



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2018

CORAM:

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

AND

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

W.P (MD) No.21233 of 2018

and

W.M.P (MD) No.19065 of 2018

Sakthivel

... Petitioner

Vs.

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Block Development Officer (Union),
Radhapuram Circle,
Rathapuram,
Tirunelveli District.

3.The Tahsildar,
Radhapuram,
Tirunelveli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the impugned order dated 24.09.2018 made in A2/2819/2017 passed by the second respondent and subsequently quash the same as illegal and devoid of merits.

For Petitioner : Mr.S.Palani Velayutham

For Respondents : Mr.VR.Shanmuganathan
1 and 3 Special Government Pleader

For Respondent 2 : Mr.N.Shanmugaselvan

* * * * *

ORDER

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

This writ petition has been filed challenging the impugned eviction notice dated 24.09.2018 issued by the second respondent calling upon the petitioner to remove the encroachments made by him in Canal (water channel) within seven days failing which action will be taken at the cost of the petitioner.



2. By consent, the writ petitions are taken up for final disposal.

3. Heard the learned Counsel for the parties.

4. Learned Counsel for the petitioner submitted that the ancestors of the petitioner has constructed a temple viz., Arulmighu Essakki Amman Thirukovil 100 years back and a Mandapam was constructed in front of the temple 20 years back in Survey No.317 (2A) at Koodankulam Village, Tirunelveli District, which is adjacent to small water channel (Odai). Further, in the impugned order it was only mentioned that an individual has encroached the Odai poramboke to an extent of 35 sq. mtr. and 25 sq. mtr. in Survey Nos.334/1A and 295 respectively. However, no notice under Section 7 of the Act was given and no enquiry whatsoever was conducted with regard to the alleged encroachment. Therefore, the impugned notice cannot be issued against the petitioner directly asking him to vacate within seven days.

5. In reply, Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the respondents placing on record the copy of the order dated 25.05.2017 passed in Writ Petition(MD)No.10020 of 2017 [**V.Sandal Muthuraj v. The District Collector, Tirunelveli District, Tirunelveli and others**], submitted that this Court, by the said order, while entertaining the said writ petition for issuance of a writ of Mandamus to remove the encroachments from the water channel falling on the Survey Nos.9/2, 10/2, 11/2, 12/3, 30/2, 31/2, 34/2, 35/3, 38/2, 40/2, 40/4, 41/2, 250/2, 251/1A, 251/2, 251/3A, 252, 253/1B, 253/2, 253/3A, 254/1B, 254/2, 256/1, 257/1, 257/2B, 259, 298/1, 300/2, 327/6, 330/2B, 334/1A, 628/2, 679, 680/2, 681/2, 683, 924/3, 925/2, 926/1A, 948, 949/1 and 950/1 which includes ponds, tanks and oorani, directed the District Collector - first respondent therein to consider the representation dated 21.03.2017 after giving opportunity of personal hearing to the petitioner and other necessary parties on merits and in accordance with law and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of the order. Based on the said order, action has been taken.

6. However, we find that the eviction notice impugned herein shows that the encroacher has not been given any personal hearing and therefore, the impugned eviction notice is directed to be treated as notice by the petitioner and accordingly, the petitioner is given two weeks' time to submit his explanation to the second respondent and on receipt of the same, the second respondent is further directed to consider the same and pass appropriate orders for taking action in accordance with law.



7. With the above directions, the writ petition stands disposed of. No costs. Consequently, the connected writ miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

1. The District Collector,
Tirunelveli District,
Tirunelveli.
2. The Block Development Officer (Union),
Radhapuram Circle,
Rathapuram,
Tirunelveli District.
3. The Tahsildar,
Radhapuram,
Tirunelveli District.

+1 CC To MR.S.PALANIVELAYUTHAM, Advocate SR. NO.90046
+1 CC TO The Special Government Pleader SR.NO. 90425

W.P (MD) No.21233 of 2018

and

W.M.P (MD) No.19065 of 2018

11.10.2018

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