



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2021

CORAM

THE HONOURABLE MR.JUSTICE T. S. SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

WEB COPY

W.P. (MD)No.6278 of 2020
and W.M.P. (MD) Nos.5497,5498 and 9177 of 2020

Maragatham

... Petitioner

Vs.

- 1.The District Collector,
Madurai District.
- 2.The Revenue Divisional Officer,
Usilampatti,
Madurai District.
- 3.The Tahsildar,
Usilampatti Taluk,
Madurai District.
- 4.The Revenue Inspector,
Karumathoor Firka,
Usilampatti Taluk,
Madurai District.
- 5.Pandi
- 6.Malarkodi

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned notice dated 23.04.2020 issued by the fourth respondent and the impugned notice dated 14.05.2020 issued by the third respondent under Sections 7 and 6 of the Land Encroachment Act, 1905 respectively and quash the same and consequently to forbear the respondents from interfering with the possession and enjoyment of the petitioner over the subject property in New Natham Survey No.485 / 1, Pulithevanpatti, Hamlet of Karumathoor Village, Usilampatti Taluk, Madurai District.

For Petitioner : Mr.J.Bharathan
for M/s.H.Arumugam

For Respondent Nos.1 to 4 : Mr.K.P.Krishnadass
Special Government Pleader

For Respondent Nos.5 & 6 : Mr.K.Navaneetha Raja
for Mr.Niranjana S.Kumar

* * * * *

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

Form VII Notice was issued by the official respondents under the provisions of the Land Encroachment Act, 1905. In response to the same, the writ petitioner has submitted a detailed objection, dated 05.05.2020. Without considering the said objection, the impugned Form VI notice has been issued. Challenging the same, the present Writ Petition has been filed on the ground that such a procedure is not contemplated under the provisions of the Land Encroachment Act, 1905 and after the authority has issued notice under Form VII and the alleged encroacher has given the objection, the authority has to consider the objection and without passing any speaking order issuing only Form VI is bad in law and therefore, notices dated 23.04.2020 and 14.02.2020 are illegal and liable to be set aside.

2. There is one more issue, there is a dispute between the petitioner and the respondents 5 and 6. Respondent Nos. 5 and 6 have filed a detailed counter affidavit stating that the land in question is a pathway to a burial ground, which the petitioner and his family members have encroached. After noting that, the sixth respondent had filed a suit in O.S.No.22 of 2020 on the file of the learned District Munsif cum Judicial Magistrate No.1, Usilampatti, praying for declaration that the suit scheduled property is a common pathway and for a consequential permanent injunction. In the said suit, the petitioner herein is not a party, but his other relatives are parties and the Tahsildar, Usilampatti, the third respondent herein, is also a party. Therefore, the respondents 5 and 6 have taken a clear stand. If they said, the land in question is maintained as a common pathway, they should stick to the suit and seek for a declaratory relief. On the other hand, they are of the view that the land in question is a Government land, they have to make a representation to the authorities to take action. The authorities on their part, while taking action, should follow the procedures under law. The objection submitted by the encroachers cannot be brushed aside and the present eviction Form VI notice has been issued without passing any speaking order on the objection raised by the petitioner.

3. Therefore, the Writ Appeal is allowed and the impugned notice is hereby quashed, leaving it open to the petitioner to proceed under law, if so advised. Equally, we leave it open to respondent Nos. 5 and 6 to submit their representations to the authorities. However, if they wish to do so, the sixth respondent cannot pursue her suit primarily for the above observations. In the event of the authorities issuing fresh notice to the writ petitioner, it is open to the writ petitioner to raise all issues, including the point relating to the jurisdiction of the authority under the provisions of the Land Encroachment Act, 1905.



Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

WEB COPY

/ /2021

Sub Assistant Registrar(CS)

sj

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector,
Madurai District.

2.The Revenue Divisional Officer,
Usilampatti,
Madurai District.

3.The Tahsildar,
Usilampatti Taluk,
Madurai District.

4.The Revenue Inspector,
Karumathoor Firka,
Usilampatti Taluk,
Madurai District.

+1 CC to M/s.NIRANJAN S.KUMAR, Advocate (SR-16630[F] dated 20/04/2021)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-16579[F] dated 20/04/2021)

+1 CC to M/s.SPL GP (SR-16496[F] dated 19/04/2021)

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RK (30.04.2021) 3P 8C