



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.10.2019**

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

W.P. (MD) .No.21411 of 2019

and

WMP (MD) No.18087 of 2019

Rev.Fr.Prabudoss

... Petitioner

Vs.

1.The Sub Collector,
Nagercoil,
Kanyakumari District.

2.The Tahsildar,
Agasteeswaram Taluk,
Kanyakumari District.

... Respondents

PRAYER: This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the notice under Section 7 of the Tamilnadu Land Encroachment Act, 1905, dated 18.06.2019, passed by the 1st respondent and in consequential notice under Section 6 of the Taminadu Land Encroachment Act, 1905, dated 30.08.2019, passed by the 2nd respondent and quash the same.

For Petitioner	: Mr.A.Chidambaram for Mr.N.GA.Natraj
For Respondents	: Mr.A.Muthukaruppan Addl.Govt.Pleader

O R D E R

(Order of this Court was made by **T.S.SIVAGNANAM, J**)

We have heard Mr.A.Chidambaram, learned Counsel for appearing for the petitioner and Mr.A.Muthukaruppan, learned Additional Government Pleader appearing for the respondents.

2. This writ petition has been filed for issuance of a Writ of Certiorari, to quash the notices issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and the notice under Section 6 of the said Act. Several grounds have been raised challenging the impugned notices. The first ground is that in Agasteeswaram Taluk, there is no Survey No.554. To substantiate



the said contention, the learned counsel drawn our attention to the Notification published in the District Gazette, dated 01.04.2013, wherein, the survey numbers were indicated after bifurcation of Agasteeswaram and Kovalam revenue Villages. It is submitted that survey numbers falling within Kovalam revenue Village is only upto 552 and Survey No.554 will not fall within the Kovalam Village.

3. The 2nd contention is that there is a gross discrepancy with regard to the type of alleged encroachment, as mentioned in the notice under Section 7 of the Act as well as notice under Section 6 of the said Act. On a reading of the same, we find that the alleged encroachment mentioned in the notice under Section 7 of the Act, is stated to be a playground and Kurusadi Katti whereas, in the notice under Section 6 of the Act, it is shown as fish drying yard. Apart from that, it is not clear as to whether on what date the notice under Section 7 of the Act was served on the petitioner.

4. We find that there is a date mentioned therein as 28.08.2019. If the said date is the date of service, then it is much after the date fixed in the notice for giving objections, which was fixed as 18.08.2019. Apart from that, before issuing notice there is nothing to indicate that survey of area was conducted. Apart from that, the wall which has been constructed around the playground has been done by the Panchyat Union, Agasteeswaram Taluk, from the funds allotted to the Member of the Legislative Assembly so as to prevent soil erosion, on account of intrusion of sea water. These are all very vital aspects, which should be taken note of by the Tahsildar, before initiating the proceedings. Thus, we find that there is a gross procedural irregularities in the manner in which the 2nd respondent proceeded with. Therefore, on this technical ground alone, we are inclined to interfere with the impugned proceedings.

5. In the result, this Writ Petition is allowed and the impugned order is set aside and liberty is granted to the 2nd respondent to conduct the survey of area, after notice to the petitioner and proceed in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar (CS)



To கனியாகுமரி

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1.The Sub Collector,
Nagercoil,
Kanyakumari District.

2.The Tahsildar,
Agasteeswaram Taluk,
Kanyakumari District.

+1 CC to M/s.N.GA.NATRAJ, Advocate (SR-91808[F] dated
15/10/2019)

+1 CC to M/s.GP (SR-91922[F] dated 15/10/2019)

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