



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2021

CORAM:

**THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
AND
THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

**W.P(MD)NO.16349 OF 2021
and
W.M.P(MD)No.13193 of 2021**

Kanagaraj :Petitioner

.vs.

- 1.The District Collector
Tirunelveli District,
Tirunelveli.
- 2.The Tahsildar,
Rathapuram Taluk,
Tirunelveli District.
- 3.The Revenue Inspector,
Office of the Revenue Inspector,
Samurengapuram and Post,
Rathapuram Taluk,
Tirunelveli District. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned notice dated 31.8.2021 issued by the second respondent under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, with regard to the land ad-measuring Hec 0.18.5(Cents 45) in Survey Number 785/2C at Samurengapuram Village,Rathapuram Taluk, Tirunelveli District and to set aside the same as illegal and consequently to direct the respondents not to evict the Petitioner from the above land on the strength of the impugned notice, till the question of title is decided in the manner known to law, in the light of the decision of the Honourable Supreme Court reported in 1982(2)SCC 134.

For Petitioner	:Mr.S.R.Anbarasu
For Respondents	:Mr.P.Thilakkumar
	Govt.Pleader



O R D E R

[Order of the Court was made by **M.DURAISWAMY., J.**]

The Petitioner has filed the above Writ Petition to issue a Writ of Certiorari Mandamus calling for the records relating to the impugned notice, dated 31.8.2021 issued by the second respondent under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, with regard to the land ad-measuring Hec 0.18.5(Cents 45) in Survey Number 785/2C at Samurengapuram Village, Rathapuram Taluk, Tirunelveli District and to set aside the same as illegal and consequently to direct the respondents not to evict the Petitioner from the above land on the strength of the impugned notice, till the question of title is decided in the manner known to law, in the light of the decision of the Honourable Supreme Court reported in 1982(2)SCC 134.

2.This Court, by order, dated 27.08.2021, dismissed the Writ Petition finding that the Tahsildar has not passed an order under Section 6 of the Act and in the case of an order being under Section 6 is passed, the remedy open to the Petitioner is to file an appeal under Section 10 of the Tamil Nadu Land Encroachment Act, 1905.This Court also given even in the earlier order, liberty to the Petitioner to file an appeal under Section 10 of the Act challenging the notice issued under Section 6 of the Act. In spite of such observation, the Petitioner chose to file the present Writ Petition challenging Section 6 notice, without resorting to the appeal remedy under Section 10 of the Act. In spite of having full knowledge about the order passed on 27.08.2021 giving liberty to the Petitioner to file an appeal under Section 10 of the Act, the Petitioner has filed the Writ Petition challenging the notice issued under Section 6 of the Act.

3.The learned counsel appearing for the Petitioner submitted that this Court should grant an order of status-quo till the Petitioner files an appeal under Section 10 of the Act. The impugned Section 6 notice was passed on 31.8.2021. The petitioner can file an application under Section 10-B of the Act seeking for stay of the order passed by the Tahsildar before the Appellate Authority. Still, the Petitioner has got time to file an appeal under Section 10 of the Act. Therefore, the Petitioner can work out his remedy only before the Appellate Authority and we are not inclined to grant any interim order till the filing of the appeal. The learned counsel relied upon the judgment reported in **1982 SCC(2)134** in the case of **Government of Andhra Pradesh .vs. Thirumala Krishna Rao and another**, wherein, the Honourable Supreme Court held as follows:

"It seems to us clear from these provisions that the summary remedy for eviction which is provided for by Section 6 of the Act can be resorted to by the Government



only against persons who are in unauthorized occupation of any land which is "the property of Government". In regard to properly described in sub- Sections (I) and (2) of Section 2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in Section 6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in un-authorised occupation of property which is declared by Section 2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously which can only be done by resorting to the summary remedy provided by the Act. But Section 6 (1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in un-authorised occupation of a land "for which he is liable to pay assessment under Section 3". Section 3, in turn, refers to un-authorised occupation of any land "which is the property of Government" If there is a bond dispute regarding the title of the Government to any property the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title. In the instant case, there is unquestionably a genuine dispute between the State Government and the respondents as to whether the three plots of land were the subject-matter of acquisition proceedings taken by the then Government of Hyderabad and whether the osmania University, for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation. The suit filed by the University was dismissed on the ground of limitation, inter alia, since Nawab Habibuddin was found to have encroached on the property more than twelve years before the date of the suit and the University was not in possession of the property at any time within that period. Having tailed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impermissible. The respondents have a bona fide claim to litigate and they cannot be evicted save by the due process of law. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title. That procedure is, therefore, not the due process of law for evicting the respondents.



Since the facts and circumstances of the present case are clearly different from the facts of the case reported in **1982 SCC(2)134**, the said ratio is not applicable to the present case.

4.It is pertinent to note that the very same counsel has filed earlier a Writ Petition and he was aware of the order passed in the Open Court on 27.08.2021. The conduct of the Petitioner cannot be appreciated in any manner whatsoever. In such view of the matter, we are not inclined to entertain the present Writ Petition. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (Cr1.Side)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsn

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
Tirunelveli District,
Tirunelveli.
- 2.The Tahsildar,
Rathapuram Taluk,
Tirunelveli District.
- 3.The Revenue Inspector,
Office of the Revenue Inspector,
Samurengapuram and Post,
Rathapuram Taluk,
Tirunelveli District.

ORDER MADE IN
W.P (MD) NO.16349 OF 2021
and
W.M.P (MD) No.13193 of 2021
13.09.2021