

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.14713 of 2004 and
W.P.M.P.No.17445 of 2004

The National College Council,
Trichirapalli,
Rep. by its Secretary,
S.Kunjithapatham

... Petitioner

Vs

1. The State of Tamilnadu
Rep. by the Secretary to Government,
Revenue Department,
Fort St.George,
Chennai - 600 009.

2. The District Collector,
Tiruchirapalli.

3. The Tahsildar,
Tiruchirapalli Town,
Tiruchirapalli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to pass an order of Writ of Certiorari, calling for records in R.C.B4/43115/02 dated 06.05.2004 on the file of the 2nd respondent confirming the proceedings of the 3rd respondent in R.C.A.2/1193/02 dated 18.10.2002 and quash the same.

For Petitioner : Mr. M.Sriram
for Mr.A.Saravanan and
Mr.J.R.Prabhakaran

For Respondents: Mrs.K.Bhuvaneswari,
Additional Government Pleader

O R D E R

The petitioner herein has admittedly encroached upon the lands in survey Nos.19, 21, 32, 33, 34, 35 and 37 in Devadhanam Village, Trichirapalli Taluk which has been classified as "Vaikkal Proamboke".

2. According to the petitioner, they are in occupation of the land for a considerable time. When the third respondent herein had demanded lease amount for the periods from 1991 to 2000 on the ground that there was an encroachment made by the petitioner in connection with the property, the petitioner has filed a writ petition in W.P.No.11727 of 2003. This Court by an order dated 23.04.2003 had observed that the Collector can decide the issue, if the petitioner is given liberty to file an appeal before him. Accordingly, a direction was given to the Collector to pass orders on the petitioner's appeal within a period of two months after giving opportunity to the petitioner.

3. In these circumstances, the petitioner herein had filed an appeal petition dated 04.05.2003, to the second respondent herein and by an order dated 06.05.2004, the petitioner's appeal came to be rejected, confirming the orders of the third respondent herein demanding lease amount retrospectively from 1991 onwards. The said order of the second respondent is under challenge in this writ petition.

4. The impugned order was pursuant to the direction of this Court, whereby the petitioner's appeal was directed to be disposed of after giving due opportunity to the petitioner herein. Apparently, such an observation of the High Court has not been adhered to, since no opportunity has been extended to the petitioner when the impugned order came to be passed. In a case of this nature where a retrospective demand is made for more than ten preceding years, and the second respondent has also determined the lease amount, it would have been appropriate to have called for the objections of the petitioner before such a retrospective demand is made.

5. Above all, it was the specific direction of this Court that the petitioner should have been given an opportunity of being heard before the orders are passed on this appeal. The second respondent has not followed such an observation made and has chosen to unilaterally pass the orders without giving opportunity to the petitioner. As such, the impugned order passed by the second respondent itself is not only a disobedience of the earlier orders of this Court, but is also in violation of principles of natural justice as enshrined in the Constitution of India. Though such a disobedience is of a serious concern to this Court, I am constrained to take a view that the matter can be remanded back to the second respondent for fresh consideration, after given due opportunity to the petitioner, in order to avoid further delay.

6. In the light of the above observations, the order dated 06.05.2004 in R.C.B4/43115/02 on the file of the second respondent is set aside. Consequently, the matter is remanded back to the second respondent for fresh consideration. The petitioner is at liberty to raise additional grounds before the second respondent within a period of four weeks from the date of receipt of a copy of this order. On receipt of such additional representation, the second respondent herein shall give due opportunity to the petitioner by way of oral and written evidence, conduct a due enquiry and pass appropriate orders. Such an exercise shall be completed as expeditiously as possible.

7. With the above observation, the writ petition stands ordered accordingly. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

vum

To

1. The Secretary to Government,
The State of Tamilnadu
Revenue Department,
Fort St.George,
Chennai - 600 009.

2. The District Collector,
Tiruchirapalli.

3. The Tahsildar,
Tiruchirapalli Town,
Tiruchirapalli.

+1cc to Mr.*, Advocate SR.No.41923

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NMI (CO)
GMY (27/06/2019)