



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.04.2019

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) .No.7801 of 2019

and

W.M.P. (MD) .No.6193 of 2019

N.Noosaj

.. Petitioner

/Vs./

1.The District Collector,
Madurai, Madurai District.

2.The Executive Engineer,
The Tamil Nadu Housing Board,
Ellis Nagar,
Madurai.

3.The Tahsildar,
Madurai South,
Madurai District.

4.The Zonal Deputy Tahsildar,
Madurai South,
Madurai District.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorari calling for the records relating to the impugned notice issued by the 3rd respondent in his proceedings nil, dated 12.03.2019 and quash the same as illegal.

For Petitioner : Mr.A.Nawaz Khan
For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader
for R1,R3 & R4
Mr.Mahaboob Athiff for R2

O R D E R

(Order of this court was made by **K.KALYANASUNDARAM, J.**)

Heard Mr.A.Nawaz Khan, learned counsel appearing for the petitioner, Mr.Aayiram K.Selvakumar, learned Additional Government Pleader appearing for the respondents 1, 3 and 4 and Mr.M.Mahaboob Athiff, learned counsel appearing for the second respondent.



2.By consent, this writ petition is taken up for final disposal.

3.Challenge in this writ petition is the show cause notice issued by the third respondent under Section 7 of the Tamil Nadu Land Encroachment Act.

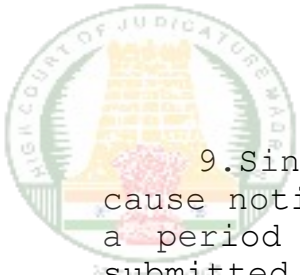
4.The case of the petitioner is that the land in Survey No.411/1 in Avaniyapuram Village, Madurai District, having an extent of 220.55 acres is an abandoned Kanmai and it was originally belong to the Revenue Department. However, in the year 1988, the lands were alienated to the Tamil Nadu Housing Board. Thereafter, the Housing Board prepared a Scheme and sold the land to the private parties. The petitioner would claim that he has occupied the unutilised land and abandoned the remaining area. Above 5000 families are living in Survey No.411/1 and they are poor coolies. According to the petitioner, since the Housing Board is the owner of the property, the Revenue Authorities have no right to issue the notice.

5.Mr.A.Nawaz Khan, learned counsel appearing for the petitioner while reiterating the averments made in the affidavit has further argued that the petitioner has been in occupation for more than 40 years, in view of the dispute between one A.Balasubramaniyan and Karunanithi, a writ petition in W.P.(MD). No.23043 of 2017 came to be filed and a direction was issued to the authorities to remove the encroachment made by the said Karunanithi. However, the third respondent without any authority has issued the notice.

6.It is contended by the learned counsel for the respondents that though the land in dispute was sold to the Housing Board in the year 1988, but as on date, the land in dispute is classified as Kanmai in the revenue records. It is further stated that under the Housing Board Act, the Board has no provision to remove the encroachment and they have to approach the revenue authorities for removal of the encroachers. Further, even according to the petitioner, he is an encroacher of the land in Survey No.411/1 and do not claim right over the property.

7.The learned Standing counsel for the second respondent would state that though larger extent of the land in Survey No.411/1 were sold to the Housing Board, only a portion of land was handed over and the remaining land was under encroachment and hence, the Housing Board approached the revenue authorities for removal of the encroachers.

8.In the case on hand, the petitioner has come up before this Court to quash the show cause notice issued under Section 7 of the Land Encroachment Act, in and by which the petitioner is directed to submit his reply within a period of 15 days.



9. Since this writ petition has been filed challenging the show cause notice, the petitioner is directed to submit his reply within a period of 15 days from today. If any objection or reply is submitted within the time, the third respondent Tahsildar shall consider the same and pass final orders, after affording an opportunity to the petitioner, in accordance with law. Till such time, the respondents shall not precipitate the matter.

10. With the above observation and direction, this writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

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TO

1. The District Collector,
Madurai, Madurai District.
2. The Executive Engineer,
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Ellis Nagar, Madurai.
3. The Tahsildar,
Madurai South, Madurai District.
4. The Zonal Deputy Tahsildar,
Madurai South, Madurai District.

+1CC TO MR. AJMAL ASSO., Advocate Sr. No. 58726
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR. No. 58594

W.P. (MD) .No. 7801 of 2019
02.04.2019

TR (15.04.2019) 3P 7C