

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM :

The Hon'ble Mrs.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.DURAI SWAMY

W.P. No.4221 of 2019
and W.M.P.Nos.4743 and 4744 of 2019

Badhurudeen ... Petitioner

-vs-

1.The District Collector,
The Nilgiris.

2.The Tahsildar,
Taluk Office, Coonoor,
The Nilgiris.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records relating to impugned order dated 7.2.2019 in Rc.(A2) 4466/2017 of the 2nd respondent and quash the same.

For Petitioner : M/s.AL.Gandhimathi

For Respondents : Mr.V.Jayaprakash Narayanan
Govt. Pleader (i/c.)

O R D E R

(Order of the Court was made by M.DURAI SWAMY, J.)

Heard the learned counsel for the petitioner and the learned Government Pleader (i/c.), who takes notice for the respondents.

2.The above writ petition has been filed by the petitioner to issue Writ of Certiorari to call for the records relating to impugned order dated 07.02.2019 passed by the second respondent and to quash the same.

3.By the impugned order dated 07.02.2019, the second respondent has called upon the petitioner to remove the

encroachment made in S.No.B/59/4 with the classification of "River" of Coonoor Town Revenue Village comprising 0.00.16 hectare in Coonoor Municipality. In the said notice, the second respondent has stated that a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, has been issued by the Revenue Inspector, Coonoor, to the petitioner on 10.05.2018. However, the learned counsel appearing for the petitioner submitted that the petitioner has not received any such notice as mentioned in the impugned notice dated 07.02.2019.

4.The learned Government Pleader (i/c.) made a representation that the notice under Section 7 of the said Act was served on the occupant of the premises and he has also produced a xerox copy of the notice, which bears some signature, however, the name of the signatory or the date on which it was received have not been mentioned in the said notice. The learned Government Pleader (i/c.) is also not in a position to state as to who has signed or who had received the said notice on behalf of the petitioner.

5.In these circumstances, we are of the view that the petitioner was not served with the notice under Section 7 of the Act prior to the issuance of notice under Section 6 of the Act. Since the second respondent has not followed the mandatory provision of issuing notice under Section 7 of the Act, the impugned order dated 07.02.2019 is liable to be set aside and it is, accordingly, set aside. However, a liberty is given to the second respondent to issue a fresh notice under Section 7 of the Act to the petitioner and thereafter, pass orders under Section 6 of the Act.

With these observations, the writ petition is allowed. No costs. Consequently, W.M.P.Nos.4743 and 4744 of 2019 are closed.

Sd/-

सत्यमेव जयते Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

sra

To

1.The District Collector,
The Nilgiris.

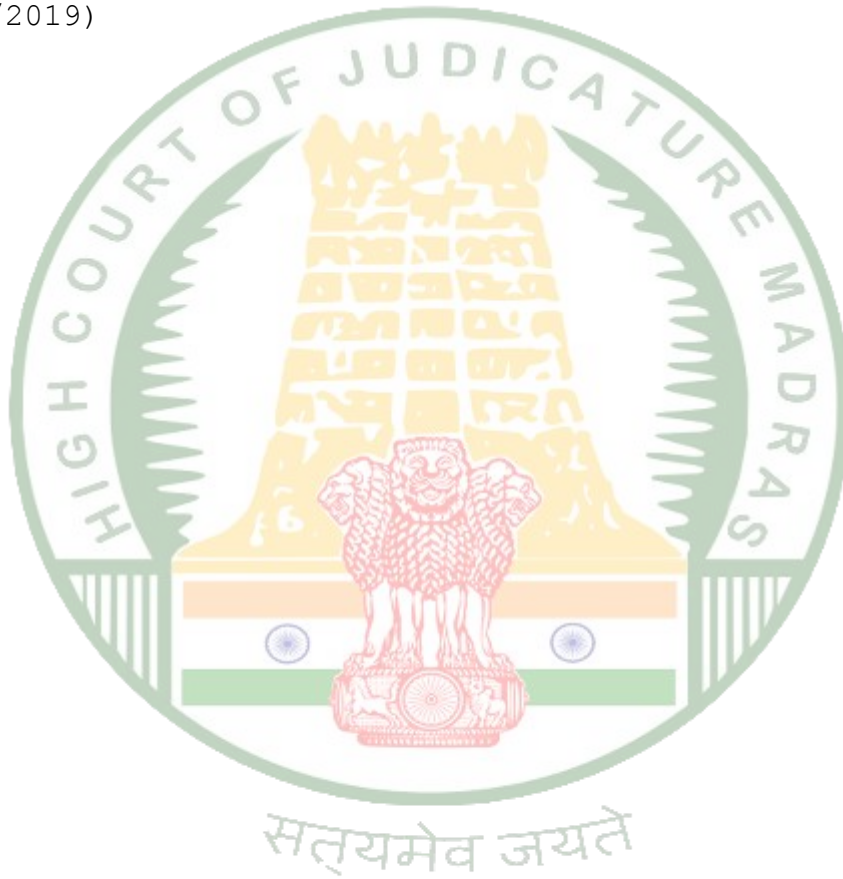
2.The Tahsildar,
Taluk Office, Coonoor,
The Nilgiris.

+1cc to Mr.AL.Ganthimathi, Advocate SR.No.15973

+1cc to Government Pleader SR.No.15767

W.P.No.4221 of 2019

VSN II (CO)
GMY (06/03/2019)



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