



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P (MD) No.4769 of 2018

and

W.M.P. (MD) No.4783 of 2018

S.Fredric Marcs

.. Petitioner

Vs.

1. The State of Tamil Nadu,
rep. By its District Collector,
Tuticorin.

2. The Revenue Divisional Officer,
Tuticorin.

3. The Tahsildar,
Taluk Office,
Tuticorin.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the issuance of the order of eviction under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, vide No.A3/13740/14 dated 31.10.2018 and quash the same and forbear the respondents from initiating any further action to evict the petitioner from S.No.223/6, situated in an extent of 30 cents, Mappillai Urani Village, Tuticorin District.

For Petitioner : Mr.S.Kadarkarai
For Respondents : Mr.D.Muruganandam, AGP

ORDER

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

Heard Mr.S.Kadarkarai, learned counsel for the petitioner and Mr.D.Muruganandam, learned Additional Government Pleader appearing for the respondents.

2.This Writ Petitions has been filed by the petitioner
<https://hcservices.ecourts.gov.in/hcservices/>
challenging the proceedings of the third respondent dated
31.01.2018 issued under Section 6 of the Tamil Nadu Land and



Encroachment Act, 1905. We could have dismissed this writ petition on the ground of availability of an alternative remedy as against the impugned order before the first respondent. However, we found that the petitioner has not sent an effective objection to the notice issued under section 7 of the Act.

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3. From the counter affidavit filed by the Tahsildar in an earlier case in W.P.(MD) No.2769 of 2018, it is seen that the land in Survey No.223/6, Mappillaiyoorani Village, has been classified in the village accounts as "Thoothukudi Nagaratchi Salavaithurai". Therefore, the question would be as to whether the petitioner can continue to remain in those lands or seek for patta.

4. The learned counsel for the petitioner vehemently contended that in all cases of encroachment, eviction is not required to be done by the authority and what is required to be done is to consider if there is a need for taking over the land and upon such satisfaction, action can be initiated for removal of encroachment.

5. It is further submitted that in the instant case, such assessment regarding need to take over the land, has not been done but the entire action has been taken on account of the writ petition filed by one Thoothukudi Circle Wahsermen Union in the year 2010 in W.P.(MD) No.473 of 2010, wherein they obtained a direction to the official respondents to remove the encroachments in Survey Nos.223/1, 223/3 and 223/6, Mappillaiyoorani Village, Thalamuthu Nagar, Tuticorin District and the writ petition was allowed by an order dated 07.12.2016 by issuing a positive direction to remove the encroachment. However, the revenue officials rightly did not immediately vacate the encroachers but issued notice under Section 7 of the Act.

6. The grievance of the petitioner is that the notice was issued by merely referring to the order in the writ petition and there is no specific finding that the land which has been encroached is required for the Government purpose. In our considered view, this submission cannot be applicable to the instant case on account of the stand taken in the counter affidavit, more particularly in paragraph 3 of the counter affidavit, where it has been stated that in the village accounts, the land has been classified as "Thoothukudi Nagaratchi Salavaithurai".

7. Be that as it may, we are satisfied that the petitioner can be granted one more opportunity as admittedly they have been residing there for nearly two decades. The learned counsel for the petitioner submitted that on the opposite side of the road, houses and shops have been granted to the persons, who are occupying Government land and such benefit can also be extended to this petitioner, who has constructed two buildings and running a



gym for several years. Any person, who encroaches has no vested right over the land. More so, when the land is said to have been allotted to the Thoothukudi Nagaratchi Salavaithurai and the village accounts reflects the name of the said entity. In the light of the above discussion, we dispose of the writ petition with the following directions:-

The petitioner is directed to treat the impugned order issued under Section 6 of the Act, as a show cause notice and submit his objections to the third respondent on or before 23.03.2018 and on receipt of such objections, the third respondent shall fix a date for personal hearing. The petitioner or his authorised representative shall be heard in person and if any documents are placed by them, the same shall be considered by the third respondent and the third respondent shall pass a speaking order giving reasons as to why the objections raised by the petitioner is feasible or not feasible of consideration. Such order shall be passed by the third respondent on or before 11.04.2018. Till then, status quo which is prevailing as on date shall continue.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
State of Tamil Nadu, Tuticorin.
2. The Revenue Divisional Officer,
Tuticorin.
3. The Tahsildar,
Taluk Office, Tuticorin.

+ 1 cc TO The Special Government Pleader in SR No. 53951
• 1 cc TO Mr.S.Kadarkarai , Advocate in SR No. 53752
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Arul

AE/KKR/SAR2/20.03.2018/3P/6C