

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Writ Petition No.152 of 2020
and WMP.No.191 of 2020

Aaakashdurai

...Petitioner

Vs

1. The District Collector,
Kallakurichi District,
Kallakurichi - 606 202.
2. The Tahsildar
Chinnasalem Taluk,
Kallakurichi District.
3. The Block Development Officer (Village Panchayat)
Kallakurichi Block,
Kallakurichi 606 202.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned notice purportedly issued under Sec.6 of Act 3 of Tamil Nadu Land Encroachment Act, 1905 by the third respondent dated 07.11.2019 the same was served on the petitioner by post on 11.12.2019 and to quash the same and directing the second respondent to consider the petitioner's representation dated 16.12.2019 seeking patta for pathway in his name in S.No.196, Madhavacheri Village, Chinnasalem Taluk, Kallakurichi district.

For Petitioner : Mr.R.Kumaravel
For Respondents: Mr.E.Balamurugan,
Special Govt. Pleader for R1 to R3

O R D E R

[Order was delivered by R.SUBBIAH,J]

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned notice purportedly issued

under Sec.6 of Act 3 i.e., Tamil Nadu Land Encroachment Act, 1905 by the third respondent dated 07.11.2019 and the same was served on the petitioner by post on 11.12.2019 and to quash the same and direct the second respondent to consider the petitioner's representation dated 16.12.2019 seeking patta for pathway in his name in S.No.196, Madhavacheri Village, Chinnasalem Taluk, Kallakurichi district.

2. It is the case of the petitioner that he is a bona-fide purchaser of Punja Agricultural land situated at Survey No.184/14 having an extent of 0.25.0 hectors at Madhavachery Village, Chinnasalem Taluk and thereafter, constructed a pucca RCC house in the said land.

3. It is the further contention of the petitioner that the third respondent issued a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. Though it was dated and signed on 19.09.2019, but it was posted on 04.11.2019 and the same was served upon the petitioner only on 06.11.2019. Immediately thereafter, the petitioner gave a detailed reply to the third respondent on 16.11.2019, by which time, the third respondent issued a notice under Section 6 of the Act, which was signed on 07.11.2019, posted on 10.12.2019, and served on the petitioner on 11.12.2019, without applying his mind while adjudicating as quasi-judicial authority and without even considering the petitioner's explanation to Section 7 notice, which is illegal.

4. It is the further contention of the petitioner that the third respondent has issued the notices at the instance of local politicians, ultimately after waiting for considerable time. The third respondent herein issued the impugned notice dated 07.11.2019 purportedly under Section 6 of the Tamil Nadu Land Encroachment Act, 1905. It is his further contention that, the third respondent, without giving any opportunity and he not being the authority under the enactment, usurped the alleged power under the Tamil Nadu Encroachment Act, 1905, to remove the encroachment, where the petitioner has been in possession for the past 20 years. The family card was issued to the petitioner and the family members in the year 2003 itself and the same was renewed periodically by the authorities concerned. Under such circumstances, the writ petition has been filed for the relief stated supra.

5. Heard both sides.

6. Be that as it may. When the petitioner is having an alternative remedy to file an appeal before the authority concerned under the Land Encroachment Act, the petitioner is directed to file an appeal before the Authority under the Land Encroachment Act, within a period of two weeks from the date of

receipt of a copy of this order. The appellate authority under the Land Encroachment Act, is directed to give an opportunity of personal hearing to the petitioner and permit him to produce all the relevant documents, if any, in support of his claim and thereafter, pass orders on merits and in accordance with law. The entire exercise shall be completed within a period of eight weeks thereafter. Till then, there shall be an order of status quo.

7. With the above direction, the writ petition stands disposed of. No costs. Consequently connected miscellaneous petition is also closed.

s/d-

Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

dpq

To

1. The District Collector,
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Kallakurichi - 606 202.
2. The Tahsildar
Chinnasalem Taluk,
Kallakurichi District.
3. The Block Development Officer (Village Panchayat)
Kallakurichi Block,
Kallakurichi 606 202.

+1 CC to Govt. Pleader sr 5756.

+1 CC to Mr.R.Kumaravel, Advocate sr 5258

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SP(12/02/2020)

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