



W.P.(MD) No.8410 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.P.(MD) No.8410 of 2023
and
W.M.P.(MD)No.7731 of 2023**

Velusamy

: Petitioner

-vs-

1.The District Collectorate,
Tenkasi, Tenkasi District.

2.The Tahsildar,
Kadayanallur Taluk,
Tenkasi District.

3.K.Pattan

: Respondents

[R3impleaded vide order dated 25.07.2023 in
W.M.P.(MD)No.11335 of 2023]

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the impugned order passed by the second respondent in Na.Ka.No.A2/1075/2022 dated 02.02.2023 and quash the same as illegal.

For Petitioner

: Mr.RJ.Karthick



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For R1 & R2

: Mr.D.Sachikumar
Additional Government Pleader

For R3

: Mr.T.Kanagaraj

ORDER

[Order of the Court was made by D.BHARATHA CHAKRAVARTHY, J.]

This Writ Petition is filed challenging the impugned order dated 02.02.2023 passed by the second respondent namely, the Tahsildar, Kadayanallur Taluk, Tenkasi District under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, thereby, requiring the petitioner herein to remove the encroachment in S.No.1039/6 which is classified as 'Kali Natham' totally admeasuring 0.03.55 ares, which is alleged to have been encroached by the petitioner by putting up a house to an extent of 75 sq.mtrs.

2. The brief facts leading to this writ petition is that the third respondent herein had originally filed W.P.(MD)No.26758 of 2022 praying for removal of encroachment and by an order passed at the admission stage without notice to the writ petitioner herein on 28.11.2022, this Court directed consideration of the representations of the third respondent and



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after conducting survey and issuing notice in the presence of the writ petitioner herein and other parties, the authorities were directed to take action for removal of encroachment in accordance with law. Thereafter, the survey was conducted and as per paragraph 6 of the counter affidavit filed by the second respondent, it is seen that the land in question was earmarked as 'Vacant Natham Site' and the petitioner has constructed a house is having right over an extent of 900 sq.mtrs and that there is a dispute between the petitioner and general public and that they claimed that the land in question was used by them as pathway. It is the further case of the second respondent that since the land in question whereas being used as a pathway for temple rituals, the second respondent issued show cause notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and after considering the objections, an order has been passed under Section 6 of the Tamil Nadu Land Encroachment Act, 1905.

3. It is the specific case of the petitioner that the land in question is 'Grama Natham'. His predecessor in title, namely, one Nagarajan was in possession and enjoyment of the said natham by putting up a thatched structure and he has sold the same to the petitioner by a sale deed dated 13.09.1994 registered as Document No.735/1994 at the office of the Sub



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Registrar, Veerasigamani. Thereafter, the petitioner is in possession and enjoyment of the land. He had also put up the house on the said land. A perusal of the documents produced on either side and the revenue records, it is clear that the land in question is a natham land. Therefore, there is no primordial title of the Government in respect of the same so as to initiate proceedings under the Tamil Land Encroachment Act, 1905. Even the contention of the third respondent is that only an extent of 0.00.5 ares comprised in S.No.1039/6 alone was donated by one Muniyandi S/o. Sundaram for the use of the Arulmigu Pattamudaiyar Sastha Karuppasamy Thirukovil. Even the said case in respect of 0.00.5 ares of the third respondent is inherently doubtful because when the land is classified as 'Natham'. Therefore, if there is any dispute as to the title in respect of a minor portion of the subject matter land in question, it is for the third respondent or such other person on the behalf of the temple to establish their title vis-a-vis the petitioner by approaching the civil Court and no action whatsoever can be taken under the provisions of the Tamil Nadu Land Encroachment Act, 1905 by the second respondent.

4. In that view of the matter, the writ petition is allowed, however preserving liberty to the third respondent or any other person, who may be



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interested on behalf of the temple to approach the civil Court for redressal of their grievance. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]

23.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The District Collectorate,
Tenkasi, Tenkasi District.
- 2.The Tahsildar,
Kadayanallur Taluk,
Tenkasi District.



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S.S.SUNDAR, J.
and
D.BHARATHA CHAKRAVARTHY, J.

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