



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

AND

THE HONOURABLE MRS. JUSTICE R. THARANI

Writ Petition (MD) No. 9245 of 2019

and

W.M.P (MD) No. 7267 of 2019

M. Ismail Gani

.. Petitioner

Vs.

1. The Executive Officer,
Town Panchayat,
Achanpudur,
Kadayanallur Taluk,
Tirunelveli District.
2. The Tahsildar,
O/o. the Tahsildar,
Kadayanallur,
Tirunelveli District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records in Na.Ka.No.22/2019 dated 03.04.2019 issued by the 1st respondent, and quash the same since the procedures under the Land Encroachment Act not followed and also there is difference in survey numbers.

For Petitioner	: Mr. M. S. Suresh Kumar
For Respondents	: Mr. Ayiram K. Selvakumar
	Addl. Govt. Pleader for R-1
	Mr. VR. Shanmuganathan
	Special Govt. Pleader for R-2

ORDER

[Order of the Court was made by **K. KALYANASUNDARAM, J**]

Heard Mr. M. S. Suresh Kumar, learned counsel for the petitioner. Mr. Ayiram K. Selvakumar, learned Additional Government Pleader takes notice for the first respondent and Mr. VR. Shanmuganathan, learned Special Government Pleader takes notice for the second respondent.

2. By consent of the parties, the writ petition is taken up for final disposal.



3.This writ petition has been filed for issuance of writ of certiorari to call for the records of the first respondent in Na.Ka.No.22/2019 dated 03.04.2019 and to quash the same.

4.The case of the petitioner is that the land measuring about 982 sq.ft in resurvey No.543/25 in Achanpudur Village and Town Panchayat, bearing door No.3, Pallivasal street, Sengottai Taluk was originally owned by his father and mother. After the demise of his father, his mother settled the property by a registered settlement deed dated 24.05.2011, which is registered as document No.2153/2011, as such he has been in possession and enjoyment of the same. The allegation of the petitioner is that some of his neighbours gave a complaint in the year 2018 stating that the petitioner had unauthorisedly constructed a building. But the respondents without making any enquiry and issuing notice under Section 7 of the Tamil Nadu Land Encroachment Act,1905, (hereinafter referred as Act) has passed the impugned order directing the petitioner to demolish the building within a period of 15 days.

5.Learned counsel for the petitioner would state the first respondent has no authority to order demolition of the building and the petitioner is entitled for notice under Section 7 of the Act.

6.Per contra, the learned counsel for the respondents would state that based on the complaint, the second respondent conducted a survey and after obtaining a report, this impugned order has been issued by the first respondent under Section 131(2) of the Panchayat Act and if the petitioner fails to remove the encroachment, proceedings will be initiated by the second respondent under the Tamilnadu Land Encroachment Act, 1905.

7.Heard the rival submissions and perused the materials available on record.

8.According to the petitioner, he is the owner of the property in resurvey No.543/25, but the impugned notice has been issued to remove the encroachment in a poromboke land in Sy.No.543/1. According to the petitioner, he has not encroached in the Government poromboke.

9.As rightly pointed out by the learned counsel for the respondents, if the petitioner fails to remove the encroachment, the proceedings under the Tamilnadu Land Encroachment Act, 1905 would be initiated by the second respondent.

10.Considering the nature of the grievance expressed by the petitioner that no survey was conducted in the land in dispute, the second respondent is directed to conduct a survey of the land in Sy.No.543/25 and 543/1 in the presence of the petitioner and other necessary parties and if any encroachment is found, a proceedings



under the Tamilnadu Land Encroachment Act, 1905 shall be initiated to remove the encroachment.

11. With the above direction, this writ petition is disposed of. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS)

vs

To

1. The Executive Officer,
Town Panchayat,
Achanpudur,
Kadayanallur,
Tirunelveli District.

2. The Tahsildar,
O/o. the Tahsildar,
Kadayanallur,
Tirunelveli District.

+1CC TO MR.M.S.SURESH KUMAR, Advocate Sr. No.61332

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 61620

Writ Petition (MD) No.9245 of 2019

16.04.2019

SCR(CO)

TR (06.05.2019) 3P 5C