



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.04.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) .Nos.10535 & 10561 of 2018

and

W.M.P. (MD) .Nos.9623, 9624, 9638 & 9639 of 2019

K.Arasu	.. Petitioner in W.P.(MD).No.10535 of 2018
J.Akasa Moorthy	.. Petitioner in W.P.(MD).No.10561 of 2018

/Vs./

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Tahsildar,
Kadayanallur Taluk,
Kadayanallur,
Tirunelveli District.

.. Respondents in both petitions

Common Prayer: Writ petitions filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified mandamus to call for the records of the 2nd respondent's notice under Section 6 of the Tamilnadu Land Encroachment Act, 1905, dated 26.04.2018 and set aside the same and consequently forbear the respondents from evicting the petitioners from their property in S.No.412/1, Urmelalagiyan Village, Kadayanallur Taluk, Tirunelveli District without following the due process of law in view of the decree in O.S.No.32 of 2010.

For Petitioner : Mr.M.Mohamed Sherbudeen

For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader

O R D E R

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

<https://hcservices.ecourts.gov.in/Hcservices/>
These writ petitions have been filed challenging the order of the second respondent passed under Section 6 of the Tamilnadu Land Encroachment Act, 1905.

2.Mr.M.Mohamed Sherbudeen, learned counsel for the petitioners would state that the impugned order came to be issued without issuing Show Cause Notice under Section 7 of the Tamilnadu Land Encroachment Act (herein after referred as 'the Act'). According to the learned counsel, in similar facts, this Court allowed a writ petition in W.P.(MD).No.10763 of 2018 on 09.05.2018.

3.It is further contended that if a show cause notice is issued under Section 7 of the Act, the petitioners would get an opportunity of submitting their reply and also produce the judgment of the civil Court in O.S.No.32 of 2010 and 33 of 2010.

4.Per contra, Mr.Aayiram K.Selvakumar, learned Government Pleader for the respondents would submit that the impugned notice can be treated as Show Cause Notice and a direction may be issued to the petitioner to submit his reply.

5.Considering the grievance expressed by the petitioners and the submissions made by the learned counsel on either side, the petitioners are directed to give an explanation/objection treating the impugned order as Show Cause Notice issued under Section 7 of the Act within a period of two weeks from the date of receipt of a copy of this order. On such compliance, the second respondent shall consider the same and take further action in accordance with law after providing opportunities to all necessary parties. If the petitioners failed to send their reply in time, the respondents are at liberty to go ahead with eviction process.

6.With the above directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The District Collector,
Tirunelveli District, Tirunelveli.

2.The Tahsildar, Kadayanallur Taluk,
Kadayanallur, Tirunelveli District.

+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.58564,58559

+2 CC to M/s.M.MOHAMED SHERBUDEEN, Advocate in SR-58762,58763

W.P. (MD) .Nos.10535 & 10561 of 2018

02.04.2019