



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2018

CORAM:

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THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.18314 of 2018 and
W.M.P.(MD) No.16183 of 2018

M.Ponnusamy

.. Petitioner

Vs.

1. The District Collector,
Thanjavur District, Thanjavur.
2. The Revenue Divisional Officer,
Thanjavur District, Thanjavur.
3. The Revenue Inspector,
Vallam Firka,
Thanjavur Taluk and District.
4. R.Velusamy

.. Respondents

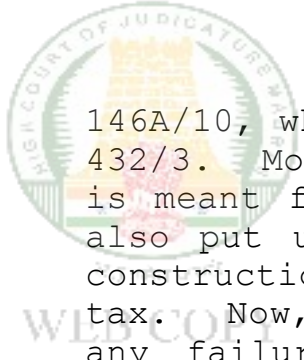
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned notice, dated 09.08.2018, passed by the third respondent and to quash the same.

For Petitioner	: Mr.S.Sankar for Mr.B.Vijay Karthikeyan
For R-1 to R-3	: Mr.V.R.Shanmuganathan, Special Government Pleader.

ORDER

[Order of the Court was made by T.RAJA, J.]

The present writ petition is directed against the impugned notice issued under Section 7 of the Tamil Nadu Encroachment Act, calling upon the petitioner to show cause why he should not be levied. On receipt of the said notice, the petitioner has also submitted a detailed representation, dated 16.08.2018.



146A/10, which is corresponding to new Survey Nos.432/1, 432/2 and 432/3. Moreover, the land in question is also Natham land, which is meant for construction of houses alone and the petitioner has also put up a construction with tiled house along with concrete construction and the said house also has been assessed to house tax. Now, the petitioner has been paying the house tax without any failure. Moreover, the petitioner has been granted with patta, bearing Patta No.435, for the survey No.432/3. Subsequently, he has also made a representation in the year 1995 and another representation in the year 2000, followed by one more reminder, dated 05.03.2018, to the respondents 1 and 2, seeking patta for old Survey No.146A/10, which includes the new Survey Nos. 432/1 and 432/2 and the said representation has not been considered till date. In the meanwhile, the present impugned notice has been issued for which also, a representation has been given.

3. It is at this stage, the learned Special Government Pleader appearing for the respondents 1 to 3 submitted that, since the impugned notice has been issued for which the petitioner on receipt of the same has also given a detailed representation. The present writ petition is cannot legally maintainable, as the respondents has to pass appropriate orders.

4. We have heard the submissions made on either side and perused the materials available on record.

5. We also find full agreement with the submission made by the learned Special Government Pleader. When the petitioner has been issued with impugned notice, on receipt of the same, he has given a detailed representation stating that old survey No.146A/10 is corresponding to the new Survey No. 432/1, 432/2 and 432/3. The said representation is pending. The impugned notice has been issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, by the Revenue inspector, Vallam Firka, Thanjavur District / the third respondent herein.

6. A perusal of the Section 7 of the said Act clearly shows that before taking proceedings under Section 6, the Collector or Tahsildar or Deputy Tahsildar or Revenue Inspector or any authorized officer or any officer specified by State Government in this behalf, as the case may be, can issue notice. Accordingly, as per Section 7, the Revenue Inspector, Vallam Firka, Thanjavur Taluk / the third respondent herein has rightly issued the order. Since the petitioner has submitted a detailed representation to the said show cause notice, only the Tahsildar, as per the Section 6 of the Act, is competent to pass final order. It is pertinent to extract Section 6 of the Tamil Nadu Land Encroachment Act,



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occupying land to summary eviction, forfeiture of crops etc;- (1) Any person unauthorisedly occupying any land for which he is liable to pay assessment under section 3 or section 3-A may be summarily evicted by the Collector or subject to his control, by the Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government in this behalf [hereinafter referred as the 'Authorised Officer'] and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector or subject to his control, the Tahsildar or Deputy Tahsildar or authorised officer may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector or subject to his control, by the Tahsildar or Deputy Tahsildar or authorised officer and any property so forfeited shall be disposed of as the Collector or subject to his control, the Tahsildar or Deputy Tahsildar or authorised officer may direct.

[2] An eviction under this section shall be made in the following manner, namely :- By serving a notice in the manner provided in section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector or the Tahsildar or Deputy Tahsildar or the Authorised Officer may deem reasonable after receipt of the said notice to vacate the land, and, if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstructed by any person, the Collector or the Tahsildar or Deputy Tahsildar, or authorised officer shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector or of any Tahsildar or Deputy Tahsildar or authorised officer for such period not exceeding 30 days as necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for



imprisonment in the civil jail of the District for the like period ;

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under sections 183, 186 or 188 of the Indian Penal Code in respect of the same facts.

7. A perusal of Section 6(1) and 6(2) of the said Act shows that after service of notice under Section 7, either the Collector or Tahsildar or Deputy Tahsildar or authorized officer can pass orders. Therefore, the jurisdictional Tahsildar of Vallam Firka, Thanjavur Taluk, is hereby directed to pass final orders, within a period of four weeks from the date of receipt of a copy of this order.

8. Accordingly, this writ petition is disposed of. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The District Collector,
Thanjavur District, Thanjavur.
2. The Revenue Divisional Officer,
Thanjavur District, Thanjavur.
3. The Revenue Inspector,
Vallam Firka,
Thanjavur Taluk and District.
4. The Tahsildar, Vallam Firka,
Thanjavur Taluk and District.

+ 1 CC TO Mr.B.VIJAY KARTHIKEYAN, ADVOCATE IN SR No. 79793
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 79941

CP/MPK

TE/SKN/SAR-2 : 01/10/2018 : 4P/7C

ORDER MADE IN
W.P (MD) No.18314 of 2018
23.08.2018