



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P. (MD) No.12458 of 2021

and

W.M.P (MD) .Nos.9758 and 9760 of 2021

S.Bharathalwar

.. Petitioner

Vs

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Revenue Divisional Officer,
Sivakasi, Virudhunagar District.
3. The Tahsildar,
Sivakasi Taluk,
Virudhunagar District.
4. The Block Development Officer,
Vembakottai, Virudhunagar District.

5. Venkatasamy

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari calling for the records pertaining to the impugned order passed by the fourth respondent vide his proceedings Na.ka.B3/331/2020 dated 20.05.2021 and his consequential order passed in Na.Ka.B3/331/2020 dated 09.07.2021 and quash the same as illegal.

For Petitioner

: Mr.T.Lenin Kumar

For respondents

: Mr.A.K.Manickam,
Standing Counsel for
Government
for R1 to R4



ORDER

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

We have heard Mr.T.Lenin Kumar, learned counsel appearing for the petitioner and Mr.A.K.Manikkam, learned Government Counsel appearing for the respondents 1 to 4.

2. The petitioner is aggrieved by the proceedings of the fourth respondent dated 20.05.2021 and 09.07.2021, directing the petitioner to remove the encroachment. Admittedly, a survey was conducted in the presence of the petitioner on 26.09.2019. Pursuant to which, the Revenue Tahsildar, Sivakasi, has passed the proceedings on 19.11.2019 and also issued notice dated 20.05.2021. In between, no action has been initiated. What prompted the fourth respondent to pass the impugned proceedings is the direction issued in W.P(MD). No.3541 of 2021, filed by one R.Venkatasamy, which was disposed of by the Hon'ble First Bench by order dated 24.02.2021. The operative portion of the order reads as follows:

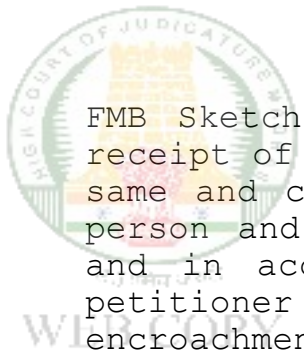
"2. The petitioner will make a detailed representation to the Block Development Officer, Vembakottai Taluk, within four weeks from the date.

3. Upon receipt of such representation of the petitioner, the concerned Block Development Officer will look into the allegations and take appropriate measures in accordance with law after affording an opportunity of hearing to the persons likely to be affected by his decision. The decision of the Block Development Officer should be communicated to the petitioner within six weeks of the receipt of the representation.

4. In the event the petitioner is dissatisfied with the action taken by the Block Development Officer or the decision communicated to the petitioner, the petitioner will be entitled to seek further remedies in accordance with law, but not by way of any public interest litigation and upon establishing the petitioner's locus standi."

3. In terms of the above directions, the said writ petitioner R. Venkatasamy had to make a representation that had to be considered by the Authority within a time frame. Though it may be true that survey was conducted on 30.09.2019, no further step was immediately taken. Therefore, the fourth respondent should have put the petitioner on notice, enclosed the copy of the survey report and then proceeded to take action, instead of issuing an order directing the removal of encroachment.

4. In the light of the above, we are not inclined to set aside the impugned proceedings, but to direct the petitioner to treat the impugned proceedings as show cause notice and submit his objections along with the copy of sale deed of the property, copy of patta,



FMB Sketch, etc., to establish that there is no encroachment. On receipt of those documents, the fourth respondent shall consider the same and conduct an enquiry by asking the petitioner to appear in person and thereafter, proceed to pass a reasoned order on merits and in accordance with law. If encroachment is found, then the petitioner should be granted seven days time to remove the encroachment, failing which, the fourth respective can remove the encroachment and recover the cost from the petitioner.

5. With the above directions, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pkn

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 District Collector,
Virudhunagar District,
Virudhunagar.
2. The Revenue Divisional Officer,
Sivakasi, Virudhunagar District.
3. The Tahsildar,
Sivakasi Taluk,
Virudhunagar District.
4. The Block Development Officer,
Vembakottai, Virudhunagar District.

+1 CC to M/s.T.LENINKUMAR, Advocate (SR-23786[F] dated 23/07/2021)
+1 CC to M/s.SPL GP (SR-24047[F] dated 27/07/2021)

W.P.(MD) No.12458 of 2021
23.07.2021

SAR(CO)
LR (02.08.2021) 3P 7C