

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.3657/2021 & WMP.No.4189/2021

M.Balakrishnan

.. Petitioner

Versus

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

2.The Tahsildar
Sulur Taluk
Coimbatore District 641402.

3.P.Eswari

4.Annakodi

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the impugned notice of the 1st respondent Na.Ka.No.564/2017/E dated 05.02.2021 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 R1	:	Mr.V.Jayaprakash Narayan Government Pleader
For R2	:	Mr.R.Vijayakumar Addl.Govt.Pleader

ORDER

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

(1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.

(2)Mr.V.Jayaprakash Narayan, learned Government Pleader accepts notice on behalf of the 1st respondent and Mr.R.Vijayakumar,

learned Additional Government Pleader accepts notice on behalf of the 2nd respondent.

- (3) The petitioner claims that the land comprised in Old S.No.422 [Part] and New S.No.720, Sular Village, Coimbatore Taluk and District, originally belonged to one Ramanboyan and his brother Kappaboyan and they had purchased the same through a registered Sale Deed dated 25.11.1894. The petitioner claims to be the great grandson of Kappaboyan and further, according to him, his great grandfather purchased the said property through a registered Sale Deed bearing Doc.No.2210/1917 dated 15.10.1917 and by way of succession, the petitioner inherited the property and claims to be in possession and enjoyment of the same. The petitioner, to his shock and surprise, was issued with the Show Cause Notice dated 26.03.2019 by the 1st respondent, cancelling the Planning Permission bearing No.986/2016-License No.134/2016-17 and it was followed by the final order dated 29.03.2019 calling upon the petitioner to remove the encroachment on the piece of land, which is a public road/pathway.
- (4) The petitioner has also filed a comprehensive civil suit in OS.No.655/2019 on the file of the Subordinate Judge at Coimbatore against Eswari, Annakodi and the 1st respondent herein, praying for declaration and permanent injunction and pendency of the suit, the petitioner is having an interim order of Status Quo in IA.No.1/2019 and the same has been extended from time to time.
- (5) The 1st respondent, on an earlier occasion, had issued notices u/s.7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, and making a challenge to the same, the petitioner had filed WP.No.5901/2020 and it came to be disposed of with certain directions.
- (6) The learned counsel for the petitioner, on instructions, would submit that before cancellation of building permit/plan, the petitioner has put up the superstructure strictly in accordance with the sanctioned plan without any deviation and the said submission, on instructions, is placed on record.
- (7) The learned counsel for the petitioner has drawn the attention of this Court to paragraph No.7 of the said order and would submit that despite directions have been given, the 1st respondent did not adhere to the same and without due and proper application of mind, has issued the impugned Notice u/s.6 of the Tamil Nadu Land Encroachment Act, 1905 and he would further add that though the petitioner is having an effective alternative remedy in the form of appeal before the District Collector of Coimbatore, since the 1st respondent did

not adhere to the directions given by this Court in the above cited order, the petitioner is entitled to invoke the extraordinary original jurisdiction of this Court under Article 226 of the Constitution of India and prays for interference.

(8) Per contra, Mr.V.Jayaprakash Narayan, learned Government Pleader appearing for the 1st respondent would submit that the petitioner was given an opportunity of personal hearing and he did not produce the documents and therefore, a fair decision has been taken to proceed further by issuing the impugned notice and prays for dismissal of this writ petition.

(9) Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the 2nd respondent would submit that the 3rd respondent filed a writ petition in for removal of encroachment and alleging non-compliance, a contempt petition has also been filed and the same is pending and would further add that since due process of law has been followed, the petitioner is not entitled to make any grievance and prays for dismissal of this writ petition with exemplary cost.

(10) This Court has carefully considered the rival submissions and also perused the materials placed before it.

(11) It is relevant to extract Paragraph 7 of the final order dated 10.03.2020 made in WP.No.5901/2020:

''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.''

(12) A Division Bench of this Court, while disposing of the said writ petition, has given certain directions and a perusal of the impugned notice would prima facie disclose that the said directions have not been adhered to. It is also the specific

case of the petitioner that he has not been afforded with any opportunity of personal hearing also.

(13) This Court, taking into consideration the facts and circumstances of the case, is passing the following order.

(14) The writ petition stands partly allowed and the impugned order/notice dated 05.02.2021 issued by the 1st respondent is set aside and the 1st respondent is directed to issue notice to the petitioner as well as the 3rd respondent to attend the personal enquiry along with relevant and authenticated documents and upon receipt of the same, the petitioner and the 3rd respondent shall appear before the 1st respondent and shall extend maximum cooperation for earlier conclusion of the enquiry and upon so, the 1st respondent is directed to consider and pass orders in accordance with law within a period of six weeks from the date of completion of enquiry and communicate the decision taken, to the petitioner as well as to the 3rd respondent.

(15) It is made clear that till the orders are passed by the 1st respondent, the petitioner shall not create any third party rights in respect of the property in question. It is also made clear that till orders are passed, the 1st respondent shall defer further decision in terms of the impugned notice as to the removal of the alleged encroachment. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS.VII)

/True Copy/

Sub Assistant Registrar

To

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

2. The Tahsildar, Sulur Taluk
Coimbatore District 641402.

+1cc to Mr.S.S.Swaminathan, Advocate SR.NO..10607

+1cc to Mr.V.Jayaprakash, Advocate SR.NO..10821

AKM/17.03.21/ 4P-5C/

WP.No.3657/2021
23.02.2021