

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2020

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

AND

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P.NO.15318 of 2020 and

W.M.P.No.19152 of 2020

P.Janakiraman, M/67

.... Petitioner

Vs

1. The District Collector
Kanchipuram District,
Kanchipuram.

2. The Tahsildar,
Walajabad Taluk,
Kanchipuram District.

3. The Revenue Inspector,
Walajabad,
Kanchipuram District.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining the impugned orders dated 08.10.2020 and 01.10.2020 passed by the respondents 2 and 3 respectively, quash the same and consequently direct the respondents to grant patta to the property measuring 00024 sq.meters ($\frac{1}{2}$ cent) in new S.F.No.573/19, Walajabad, Kanchipuram District by considering the petitioner's representation dated 05.10.2020.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.R.Vijayakumar

Additional Government Pleader

O R D E R

(Order of the Court was made by V.PARTHIBAN, J.)

The matter is taken up through web hearing.

2. The case of the petitioner is that his wife had purchased three different house properties on either side of a passage in S.No.573/19, Walajabad, Kanchipuram District, which passage is the subject matter of dispute between the petitioner and the

respondents. According to the petitioner, few persons inimical to the petitioner, were representing to the respondent authorities to initiate action against the petitioner and to evict them from the alleged encroachment of the public passage. It appears that a writ petition was filed in W.P.No.6489 of 2020 by one Sathish seeking direction to the authorities concerned to take action against the alleged encroachment in the disputed passage. Unfortunately, the petitioner was not made a party, though the petitioner was likely to be affected by any action to be initiated by the respondents on the basis of the directions issued by this Court.

3. This Court disposed of the writ petition vide its order dated 07.09.2020 (W.P.No.6489 of 2020), directing the respondents to complete the process of removing the encroachment by following due procedure within eight weeks. In pursuance of the directions, the second respondent issued Notice under Section 7 of the Land Encroachment Act, 1905, dated 01.10.2020 directing the petitioner to show cause as to why the petitioner cannot be removed from the encroached portion as described in the notice.

4. In response to the notice, the petitioner submitted a representation on 05.10.2020 denying the factum of encroachment on their part. Without considering the explanation, the third respondent issued notice on 08.10.2020 under Section 6 of the Land Encroachment Act, 1905 directing the petitioner to remove the encroachment on his own within seven days, failing which the petitioner would be forcibly removed from the encroached portion. The notice and the order passed by the respondents dated 01.10.2020 and 08.10.2020 are put to challenge in this writ petition.

5. Mr.N.Manokaran, learned counsel appearing for the petitioner would submit that when a notice was issued under Section 7 of the Act and due explanation was submitted to the show cause notice, it was imperative on the part of the authority to consider the explanation and pass appropriate orders under Section 6 of the Act. In this case, unfortunately, the respondent, who passed the final order dated 08.10.2020 appears to have not considered the explanation offered by the petitioner at all. The order purported to be passed under Section 6 of the Act is a cyclostyled order, which per se did not disclose any application of mind on the part of the authority. Therefore, he would submit that on this ground alone the impugned orders are liable to be set aside.

6. Mr.R.Vijaya Kumar, learned Additional Government Pleader takes notice for the respondents.

7. In consideration of the submissions made by the petitioner that the order passed under Section 6 of the Act cannot be construed to be an order at all, as the same did not disclose any application of mind by the authority who had passed the order, this Court is in agreement with the submissions made by the petitioner that the purported order issued under Section 6 of the Act did not disclose any iota of application of mind on the part of the authority. In fact, no reference is also drawn to the representations / objections submitted by the petitioner on 05.10.2020.

8. This Court is unable to appreciate as to how an authority, who was empowered to issue the removal order on the ground of encroachment, can pass orders through a cyclostyled communication as in the present case.

9. When the authority issues a cyclostyled order of this nature, that itself ex-facie discloses that the authority was pre-determined to proceed further with their action initiated under Section 7 notice date 01.10.2020. Such course adopted by the authority did not fulfill the legal requirements contemplated under Section 6 of the Act. On this ground alone, the impugned orders are liable to be interfered with.

10. For the above said reasons, the impugned Notice under Section 7 dated 01.10.2020 and the Notice under Section 6 dated 08.10.2020 are hereby set aside. The matter is remanded back to the second respondent and the second respondent is directed to consider the representation of the petitioner, and if necessary grant an opportunity of personal hearing to him and pass a reasoned order on merits. The authority is directed to pass appropriate orders as indicated above within a period of eight weeks from the date of receipt of a copy of this order. Till a final order is passed, the authorities are restrained from taking any adverse action against the petitioner and the status quo as on date shall be maintained till then.

11. The writ petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (V.A)

//True Copy//

Sub Assistant Registrar

kst/pns

To

1. The District Collector
Kanchipuram District,
Kanchipuram.
2. The Tahsildar,
Walajabad Taluk,
Kanchipuram District.
3. The Revenue Inspector,
Walajabad,
Kanchipuram District.

+1cc to Mr.N.Manokaran, Advocate, S.R.No. 34794
+1cc to the Government Pleader, S.R.No. 34806

W.P.No.15318 of 2020

RK(CO)
GN(28/10/2020)