
W.M.P.(MD).No.13701 of 2018

G.Rajesh

:Petitioner

.vs.

The Estate Officer Cum
Municipal Commissioner
Nagercoil Municipality
Nagercoil,
Kanyakumari District.

:Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari particularly in the nature of writ, calling for the records pertaining to the impugned proceedings of the respondent in Roc.No.2520/2005/F1, dated 28.06.2018, quash the same.

For petitioner : Ms.J.Anandhavalli
For Respondent : Mr.P.Athimoolapandian
Standing Counsel

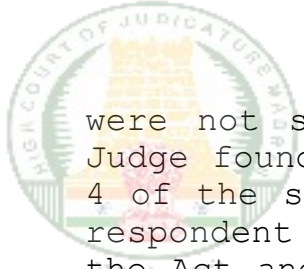
ORDER

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

This Writ Petition is filed, challenging the proceedings of the respondent dated 28.06.2018, which is nothing but a notice issued to the petitioner to show cause as to why an order of eviction should not be made against him under sub-section (1) of Section (4) of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975.

2.Heard Ms.J.Anandhavalli, learned counsel appearing for the petitioner and perused the materials placed before this Court.

3.Earlier, the very same respondent issued the very same show-cause notice on 06.06.2018 and called upon the petitioner to give his explanation. The said proceeding was challenged before this Court in W.P.(MD).No.12563 of 2018. The learned Single Judge, by an order dated 13.06.2018, allowed the writ petition and set aside the said notice only on the reason that grounds for eviction

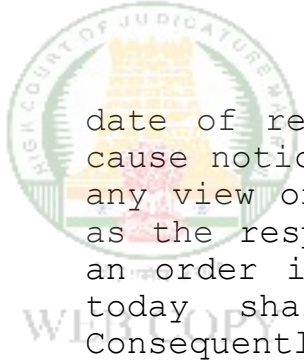


were not set out in the impugned notice. Therefore, the learned Judge found that the said notice was not in compliance with Section 4 of the said Act. However, the writ court granted liberty to the respondent to issue a fresh notice in conformity with Section 4 of the Act and proceed further in accordance with law. Therefore, the present impugned notice dated 28.06.2018 is issued by giving a reason for issuing such notice. It is claimed by the respondent that the subject matter land in occupation of the petitioner is required for widening the approach road of Vadasery Bus-Stand for public purpose and that the petitioner is in unauthorised occupation of the said land. Therefore, the respondent called upon the petitioner to show cause within 10 days as to why an order of eviction should not be made against him. Again, the said notice is challenged before us by contending that the respondent is not having any jurisdiction to issue such notice and that the reasons stated in the impugned proceeding are also not factually correct.

4. We are not convinced to entertain the writ petition on more than one reason. First of all, the impugned action is only issuance of a show-cause notice and therefore, the petitioner can raise all his objections raised before us by way of giving an explanation to the said show-cause notice. When the writ petitioner filed the earlier writ petition, challenging the previous show-cause notice, though the writ petitioner sought to contend as if the respondent is not having jurisdiction, the writ court allowed the writ petition and set aside the said notice only on the reason that reasons are not set out in the said notice. It is also to be noted that the writ court has specifically granted liberty to the respondent to issue a fresh notice in accordance with law and proceed further. When such liberty is given, the petitioner is not entitled to canvass once again as if the respondent is not having jurisdiction. Further, even otherwise, we are not convinced that the above contention of the petitioner touching upon the question of jurisdiction can be decided now, without going into the factual aspects of the case, as such question of jurisdiction, as raised by the petitioner, cannot be decided purely as a question of law. Therefore, the petitioner is bound to give reply to the show-cause notice and consequently is not entitled to maintain this writ petition as against such show-cause notice.

5. It is well-settled that the writ petition cannot be entertained, as against the show-cause notice, as the person aggrieved is always having a right and liberty to give a suitable reply to such show-cause notice before the authority by raising all the objections both on facts and law. As we already pointed out that jurisdictional issue as raised by the petitioner cannot be raised and decided herein more particularly, in view of the earlier order passed by this Court, we are not inclined to interfere with the impugned notice.

6. Accordingly, the writ petition fails and the same is dismissed. However, the petitioner is given two weeks time from the



date of receipt of copy of this order to give reply to the show-cause notice by raising all the objections, as we are not expressing any view on the merits of the claim made by the petitioner as well as the respondent. Till such reply is given by the petitioner and an order is passed thereafter by the respondent, status-quo as on today shall be maintained by both the parties. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The Estate Officer Cum
Municipal Commissioner
Nagercoil Municipality
Nagercoil,
Kanyakumari District.

+1cc to M/S.J.Anandhavalli, Advocate SR.No. 72931

ORDER MADE IN
W.P(MD)NO.15143 of 2018
and
W.M.P.(MD).No.13701 of 2018
13.07.2018

vs
JM/SKN RSK/SAR 2/01.08.2018/3P/3C