

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.01.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P. No.777 of 2020

C.Subramani

.. Petitioner

v.

1.The District Collector,
Tirupattur Town,
Tirupattur District.

2.The Tahsildar,
Natrampalli,
Tirupattur District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari by calling for the records relating to impugned notice dated 31.12.2019 issued by the respondent herein to the petitioner under Section 6 of the Tamil Nadu Land Encroachment Act 1905 and quash the same.

For petitioner : Mr.S.Udaya Kumar for
Karan and Uday

For respondents : Mr.V.Shanmuga Sundar,
Special Government Pleader

ORDER

(Order of this Court was made by R.SUBBIAH,J.)

The writ petition has been filed challenging the impugned notice dated 31.12.2019 issued by the second respondent herein to the petitioner under Section 6 of the Tamil Nadu Land Encroachment Act 1905.

2.In the affidavit filed in support of the writ petition, it is averred that the petitioner is the owner of the property to the extent of 0.41.50 and 1.44.0 hectares comprised in Survey Nos.343/3 and 344/2 situated at Natrampalli Village, Tirupattur District and from the date of purchase, he is in absolute

possession and enjoyment of the same and patta was also issued to him for the above property in Patta Nos.1590 and 1789. While so, there is a Mandaveli Government Poromboke land in S.No.460 to an extent of 0.71.0 Hectares, which is adjacent to the petitioner's land and the said land was originally used by the Adi Dravidar Community of Natrampalli Villagers, Tirupattur for Cemetery. Since the said land in S.No.460 was located near to the Government Primary Schools and Om Shakthi Temple on the way to National Highway, the Special Officer of Natrampalli has passed an order by affixing a board informing the public not to use the said Survey No.460 for cemetery purpose. Based on the order passed by the Special Officer, the said land was not used for the cemetery purpose for the past five years. While so, on 22.09.2019, the second respondent herein permitted one of the villagers of Attur Kuppam for burying the dead body of one Venugopal in the above Survey No.460. Without considering the protest of the petitioner and his villagers, the second respondent allowed the villagers of Attur Kuppam for burying the dead body with the help of police officials. Though the petitioner's house has been constructed in the patta land, without surveying the land and without conducting any proper enquiry, a notice was issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 alleging that the petitioner constructed a house site in Government Poromboke land. After receipt of the notice from the second respondent, the petitioner submitted a detailed explanation on 04.11.2019 stating that the petitioner's house is located in the patta land. But without considering the explanation offered by the petitioner and without conducting an enquiry, the second respondent herein issued an eviction notice on 31.12.2019 whereby directing the petitioner to demolish the house. Since no reasonable opportunity was given to the petitioner to put forth his claim, the impugned notice dated 31.12.2019 issued by the second respondent evicting the petitioner is per se illegal and violation of procedure contemplated under Sections 6 and 7 of the Tamil Nadu Land Encroachment Act, 1905. Hence, the petitioner is before this Court seeking the above prayer.

3.The only ground raised by the learned counsel for the petitioner is that since the impugned notice has been issued without affording an opportunity of personal hearing to the petitioner, the same is liable to be set aside.

4.Learned Special Government Pleader appearing for the respondents would submit that the petitioner is having an alternative remedy of appeal and seek for dismissal of the petition.

5.Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

6. In view of the submission made by either side, we are of the opinion that when the petitioner made his representation, the second respondent ought to have given an opportunity of personal hearing to the petitioner before issuing the impugned notice, but the same has not been done. Therefore, the impugned notice issued by the second respondent is liable to be set aside and the same is set aside. Accordingly, the respondents are directed to conduct enquiry, by affording an opportunity of personal hearing to the petitioner and the necessary parties, if any and pass appropriate orders, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. Till such time, status quo to be maintained by both the parties.

7. With the above direction, the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

vga

To

1. The District Collector,
Tirupattur Town,
Tirupattur District.

2. The Tahsildar,
Natrampalli,
Tirupattur District.

+1cc to Mr. Karan, Advocate, SR.No.7639.

+1cc to Government Pleader, SR.No.7392.

GMR (CO)
CSR: 26.02.2020

W.P. No.777 of 2020

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