



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 06.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) .No.4675 of 2018
and
W.M.P. (MD) .No.4738 of 2018

Kaleeswari

... Petitioner

Vs.

1. The District Collector,
Madurai.
2. The Revenue Divisional Officer,
Office of the District Collector Buildings,
Madurai.
3. The Tahsildar,
Madurai South Taluk,
Madurai.
4. The Revenue Inspector,
Thiruparankundram,
Madurai District.

5.Kalyani

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent dated 23.02.2018, quash the same, as the same is arbitrary, ultravires, without jurisdiction and consequentially direct the respondents 1 to 3 to conduct an enquiry afresh in respect of the property comprised in S.No.354/7, Block No.168, Thiruparankundarm Village, Madurai on the basis of the representation dated 06.02.2018

For Petitioner : Mr.R.G.Sankar Ganesh

For R1 to R4 : Mr.S.Pandiarajan
Addl. Government Pleader

**ORDER**

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

Heard Mr.R.G.Sankar Ganesh, learned counsel appearing for the petitioner and Mr.S.Pandiarajan, learned Additional Government Pleader appearing for the respondents 1 to 4.

2.In the light of the order, we propose to pass, notice to the fifth respondent is dispensed with.

3.The petitioner is before this Court challenging the notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, directing the petitioner to remove the encroachment in the land comprised in Survey No.354/7.

4.The petitioner's case is that the property in Survey No.354/7 was assigned by the Tahsildar, Madurai City, by an assignment order, dated 01.05.1994 to one Ramesh and the petitioner has purchased the said property from one Ramesh by Registered sale deed, dated 06.12.2010 and has constructed a house in the said property and residing there.

5.The petitioner further stated that the respondents 3 and 4 have assigned the same property in favour of the 5th respondent, who attempted to interfere with the petitioner's possession. Therefore, the petitioner submitted a representation to the authorities on 09.01.2017, which was forwarded by the Revenue Inspector, Thiruparankundram for appropriate action to be taken by the Tahsildar, Thiruparankumram, by proceedings dated 09.03.2017. This was followed by another communication addressed to the Tahsildar, dated 07.02.2018. Since nothing happened thereafter, the petitioner came before this Court and filed a writ petition in W.P.(MD).No.9442 of 2013. The said writ petition was disposed of by order, dated 05.07.2017 to consider the petitioner's representation and initiate appropriate action. Subsequently, the petitioner has been awaiting action and there has been a correspondence between the Revenue Official but nothing had happened as sought for by the petitioner. While so, the impugned notice has been issued to the petitioner terming him as an 'encroacher'.

6.The learned Additional Government Pleader submitted that the land for which the impugned notice has been issued has been encroached by the petitioner, which is over and above, the extent which he has purchased. If that is so, the authority should have been aware of the encroachment much prior to the assignment in favour of the 5th respondent, which was done only on 14.07.2016. Therefore, it appears that the Revenue Authorities acted in a manner without even conducting an inspection or measuring the property, before issuing the assignment order in favour of the 5th respondent.



7. In the light of the above, we dispose of this writ petition by issuing following direction;

(i) the third respondent is directed to instruct his officers to conduct survey of the property owned by the petitioner as well as what has been assigned to the 5th respondent, after issuing notice to the petitioner and the 5th respondent, on such measuring, if it is found that there is any encroachment by either party, the same should be clearly demarcated and opportunity to be granted to the encroacher to remove the encroachment within a reasonable time, failing which, the authorities are directed to remove the encroachment departmentally with liberty to recover the cost from the encroacher. The above direction shall be complied with by the third respondent within a period of three weeks from the date of receipt of a copy of this order. Till then, status-quo which is prevailing in respect of both the properties, shall be maintained as such. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

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Madurai.
2. The Revenue Divisional Officer,
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3. The Tahsildar,
Madurai South Taluk,
Madurai.
4. The Revenue Inspector,
Thiruparankundram,
Madurai District.

+ 1 cc TO Mr.R.G.Shankar Ganesh , Advocate in SR No. 53120

Ns

AE/SKN RSK/SAR2/23.03.2018/3P/6C

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