



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2019

CORAM:

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**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

**W.P(MD)NO.8265 OF 2019
and
W.M.P(MD)No.6488 of 2019**

P.Backiyalakshmi

:Petitioner

.vs.

The Tahsildar,
Sivakasi Taluk,
Virudhunagar District.

: Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the impugned order issued by the respondent in Na.Ka.P1/371/2019, dated 26.3.2019 served on 30.3.2019 and to quash the same.

For Petitioner

:Mr.R.Vijayakumar

For Respondent

:Mr.VR.Shanmuganathan
Special Govt.Pleader

O R D E R

[Order of the Court was made by **K.RAVICHANDRABAABU.,J.**]

The Petitioner is aggrieved against the proceedings of the respondent, dated 26.03.2019, served on 30.03.2019, issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905.

2.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent.



3. Apart from raising other contentions on the merits of the matter touching upon the status of the subject-matter property, the main grievance expressed by the Petitioner before this Court against the impugned order is that the same was issued without following the procedure contemplated under the Tamil Nadu Land Encroachment Act, 1905 (hereinafter called as the 'Act'), by issuing a notice under 7 of the 'Act'. In other words, it is the specific contention of the Writ Petitioner that without issuing notice under Section 7 of the 'Act' and conducting an enquiry thereafter by giving an opportunity of hearing to the Petitioner, the respondent is not justified in issuing the impugned proceedings under Section 6 of the 'Act' straight-away.

4. Mr. R. Vijayakumar, learned counsel for the Petitioner reiterated the above said contention.

5. Mr. VR. Shanmuganathan, learned Special Government Pleader appearing for the respondent fairly submitted that without issuing a notice under Section 7 of the 'Act', the impugned order was issued to the petitioner under Section 6 of the 'Act' and hence, after realizing such mistake, a fresh notice under Section 7 of the 'Act' was issued to the Petitioner on 23.4.2019. Therefore, he submitted that the Petitioner may be directed to give explanation to the said notice, so as to enable the respondent to consider the same and pass orders, after conducting a detailed enquiry.

6. Since it is admitted by the learned Special Government Pleader appearing for the respondent that the impugned proceedings under Section 6 of the 'Act' was issued without following the procedure under Section 7 of the 'Act' and as it is stated that a notice under Section 7 of the 'Act' is now issued on 23.4.2019, We are inclined to allow the Writ Petition and remit the matter back to the respondent. Accordingly, the Writ Petition is allowed and the impugned order, dated 26.3.2019 is set aside, granting liberty to the respondent to go ahead with the proceedings, in pursuant to the issuance of notice under Section 7 of the 'Act', dated 23.4.2019. The Petitioner is directed to give her explanation to the said notice within a period of two weeks from the date of receipt of a copy of this order and on receipt of such explanation, the respondent shall conduct a detailed enquiry by giving an opportunity of personal hearing to the Petitioner and other interested parties, if any and thereafter to pass a speaking order on merits and in accordance with law, as this Court is not expressing any view on the merits of the matter. Such order shall be passed by the respondent within a period of four weeks from the date of receipt of explanation.



Till final order is passed as directed supra, status-quo as on today, shall be maintained by the respondents. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar (CS)

vsn

To

The Tahsildar,
Sivakasi Taluk,
Virudhunagar District.

+ 1 CC TO Mr.R.Vijayakumar, ADVOCATE IN SR No.68376
+ 1 CC to The Special Government Pleader SR.No.68485

ORDER MADE IN
W.P (MD) NO.8265 OF 2019
and
W.M.P (MD) No.6488 of 2019

12.06.2019

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