

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA
W.P.No.5901 of 2020
and
W.M.P.No.6910 of 2020

M.Balakrishnan

... Petitioner

Vs

1.The Executive Officer,
Town Panchayat Office,
Sulur, Coimbatore District - 641 402.

2.The Tahsildar,
Sulur Taluk,
Coimbatore District - 641 402.

3.P.Eswari

4.Annakodi

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned notice of the 1st respondent dated 25.02.2020 and quash the same and consequently, direct the respondents not to interfere with the peaceful possession and enjoyment of the premises bearing door No.10/7, Karuppaboyan Lane, East Car Street, Sulur, Coimbatore 641402 by the petitioner.

For Petitioner : Dr.S.S.Swaminathan.

For Respondents: Mr. S. Kamalesh Kannan,
Government Advocate for R1 & R2.

WEB COPY

O R D E R

(Order of the court was made by N.KIRUBAKARAN.J.,)

The Petitioner had challenged the notice issued under Section 7 of the Land Encroachment Act by the first respondent stating that the petitioner has encroached upon the property comprised in S.Nos.720/8 & 720/9 at Sulur Village, Coimbatore District.

2. According to the petitioner, the property is in occupation of the ancestors of the petitioner and the petitioner right from 15.10.1917 by virtue of a sale deed. A Bigger property was originally purchased and later by virtue of partition deed dated 24.04.1945, the property was partitioned and subsequently, release deeds were executed. It is seen from the records that as on date the petitioner is the owner of the property and the petitioner is residing in the disputed portion of the said property. Since the respondents are about to take action on the property by evicting the petitioner, the petitioner was compelled to file a suit in O.S.No.655 of 2019 before the III Additional Subordinate Judge, Principal Sub Court, Coimbatore seeking for a declaration that he is the owner of the property as per the partition release deeds dated 01.03.1996 & 30.05.2005.

3. In the said suit, the Executive Officer, Town Panchayat Office, Sulur, Coimbatore, P.Eswari and Annakodi were also made as parties who are the first, third and fourth respondents herein. On one occasion, interim order has been granted. Taking advantage of the interim order, this impugned notice has been issued under Section 7 of the said Act. Though the date of the notice was 25.02.2020, it was served only 27.02.2020. Challenging the said notice, the petitioner is before this Court.

4. Heard Dr.S.S.Swaminathan, learned Counsel appearing for the petitioner and Mr.S.Kamalesh kannan, learned Government Advocate appearing for the respondents 1 and 2.

5. The learned Government Advocate produced a copy of the notice dated 03.03.2020 issued under Section 6 of the said Act by the first respondent with reference to the impugned notice dated 25.02.2020 issued under Section 7 of the said Act. A perusal of the impugned notice dated 25.02.2020 would show that the petitioner was directed to give reply to the said notice on or before 02.03.2020 whereas the said notice was only served on 27.02.2020. If 27.02.2020 was taken as the received date, as per the existing rules, it is seen that fifteen days time has not been given to the petitioner to give a reply to the impugned notice.

6. However, on 02.03.2020, the petitioner gave an application for extension of time for giving reply. Subsequently, it is seen that before the petitioner could give reply to the impugned notice, a final notice has been issued under Section 6 of the said Act on 03.03.2020. Even though the said notice is not challenged by the petitioner and the copy of the same is produced before this Court for the first time, it is seen that no sufficient time has been given to the petitioner

for giving reply and no sufficient opportunity has been granted to the petitioner to prove his case.

7.Hence, the notice issued under Section 6 of the said Act dated 03.03.2020 by the first respondent with reference to the notice issued under Section 7 of the said Act dated 25.02.2020 is set aside and fifteen days time from the date of receipt of a copy of this order is granted to the petitioner to give reply to the notice dated 25.02.2020. After reception of the reply given by the petitioner, the respondents 1 and 2 shall give sufficient opportunity to the petitioner and hear him and pass appropriate Order under Section 6 of the said Act within a period of six weeks thereafter. In view of the above order, the respondents 1 and 2 shall not interfere with the petitioner's possession till an opportunity is given to the petitioner and final notice has been issued under Section 6 of the said Act.

8.With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Executive Officer,
Town Panchayat Office,
Sulur, Coimbatore District - 641 402.

2.The Tahsildar,
Sulur Taluk,
Coimbatore District - 641 402.

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No. 21325
+1cc to the Government Pleader, S.R.No. 22136

W.P.No.5901 of 2020

and

W.M.P.No.6910 of 2020

SSI (CO)
GN(13/03/2020)