



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

AND

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

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W.P. (MD) No.6217 of 2020

and

W.P. (MD) Nos.5424 and 5425 of 2020

Shanmugam : Petitioner

Vs.

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The Tahsildar,
Muthukulathur Taluk,
Ramanathapuram District.

3.The President,
Nallukurichi Village Panchayat,
Muthukulathur Panchayat Union,
Ramanathapuram District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari calling for records relating to the impugned notice issued by the second respondent in his proceedings in Na.Ka.L1/959/2019, dated 16.03.2020 under Section 7 of the Tamilnadu Land Encroachment Act in the style and nature of Section 6 of the said Act and quash the same.

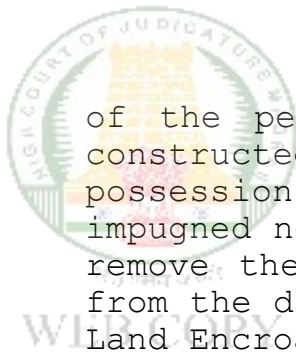
For Petitioner : Mr.B.Prahalad Ravi
For Respondents : Mr.J.Gunaseelan Muthaiah
Additional Government Pleader

ORDER

(ORDER of the Court was delivered by **S.S.SUNDAR, J.**)

The petitioner has challenged in this Writ Petition a notice purported to have been issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. The petitioner states that he has been running a tea-shop in front of his house. The petitioner himself admit that he has encroached into a portion measuring about five square meter in Survey No.318 in Nallukurichi Village.

2.Though the second respondent has stated in the notice that the petitioner has encroached into a road poramboke, the contention



of the petitioner is that the land in which the petitioner has constructed a tea-shop is a natham poramboke and it is in the possession and enjoyment of the petitioner for a long time. The impugned notice, dated 16.03.2020, states that the petitioner should remove the encroachment and vacate the premises within seven days from the date of receipt of the notice. Section 7 of the Tamil Nadu Land Encroachment Act, 1905 reads as follows:

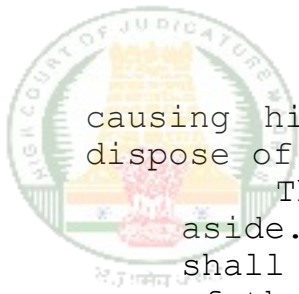
"7.Prior notice to person in occupation.-Before taking proceedings under Section 6 of the Collector or Tahsildar or Deputy Tahsildar or Revenue Inspector or any authorised officer or any other officer specified by the State Government in this behalf (not being an authorised officer) (hereinafter referred to as the 'specified officer') as the case may be shall cause to be served on the person reputed to be in unauthorised occupation of land being the property of Government a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under Section 6.

Such notice shall be served in the manner prescribed in Section 25 of the Tamil Nadu Revenue Recovery Act, 1864, or in such other manner as the State Government by rules or orders under Section 8 may direct.

Provided that no such notice shall be necessary in the case of any person unauthorisedly occupying any land, if he had been previously evicted from such land under Section 6 or if he has previously vacated such land voluntarily after the receipt of a notice under Section 5B or under this section:

Provided further that where the notice under this section is caused to be served by any Revenue Inspector or any specified officer he shall require the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Collector, Tahsildar, Deputy Tahsildar or authorised person having jurisdiction, as the case may be and shall also make a report in writing containing such particulars as may be specified in rules or orders made under Section 8 to the Collector, Tahsildar, Deputy Tahsildar or authorised person having jurisdiction, as the case may be."

3.Before issuing an order under Section 6 of the Act, a notice under Section 7 is mandatory. As per Section 7, the encroacher will be called upon to show cause why he should not be evicted as per Section 6 of the Land Encroachment Act. Since the notice in the present format is contrary to the terms of Section 7 of the Land Encroachment Act, this Court is inclined to entertain this Writ Petition. However, it is stated by the second respondent that the petitioner has encroached a road poramboke and his encroachment is



causing hindrance to public. In such circumstances, this Court dispose of the Writ Petition in the following terms:

The impugned show cause notice dated 16.03.2020 is set aside. However, the second respondent and the petitioner shall treat the impugned notice as a notice under Section 7 of the Tamil Nadu Land Encroachment Act. The petitioner is directed to submit his reply within four weeks from the date of receipt of a copy of this order. The second respondent shall thereafter consider the objections or representation of the petitioner in the manner known to law and pass suitable order in terms of Section 6 or as it requires having regard to the facts and circumstances of the case. The second respondent shall maintain *status quo* till an order is passed under Section 6 of the Land Encroachment Act.

No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SRM

To

- 1.The District Collector,
Ramanathapuram District,
Ramanathapuram.
- 2.The Tahsildar,
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ORDER IN

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SMA/02/06/2020/3P/4C