



WEB COPY

W.P.(MD).No.12279 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2021

CORAM:

The Hon'ble Mr.JUSTICE T.S.SIVAGNANAM

AND

The Hon'ble Mrs.JUSTICE S.ANANTHI

W.P. (MD) .No.12279 of 2021

and

W.M.P(MD) No.9656 of 2021

M.Vijayan

...Petitioner

Vs.

1.The District Collector,
Office of the District Collector,
Sivagangai District,
Sivagangai.

2.The Tahsildar,
Thirupathur Tahsildar Office,
Thirupathur Taluk,
Sivagangai District.

3.The Deputy Tahsildar,
Thirupathur Taluk,
Sivagangai District.

4.M.Veeraiya ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of Certiorarified Mandamus, to call for the records of the third respondent's impugned notice under Section 7 of the Tamil Nadu Land Encroachment Act 3 of 1905, dated 02.07.2021 and quash the same as devoid of merits and consequently directing the respondents 1 to 3 to grant patta to the petitioner as per the Revenue Policy Note 2001-2002, the land in his possession enjoyment in Survey No.17/1 an extent of 1 acres in Karenthelpatti Village, Thirukalapatti Panchayat, Mathavarayanpatti Group, Thirupathur Taluk, Sivagangai District and not to disturb the petitioner's possession till the final verdict of his appeal, dated 14.07.2021 under Section 10 of the Tamil Nadu Land Encroachment Act 3 of 1905, within the period stipulated by this Court.

For Petitioner

: Mr.Haja Mohideen

For Respondents 1 to 3

: Mr.A.K.Manikkam,
Standing Counsel for Government

For 4th Respondent

: Mr.H.Velvadhas

<https://hcservices.ecourts.gov.in/hcservices/>



O R D E R

WEB COPY

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

Heard Mr.Haja Mohideen, learned counsel appearing for the petitioner, Mr.A.K.Manikkam, learned Standing Counsel for Government appearing for the respondents 1 to 3 and Mr.H.Velvadhas, learned counsel appearing for the fourth respondent.

2.This Writ Petition challenges the notice issued by the third respondent dated 02.07.2021, on the ground that without following the procedure under the Tamil Nadu Land Encroachment Act 3 of 1905, the eviction proceedings have been initiated.

3.On a perusal of the impugned notice, it appears that the impugned notice has been issued only based on the direction issued by this Court in W.P.(MD) No.6571 of 2021 dated 24.03.2021, filed by the 4th respondent herein. In the said Writ Petition, this Court has directed the respondent No.3 to take appropriate action in accordance with law to remove the encroachment. Therefore, necessarily the procedure under the Tamil Nadu Land Encroachment Act 3 of 1905, has to be followed.

4.However, we wish to point out that the extent of land encroached appears to be huge. Apart from that, it is not as if the petitioner has not received any earlier notice as pointed out by the learned counsel for the fourth respondent.

5. Even prior to the filing of the Writ Petition by the fourth respondent in W.P.(MD) No.6571 of 2021, notice was issued for eviction. But, however, no further action was initiated. A suit was filed by the petitioner in O.S.No.19 of 2021 on the file of the District Munsif Court, Thirupathur and somehow he was able to restrict the authorities from removing the encroachment.

6.Mr.A.K.Manickkam, learned Standing Counsel for Government, on instructions, submitted that the authorities have realized the mistake and on 03.07.2021 notice under Section 7 of the Tamil Nadu Land Encroachment Act 3 of 1905, has been issued to the petitioner and a copy of which has been marked to the fourth respondent.

7.In the light of the same, the Writ Petition is allowed and the impugned notice of the third respondent dated 02.07.2021 is set aside and the petitioner is directed to file his objection to the notice dated 03.07.2021, not later than 05.08.2021. It is open to the fourth respondent to place all the materials before the third respondent to prove his case that the petitioner is an encroacher.



After conducting an enquiry by affording an opportunity of personal hearing to the petitioner and the fourth respondent, the third respondent shall pass a speaking order on merits and in accordance with law not later than 13.08.2021. No costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rm

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,
Office of the District Collector,
Sivagangai District,
Sivagangai.
- 2.The Tahsildar,
Thirupathur Tahsildar Office,
Thirupathur Taluk,
Sivagangai District.
- 3.The Deputy Tahsildar,
Thirupathur Taluk,
Sivagangai District.

+1 CC to M/s.GP (SR-23490[F] dated 22/07/2021)

W.P. (MD) .No.12279 of 2021

20.07.2021

MGJ(02.08.2021) 3P 5C