



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P.[MD]Nos.12152 & 12185 of 2021

and

W.M.P.[MD]No.9568, 9570, 9571 & 9589 of 2021

P.Balakrishnan : Petitioner in W.P.[MD]No.12152/21
G.Krishnan : Petitioner in W.P.[MD]No.12185/21

Vs.

- 1.The District Collector,
Madurai District.
 - 2.The Revenue Divisional Officer,
Usilampatti,
Madurai District.
 - 3.The Tahsildar,
Peraiyur Taluk,
Madurai District.
 - 4.The Deputy Superintendent of Police,
Peraiyur,
Madurai District.
 - 5.The Inspector of Police,
Peraiyur Police Station,
Madurai District.
 - 6.The Executive Officer,
Peraiyur Town Panchayat,
Madurai District.
 - 7.The Assistant Executive Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
Peraiyur,
Madurai District. : Respondents in W.P.[MD]No.12151/21
- 1.The District Collector,
Collectorate,
Madurai District.
 - 2.The Revenue Divisional Officer,
Usilampatti, Madurai District.



3.The Tahsildar,
Peraiyur Taluk,
Madurai District.

4.The Revenue Inspector,
Peraiyur Firka,
Peraiyur Taluk,
Madurai District.

: Respondents in W.P.[MD]No.12185/21

PRAYER in W.P. [MD]No.12152 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned notice, dated 26.06.2021 under Section 6 of the Land Encroachment Act, 1905 and impugned memo dated 13.07.2021 made in Na.Ka.No.5914/2020/Aa5 issued by the third respondent in respect of the subject property in Survey No.92/4, Peraiyur First Bit Village, Peraiyur Taluk, Madurai District and quash the same and consequentially to forbear the respondents from interfering with possession and enjoyment of the subject property by the petitioner.

PRAYER in W.P. [MD]No.12185 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned eviction order issued by the third respondent herein in Form-VI, dated 14.07.2021 under the Tamil Nadu Land Encroachment Act, 1905 and quash the same as illegal and further direct the third respondent herein to conduct enquiry based on petitioner's objection, dated 17.06.2021 (affording opportunity of being heard) and pass orders in accordance with law with respect to Survey No.92/4, to an extent of 11 cents in Peraiyur Bit-1, Madurai South, Madurai District.

For Petitioner : Mr.J.Barathan
For Respondents 1 to 5 : Mr.A.K.Manickam
Standing Counsel for Government
For Respondent No.6 : Mr.R.Subbaraj
[In W.P.[MD]No.12152 of 2021]

For Petitioner : Mr.V.Meenakshisundaram
For Respondents : Mr.A.K.Manickam
Standing Counsel for Government
[In W.P.[MD]No.12185 of 2021]

COMMON ORDER

[Common Order of the Court was made by **T.S.SIVAGNANAM, J.**]

With the consent on either side, these Writ Petitions themselves are taken up for final disposal.

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2. Heard the learned Counsel on either side.

3. These writ petitions have been filed challenging the notice issued by the third respondent under Section 6 of the Tamil Nadu Land Encroachments Act, 1905. The petitioners would contend that they have purchased a meagre extent of land comprised in R.S.No.92/4 and they have been in possession and enjoyment of the land ever since the date of purchase ie., during 1999 & 2000. The vendors of the petitioners are stated to be the legal heirs of one Muthu Chellam. According to the petitioners, the land which have been purchased forms part of larger extent, which is an exclusively private patta land of Muthu Chellam and his legal heirs and there is also a private temple constructed in the said land.

4. Muthu Chellam filed a petition under Section 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and an order came to be passed by the Deputy Commissioner HR & CE, Madurai in O.A.No.77 of 1979 dated 24.12.1979, holding that the institution which was claimed to be a private temple does not come under the purview of the Act under Section 63(a) of the Act. This order passed by the Deputy Commissioner appears to be a basic document based on which the petitioners claim that the property which they have purchased is a patta land of their vendors who are the legal heirs of Muthu Chellam and others. The petitioners are stated to have obtained building plan approval to put up construction and paying taxes and continuing to enjoy their property in their own right.

5. While so, notice was issued to the petitioners on 01.06.2021, under Section 7 of the Tamil Nadu Land Encroachments Act, branding the petitioners as encroachers, which has been served only on the writ petitioner G.Krishnan. The petitioner P.Balakrishnan submitted that no such notice under Section 7 has been issued to him. The petitioner G.Krishnan has given a statement of objections dated 17.06.2021, after which the impugned communication has been sent on 14.07.2021, which is an eviction notice. So far as the petitioner P.Balakrishnan is concerned, he would contend that no notice was issued under Section 7 of the Act. Since the petitioner came to know from the newspaper that action has been initiated based on the complaint given by certain private parties, he volunteered and sent legal notice to the authorities along with others and the legal notice is shown to have been served in the office of the respondents on 30.06.2021 vide postal acknowledgement card, after which the impugned proceedings have been passed.

6. From a reading of the impugned proceedings we find that it is an order under Section 6 of the Act. The third respondent has not dealt with the objections filed by the petitioners and no opportunity was granted to the petitioners. This would be sufficient to interfere with the impugned orders.



7.The learned Government Counsel, on instructions, would submit that the land in R.S.No.92/4 is classified in the revenue records as Temple and Theppam and the land in R.S.No.92/5 stands in the name of Muthu Chellam. It is not clear as to why the petitioners have not mutated the revenue records in their names. Mr.J.Barathan, learned Counsel for the petitioner would submit that there is no necessity for the petitioners to obtain a patta for the house site and the Government cannot insist upon production of a patta because Section 23 of the Tamil Nadu Patta Pass Book Act has not been notified.

8.In our considered view, the petitioners have to first establish that the petitioners' vendors had a right to sell the property which they have purchased by registered sale deed. Secondly, it has to be established that it was a housing site. The petitioners would have a task, in this regard. Nevertheless, it appears that during the enquiry which was conducted by the Deputy Commissioner in O.A.No.77 of 1979, certain documents have been marked by Muthu Chellam. Thus, we are of the view that the petitioners should be granted an opportunity to establish their contentions.

9.For the above reasons, the writ petitions are allowed and the impugned notice under Section 6 is set aside and the matter is remanded to the third respondent for conducting an enquiry. The third respondent shall direct the petitioners P.Balakrishnan, G.Krishnan and Subbu Raj, S/o. Veerasamy, to appear for enquiry, during which, they are at liberty to produce documents in support of their claim and if such documents are produced, the third respondent shall inquire into the matter and pass a speaking order on merits and in accordance with law, within a period of three [3] months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR

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,
Collectorate,
Madurai District.
- 2.The Revenue Divisional Officer,
Usilampatti, Madurai District.
- 3.The Tahsildar,
Peraiyur Taluk,
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Madurai District.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-23378[F] dated 20/07/2021)
+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-23276[F] dated 20/07/2021)
+1 CC to SPLGP (SR-23485[F] dated 22/07/2021)

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RD(4.08.2021) 5P 12C