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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 22.10.2021

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.P. No.22501 of 2021
and
WMP.Nos.23721 and 23723/2021

Devi Prasath Shanmugam

.. Petitioner

Versus

1. The Revenue Inspector,
Thondamuthur Firka,
Perur Taluk,
Coimbatore 641 109.

2. The Village Administrative Officer,
Thenamanallur Village,
Perur Taluk,
Coimbatore 641 109.

3. The Tahsildar,
Thondamuthur,
Perur Taluk,
Coimbatore 641 109.

4. Sandhya Somasundaram

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus, directing the first respondent to call for the records in so far relates to the impugned notice dated 02.09.2021 issued under Section 7 of Tamil Nadu Land Encroachment Act 1905 (III of 1905) and subsequent impugned notice dated 09.09.2021 issued under Section 6 of Tamil Nadu Land Encroachment Act 1905 (III of 1905) issued by the first respondent and quash the same and consequentially direct the respondents to produce all the records and field maps pertaining to classification of SF.No.655 in Thenamanallur Village and to issue patta in the name of the petitioner in the event the land falls under the classification of Grama Natham.



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For petitioner : Mr.N.S.Ramanan
For respondents
for RR1 to 3 : Mr.T.N.C.Kaushik

ORDER

(The Order of the Court was made by K.KALYANASUNDARAM, J)

The Writ Petition is heard through video conferencing.

2. The petitioner has come up with this petition for issuance of a Writ of Certiorarified Mandamus to quash the notice dated 02.09.2021 issued under Section 7 of Tamil Nadu Land Encroachment Act 1905 and the order dated 09.09.2021 passed under Section 6 of the Act and consequently direct the respondents to produce all the records and field maps pertaining to classification of SF.No.655 in Thenamanallur Village and issue patta in the name of the petitioner.

3. The case of the petitioner is that the property measuring an extent of 1.87 acres, comprised in G.S.No.57/1 in Thenamanallur Village, Perur Taluk, Coimbatore District absolutely belongs to him and his sister Srimathi. The property was originally owned by their mother Thavamani and she secured the same by virtue of a registered released deed, dated 28.07.1953 executed in her favour by her mother Nachammal. It is his case, that the above said property has been in possession and enjoyment of their forefathers for more than 100 years. After the demise of Thavamani on 04.07.2006, the property devolved on them.

4. The petitioner would state that the second respondent sent a WhatsApp message on 25.08.2021 calling upon him to be present to conduct survey on 27.08.2021. On his request, the date was re-scheduled on 29.08.2021. It is alleged that at the instigation of the fourth respondent, the official respondents have initiated action as if the petitioner has encroached in Survey No.655/1 to an extent of 40 sq.mt.

5. The learned counsel appearing for the petitioner Mr.N.S.Ramanan, would state that the impugned order came to be passed in violation of the principles of natural justice. According to the learned counsel, no opportunity of personal hearing was given to the petitioner, despite his request. That apart, survey was not conducted in proper manner.

6. The learned Government Advocate appearing for the respondents 1 to 3 Mr.T.N.C.Kaushik, would state that the petitioner is having a statutory remedy of filing appeal before



the District Collector, hence, the Writ Petition is not maintainable.

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

8. Perusal of records would reveal that the second respondent sent a notice through WhatsApp message on 25.08.2021, for which, the petitioner sought time. Admittedly, the physical copy of the Section 7 notice was served on the petitioner only on 06.09.2021 and within a period of six days, the first respondent passed the impugned order under Section 6 of the Act. It appears that for the notice under Section 7 of the Act, the petitioner submitted a reply dated 17.09.2021.

9. Considering the fact that the petitioner is not given adequate opportunity to put forth his case, we hereby set aside the order of the first respondent dated 09.09.2021 granting liberty to the first respondent to pass orders afresh. Before proceeding further, the third respondent shall cause survey of the disputed property on proper intimation to the petitioner. If encroachment is found in the survey, the first respondent shall pass order after considering the petitioner's reply dated 17.09.2021 and also affording ample opportunity to him in accordance with law.

10. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

pvs

To

1. The Revenue Inspector,
Thondamuthur Firka,
Perur Taluk,
Coimbatore 641 109.
2. The Village Administrative Officer,
Thennamanallur Village,
Perur Taluk,
Coimbatore 641 109.



3.The Tahsildar,
Thondamuthur,
Perur Taluk,
Coimbatore 641 109.

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+1cc to M/s.B.Sharmila, Advocate SR.No.54057
+1cc to Government Pleader SR.No.54653

W.P. No.22501 of 2021

GPL (CO)
SB(12/11/2021)