



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE Mrs.JUSTICE R.THARANI

W.P. (MD)Nos.17730, 18693, 18696 and 18700 of 2019
and
W.M.P. (MD)Nos.14214, 15067, 15069 and 15071 of 2019

W.P. (MD)No.17730 of 2019:

Sumathi

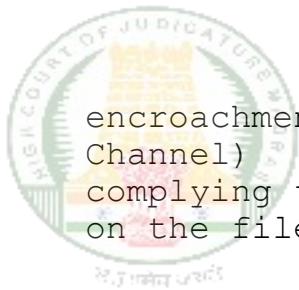
... Petitioner

Vs.

- 1.The District Collector,
Sivagangai District.
Sivagangai.
- 2.The Revenue Divisional Officer,
Devakottai,
Sivagangai District.
- 3.The Tahsildar,
Karaikudi Taluk,
Sivagangai District.
- 4.The Commissioner,
Karaikudi Municipality,
Sivagangai District.
- 5.The Assistant Executive Engineer,
Public Works Department,
Water Resources Organization,
Govindarajulu Street,
Karaikudi,
Sivagangai District.

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order NIL dated 23.07.2019 and consequential proceedings made in Na.Ka.Aa5/ 292/2017, dated 23.07.2019 issued by the 3rd respondent quash the same and consequently direct the respondents 1 to 3 to remove the



encroachment in Town Survey No.1111 to 1138 (Karaikudi Kanmoi Channel) situated at Karaikudi Town, Sivagangai District by complying the order dated 08.04.2019 made in W.P.(MD)No.8324 of 2019 on the file of this Court.

For Petitioner
For Respondent

: M/S.P.Arun Jayatram
: MR.A.K.Baskarapandian
Special Government Pleader for R1

W.P. (MD)No.18693 of 2019:

K.R.Lakshmi Narayanan

... Petitioner

Vs.

1.The Tahsildar,
Karaikudi Taluk,
Sivagangai District.

2.G.Maheswaran

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order of the first respondent dated 06.08.2019 in T.S.No.1116 for an extent of 1.5 cent situate at Karaikudi Town, Sivagangai District and quash the same.

For Petitioner
For Respondents

: Mr.J.Anandkumar
: Mr.A.K.Baskarapandian,
Spl.G.P. for R1

W.P. (MD)No.18696 of 2019:

K.R.Shanmugam

... Petitioner

Vs.

1.The Tahsildar,
Karaikudi Taluk,
Sivagangai District.

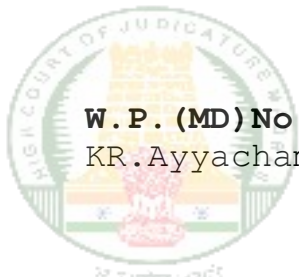
2.G.Maheswaran

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order of the first respondent dated 06.08.2019 in T.S.No.1116 for an extent of 1 cent situate at Karaikudi Town, Sivagangai District and quash the same.

For Petitioner
For Respondents

: Mr.J.Anandkumar
: Mr.A.K.Baskarapandian, Spl.G.P. for R1



W.P. (MD)No.18700 of 2019:

KR.Ayyachamy

... Petitioner

Vs.

1.The Tahsildar,
Karaikudi Taluk,
Sivagangai District.

2.G.Maheswaran

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order of the first respondent dated 06.08.2019 in T.S.No.1116 for an extent of 1 cent situate at Karaikudi Town, Sivagangai District and quash the same.

For Petitioner : Mr.J.Anandkumar

For Respondents : Mr.A.K.Baskarapandian, Spl.G.P. for R1

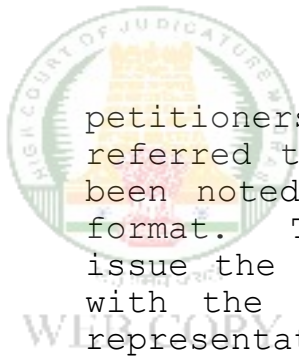
COMMON ORDER

(Order of the Court was made by T.S.SIVAGNANAM,J.)

Heard Mr.J.Anandkumar, learned counsel for the petitioners and Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the official respondent.

2.The impugned orders passed under Section 6 of the Tamil Nadu Land Encroachment Act, 1904, (hereinafter called the Act) dated 06.08.2019, holding that the petitioners as an encroacher of the Government land classified as Kanmoi Channel (கண்மொறி). Earlier, an identical order was issued to the petitioners. Challenging the same, they approached this Court and filed W.P.(MD)Nos.1138 to 1140 of 2019. The Court faulted the procedure adopted by the respondent namely, Tahsildar, Karaikudi Taluk and by treating the impugned order dated 22.01.2019 as a show cause notice with a direction to the petitioners to give their reply to the Tahsildar concerned, within a period of two weeks from the date of receipt of the copy of this order. On receipt of such reply, the Tahsildar has directed to affirm an opportunity of personal hearing to the parties and pass orders on merits and in accordance with law. It was further observed that in case, the Tahsildar comes to the conclusion that there is encroachment, he was directed to remove the same forthwith, after issuing prior notice to the concerned parties in accordance with law.

3.In our considered view, the order and direction issued by the Division Bench is clear. However, the Tahsildar, without taking note of the directions, has once again issued the very same impugned order, which was impugned in W.P.(MD)Nos.1138 to 1140 of 2019. The



petitioners have also submitted their reply, wherein they have referred to a Civil Court decree. None of these appears to have been noted by the Tahsildar and impugned proceedings is a printed format. Though the first respondent / Tahsildar is permitted to issue the order under Section 6 of the Act, in the approved format with the relevant particulars, when this Court had directed the representation to be considered and opportunity of personal hearing should be given, a speaking order should have been passed. Thus, two errors have been committed by the Tahsildar.

4. In fact, we had wondered as to whether there was any collusion between the Revenue officials and the encroachers and by adopting the *modus operandi*. However, at this juncture, we do not wish to comment anything on this aspect.

5. Further, the learned counsel appearing for the petitioners brought to our notice to an earlier direction issued by the Division Bench in W.P.(MD)No.8324 of 2019 to which one of us (Hon'ble Mrs. Justice R. THARANI) was a party and by order dated 08.04.2019, directions were issued to take action against all encroachers. The learned counsel for the petitioners would submit that no action has been taken against the encroachers, who are petitioners' neighbours and they said that they are very influential people occupying high official position and very important political personalities.

6. The Division Bench by an order dated 08.04.2019 directed to remove all encroachers. The directions should have been complied with and there cannot be any discrimination. However, as it is found that the order impugned in the present Writ petition suffers from two infirmities, we have left no option except to set aside the same.

7. Accordingly, the Writ petitions are allowed. The impugned order is set aside. The matter is remanded back to the first respondent / Tahsildar, who is directed to pass a speaking order by scrupulously following the directions issued by the Division Bench in the order dated 22.01.2019 and the operative portion of which reads as follows:

"9. In view of the submissions made by either side, this Court is constrained to issue following direction:

Notice issued to the petitioners under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 is directed to be treated as show cause notice. They are directed to give their reply to the first respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of such reply, the first respondent after affording opportunity of personal hearing to the parties, shall pass orders on merits and in accordance with law. in case of the first respondent coming to the conclusion that there is

<https://hcservices.reports.org.in/hcservices/> the first respondent is directed to remove the



same forthwith after issuing prior notice to the concerned parties in accordance with law. The entire exercise shall be completed within a period of eight weeks thereafter."

8.The above direction shall be complied with within a period of two weeks from the date of receipt of a copy of this order. The Writ petitions are allowed accordingly. No costs. Consequently, connected W.M.Ps.are closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The District Collector,
Sivagangai District. Sivagangai.
- 2.The Revenue Divisional Officer,
Devakottai, Sivagangai District.
- 3.The Tahsildar,
Karaikudi Taluk, Sivagangai District.
- 4.The Commissioner,
Karaikudi Municipality, Sivagangai District.
- 5.The Assistant Executive Engineer,
Public Works Department,
Water Resources Organization,
Govindarajulu Street, Karaikudi,
Sivagangai District.

+1 CC to M/s.P.ARUNJAYATRAM, Advocate (SR-85106[F] dated 04/09/2019)

+3. C.C. to M/S.J.ANAND KUMAR, Advocate SR.No. 85116

+1 CC to M/s.SPL GP (SR-85333 & 85339 [F] dated 05/09/2019)

W.P. (MD)Nos.17730, 18693, 18696 and 18700 of 2019
03.09.2019

NBJ
JM/18.09.2019/5P/11C