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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.08.2020

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THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD) No.9495 of 2020

and

W.M.P. (MD) Nos.8574 & 8575 of 2020

(Through Video conferencing)

S.G.Murugesan

...Petitioner

-Vs-

1.The Tahsildar
Second Grade Executive Magistrate
Ramanathapuram.

2.The Commissioner
Ramanathapuram Municipality
Ramanathapuram.

3.The Inspector of Police
B-1 Police Station
Ramanathapuram
Ramanathapuram District.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorari, calling for the impugned order passed by the 1st respondent under Na.Ka.P9/1647/2020 dated 20.07.2020 and to quash the same as illegal and pass such or further orders.

For Petitioner : Mr.K.R.Laxman
For Respondents : Mr.R.Murugan
Addl. Govt. Pleader

ORDER

[Order of the Court was made by **M.SATHYANARAYANAN, J.,**]

The petitioner in the affidavit filed in support of the writ petition would aver, among other things, that his grand father viz., Sadaiyandi has purchased a landed property comprised in old Bymash Number 32-A, through a registered sale deed dated 08.08.1950, bearing Document No.2823 of 1950, registered on the file of the office of the Sub-Registrar, Ramanathapuram, admeasuring to an extent of 16.51 Cents and later on, the said Bymas Number was classified as Old Survey No.276/5 and it got further classified in New Survey No.276/9.



2. The petitioner would further aver that upon demise of his grandfather, his father has succeeded to the estate and thereafter, the petitioner along with his brother have succeeded to the estate and he is one of the co-owners of the property.

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3. The grievance expressed by the petitioner is as to the alleged encroachment on a public pathway, for which, the office of the first respondent has sent a notice dated 27.06.2020, in Na.Ka.P9/1418/2020 and the petitioner went to the office of the first respondent, he was informed that on account of the out break of COVID-19 pandemic virus, the hearing would not take place and he returned and to the shock and surprise, the first respondent has issued the impugned notice, directing the second respondent to remove the encroachment on or before 31.07.2020 and report the same to his office.

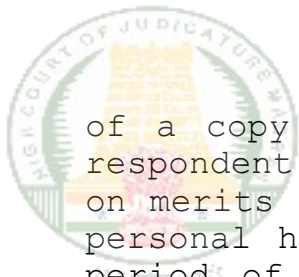
4. The primordial submission of the learned counsel appearing for the petitioner is that even as per the impugned notice, the land in survey No.276/5 stands in the name of one Sithi Jinaitha Ammal and if it is so, the provisions of the relevant laws cannot be invoked for removal of encroachment and further pointed out that the impugned proceedings also do not refer to any provision of law, under which the first respondent is exercising such powers and hence, prays for interference.

5. *Per contra*, Mr.R.Murugan, learned Additional Government Pleader accepts notice on behalf of the respondents and would submit that the first respondent, on a thorough consideration and scrutiny of the materials, has reached the conclusion that the petitioner had encroached upon a public pathway and therefore, the impugned notice issued by the first respondent is perfectly in order and prays for dismissal of this writ petition.

6. This Court has carefully considered the rival submissions and also perused the materials placed on record.

7. A perusal of the impugned proceedings/order of the first respondent would disclose that in the reference, three documents have been cited and none of the documents referred to would show that any opportunity was given to the petitioner to put forth his case/defence and it further appears that order of eviction came to be passed straightaway without affording any opportunity whatsoever to the petitioner.

8. This Court, taking into consideration the above facts and circumstances, directs the first respondent to treat the impugned notice as show cause notice, for which, the petitioner is granted liberty to submit his response along with relevant and authenticated documents, within a period of three weeks from the date of receipt



of a copy of this order and upon receipt of the same, the first respondent is directed to consider the said representation/response on merits and in accordance with law by affording an opportunity of personal hearing also and pass appropriate orders within a further period of four weeks thereafter and till such time, shall defer further decision in terms of the impugned notice dated 20.07.2020. It is also made clear that the petitioner, till the disposal of his representation by the first respondent, shall not create any third party rights in respect of the land in question.

9. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Tahsildar
Second Grade Executive Magistrate
Ramanathapuram.
- 2.The Commissioner
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Ramanathapuram.
- 3.The Inspector of Police
B-1 Police Station
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Order made in
W.P. (MD) No. 9495 of 2020
19.08.2020

VB (31.08.2020) 3P 4C