

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2019

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P.NO.30949 OF 2005

AND

W.M.P.NO.33917 OF 2005

M/s.J.R.Educational Trust,
rep.by its Chairman,
J.R.Prithviraj,
S/o.Late A.J.Ram,
No.38-B, Narayana Nagar,
Salem- 636 015

... Petitioner

Vs.

1. The District Collector,
Salem District, Salem.
2. The Tahildar,
Salem

... Respondents

PRAYER :

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings dated 05.09.2005 issued by the second respondent and quash the same and consequentially forbear the respondents from evicting the petitioner from the lands comprised in T.S.No.2/1 (Old T.S.No.2/10) Ward-J, Block No.19, Salem Town.

For petitioner : Mr.G.Ethirajulu

For Respondents : Mr.I.Sathish,
AGP,

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O R D E R

This writ petition has been filed challenging the notice issued under Section 6 of the Tamil Nadu Land Encroachment Act 1905 directing the petitioner to vacate the land in T.S.No.2/1, Ward-J, Block No.19, Salem Town.

2. The learned counsel for the petitioner would submit that the petitioner-Trust have put up construction in the above said land and running a school from the year 1974 onwards. Earlier, the petitioner had filed an application before the District Collector under Section 37(B) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 seeking permission for lease, wherein, the District Collector passed an order stating that the above said land is classified as a water body(Eri Poramboke). Now, the impugned notice has been issued under Section 6 of the Act treating the land as "Sarkar Poramboke", without issuing notice under Section 7 of the Act, no enquiry has been conducted, and no opportunity was given to the petitioner in violation of Tamil Nadu Land Encroachment Act.

3. The learned counsel appearing for the respondents would submit that the land is classified as "Sarkar Poramboke", the petitioner-Trust is in unauthorized occupation in the said premises. In the above circumstances, notice has been issued asking them to remove the superstructure therein within 15 days from the date of receipt of the notice.

4. I have considered the submissions and perused the materials available on record.

5. On perusal of the records, it is seen that impugned notice has been issued under Section 6 of the Act without issuing any show cause notice under Section 7 of the Act, and without conducting any enquiry. It is mandatory that before issuing notice under Section 6 of the Act, the authority should issue a notice under Section 7 of the Act and conduct an enquiry by giving opportunity to the concerned encroacher. In the instant case, without issuing any show cause notice whatsoever, the impugned notice has been issued. On that ground alone, the impugned order is liable to be set aside. If the respondents still want to pursue the matter, it is always open to them to issue notice under Section 7 of the Act, giving an opportunity to the petitioner to raise his objection, thereafter, conduct an enquiry and pass suitable orders on merits and in accordance with law.

6. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The District Collector,
Salem District, Salem.

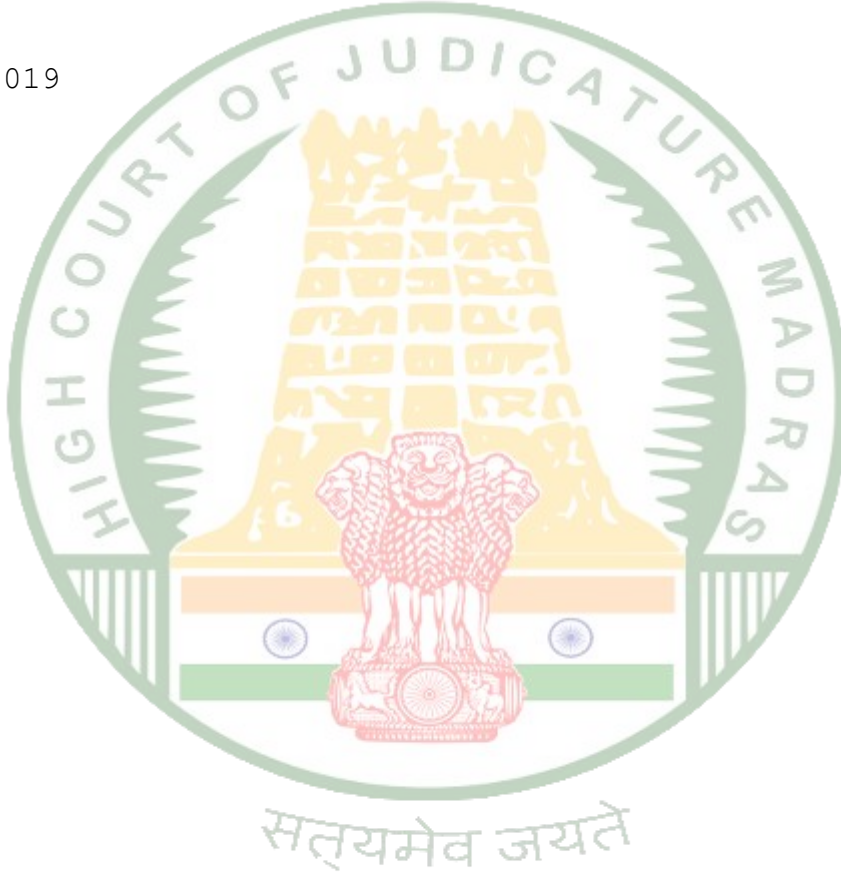
2. The Tahildar,
Salem.

+1cc to Mr.G.Ethirajulu, Advocate, S.R.No.82784

+1cc to the Government Pleader, S.R.No. 83221

W.P.No.30949 of 2005

SSD(CO)
CS/10/12/2019



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