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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2020

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 11398 of 2019

and

W.M.P. Nos. 11692 and 11693 of 2019

A. Muthusamy

... Petitioner

-vs-

1. The State Information Commission,
Rep. by its Assistant Registrar,
Office of the State Information Commission,
No. 2, Thiyagarayar Road,
Eldams Road Junction,
Teynampet,
Chennai - 600 018.

2. The Public Information Officer,
Tahsildar Office,
Namakkal Taluk and District.

3. The Block Development Officer,
Block Development Office,
Pudhuchatiram,
Namakkal District.

4. P. Manikandan

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the order dated 07.03.2019 passed by the First Respondent in S.A. No. 8565/B/2017 and quash the same.

For Petitioner :Mr. T.L. Thirumalaisamy

For Respondents:Mr. Niranjan Rajagopalan,
Standing Counsel (for R1)

Mr. D. Sathyaraj,
Special Government Pleader (for R2 & R3)

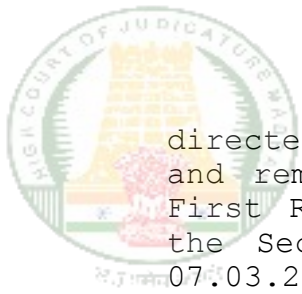
Mr. C. Gangaiamaran (for R4)



O R D E R
(through video conference)

Heard Mr. T.L. Thirumalaisamy, Learned Counsel for the Petitioner, Mr. Niranjan Rajagopalan, Learned Standing Counsel appearing for the First Respondent, Mr. D. Sathyaraj, Learned Special Government Pleader appearing for the Second and Third Respondents and Mr. C. Gangaianmaran, Learned Counsel appearing for the Fourth Respondent through video conference and perused the materials placed on record, apart from the pleadings of the parties.

2. The Fourth Respondent, viz., P. Manikandan, is reported to have made a representation dated 21.08.2013 to the Sub-Collector, Namakkal for removal of certain encroachments which had been ordered in Memo No. O. Mu. 6960/ 2013/A6, but no further action had been taken thereon despite the lapse of four years. In that backdrop, the Fourth Respondent appears to have made an application dated 28.08.2017 under Section 6(1) of the Right to Information Act, 2005 (hereinafter referred to as the 'RTI Act' for short), to the Second Respondent, viz., the Public Information Officer, in that regard who had furnished information to him by letter dated 31.10.2017. The Fourth Respondent, who was not satisfied with the same, had filed an appeal dated 01.10.2017 against that order under Section 19(1) of the RTI Act, to the Appellate Authority for which he had not received any reply. At that stage, the Fourth Respondent had filed Second Appeal dated 04.11.2017 before the First Respondent, viz., the State Information Commission under Section 19(3) of the RTI Act, which was taken on file as S.A. No. 8565/B/2017. It was represented by the Second Respondent during the enquiry on 07.03.2019 before the First Respondent that the Fourth Respondent had been informed that the land in S. No. 58/17 to an extent of 0.080.0 sq.m. of Thathripuram Village has been classified as Government Poramboke Street and that the Petitioner had constructed a house in S. No. 58/18 and Door No. 3/30 and he has been residing there for the past 20 years and had encroached to an extent of 10 feet on the Government Poramboke Street, which according to him, was not causing any inconvenience to for usage or transportation by the public and that the Village Administrative Officer had also informed that the said encroachment need not be removed considering the economic status of the Petitioner and that a suit in O.S. No. 369 of 2017 is pending regarding the removal of encroachment. The Fourth Respondent during that enquiry refuted the contentions of the Second Respondent and brought to the notice of the First Respondent that the Revenue Divisional Officer, Namakkal had already directed the removal of the compound wall of the Petitioner in S. No. 58/17 in Thathripuram Village, which is a Government Poramboke Street, and the Revenue Divisional Officer by proceedings No. Ci. Pa. 54/2017/A5 dated 15.09.2017



directed the Tahsildar, Namakkal to enquire and survey the land and remove the encroachments, if any, and file a report. The First Respondent, who was of the view that the contentions of the Second Respondent could not be accepted, by order dated 07.03.2019 in S.A. No. 8565/B/2017 directed the Second Respondent to remove the compound wall constructed by the Petitioner in the encroached land in S. No. 58/17 in Thathripuram Village with the assistance of the Third Respondent within a period of 10 days and report the same to the First and Fourth Respondents within a period of 20 days from the date of receipt of a copy of that order. It was further informed that if the said order was not complied, severe action would be taken against the Second Respondent under the provisions of the RTI Act. The Petitioner, who was not a party to the proceedings before the First Respondent, has filed this Writ Petition challenging the aforesaid order dated 07.03.2019 passed by the First Respondent, complaining that it entails adverse civil consequence to him.

3. The main thrust of the contention of the Learned Counsel for the Petitioner is that the direction issued by the First Respondent in the impugned order undoubtedly entails adverse civil consequence to the Petitioner, but no notice or opportunity of personal hearing was afforded to the Petitioner before the impugned order was passed. It is further contended by him that the nature of relief granted by the First Respondent travels beyond the powers conferred upon the First Respondent by the RTI Act.

4. Learned Counsel appearing for the First and Fourth Respondents are not in a position to justify the impugned action viz-a-viz the aforesaid infirmities raised by the Learned Counsel for the Petitioner.

5. It is settled legal position that any decision entailing adverse civil consequence by a public authority must be made consistently with the rules of natural justice, meaning thereby that the person concerned must be informed of the case with supporting evidence against him and he must be given a fair opportunity to meet the case before an adverse decision is taken, as held by the Hon'ble Supreme Court of India in State of Orissa -vs- Binapani Dei [(AIR 1967 SC 1269)]. It is equally trite law that the First Respondent, viz., State Information Commission, which is an authority under the RTI Act, is entitled to exercise only those powers which have been conferred under Sections 18 and 19 of the RTI Act and cannot travel beyond same. The Hon'ble Supreme Court of India in All India Indian Overseas Bank Sc and ST Employees' Welfare Association -vs- Union of India [(1996) 6 SCC 606] has reiterated this legal position in connection with the scope of exercise of powers in respect of the National Commission for Scheduled Castes and Scheduled



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Tribes established under Article 338 of the Constitution. Viewed from that perspective, there is substantial force in the contention of the Learned Counsel for the Petitioner that the First Respondent cannot grant any relief to the Fourth Respondent in the Second Appeal filed by him beyond the scope of the powers conferred on the First Respondent under the RTI Act.

6. In the aforesaid circumstances, the impugned order dated 07.03.2019 in S.A. No. 8565/B/2017, which cannot be sustained, is set aside and the matter is remitted to the First Respondent to decide the matter afresh and pass reasoned orders on merits and in accordance with law, after impleading the Petitioner as a party to that proceeding and affording full opportunity of hearing to all parties concerned including the Petitioner and the Fourth Respondent following the prescribed procedure. It is needless to point out here that while adjudicating the Second Appeal filed by the Fourth Respondent, it is incumbent upon the First Respondent to consider each of the contentions raised by the parties including the question as to whether the nature of relief sought by the Fourth Respondent falls within the powers conferred upon the First Respondent under the RTI Act and communicate the decision taken to all parties concerned under written acknowledgment. It is made clear that no view has been expressed by this Court on the factual correctness or entitlement of the rival claims of any of the contesting parties.

7. The Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

vjt
To

1. The Assistant Registrar,
State Information Commission,
Office of the State Information Commission,
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VSN II (CO)
CB(15/07/2020)