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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.No.6023/2022 and WMP.Nos.6108 and 6109/2022

R.Kolandaisamy

... Petitioner

-vs-

1. The District Collector,
Erode District.
2. The Tahsildar,
Perundurai Taluk,
Erode District.
3. The President,
Kandhampalayam Panchayat,
Perundurai Taluk,
Erode District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorari, calling for the records relating to the notice issued by the 3rd respondent herein under Section 6 of the Chennai pattinam 1905 Act 3 of 1905 Nil dated and quash the same.

For Petitioner : Mr.R.S.Anandan

For Respondents : Mr.A.Selvendran, Spl.G.P.
1 and 2

For 3rd respondent : Mr.S.Ravikumar, Spl.G.P.

ORDER

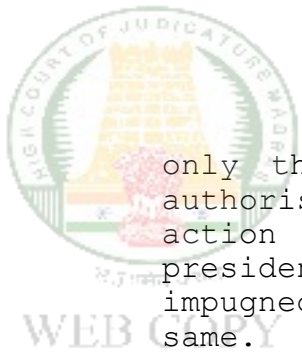
(Order of the Court was made by T.RAJA, J.)

Questioning the impugned notice issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 (Chennaipattinam 1905 Act 3 of 1905), calling upon the petitioner to vacate from the place-in-question, the present Writ Petition has been filed.



2. Learned Counsel appearing for the petitioner challenging the impugned proceedings pleaded that the petitioner's father Ramasamy Gounder died on 12.8.2010 who inherited the ancestral joint family properties by way of partition deed dated 25.4.1986 and registered as Document No.479/1986 before SRO, Perundurai. They are agricultural lands in R.S.No.4/4 to an extent of 1.48 hectares in N Kandampalayam Village, Perundurai Taluk, Erode District and another land in R.S.4/6 used jointly as cart track to an extent of .15 hectares in N Kandampalayam Village, Perundurai Taluk, Erode District. Ever since the date of partition, their family members are in joint possession and enjoyment of the said properties. On 1.6.2005 both the petitioner's father and other co-owners executed a gift deed in favour of the 3rd respondent herein, namely, Kandampalayam Panchayat President for laying 30 feet road for the use of general public. While so, one Muthukrishnan has filed a W.P.No.25601/2015 for removal of encroachment in the common track in R.S.No.4/6. This Court by an order dated 18.08.2015 has given a direction to consider the representation of the petitioner therein dated 20.7.2015 with a further direction to take necessary consequential action after proper survey and inspection and also after providing an opportunity of hearing to the alleged encroachers including the 4th respondent therein. Based on the said order, the Tahsildar, Perundurai Taluk, the 2nd respondent herein issued a proceeding for survey and measure the land for taking further action. But the authorities on the pretext of survey and measurement tried to enter into the petitioner's land in Survey No.4/4. Therefore, raising objection, the petitioner has submitted representations dated 08.10.2015 and 9.10.2015 to the respondents and also filed a W.P.No.3269/2015 seeking Mandamus, directing the authorities to consider the representation dated 9.10.2015 and conduct proper survey of entire extent of R.S.Nos.4/4, 4/5 and 4/6 in N.Kandampalayam Village, Perundurai Taluk, Erode District so as to fix the boundary line of the common pathway as per the revenue records with a further direction, directing the respondents 2 and 3 therein not to encroach the petitioner's patta land in R.S.No.4/4 and lay any road.

3. Learned Counsel for the petitioner further pleaded that when the matter stands as above, the 3rd respondent herein, namely, the President of Kandhampalayam Panchayat, Perundurai Taluk, Erode District has issued a notice under Section 6 of the Tamil Nadu Land Encroachment Act 1905 (Tamil Nadu Act 3 of 1905) for the removal of the encroachments in R.S.No.4/6 to an extent of 0.01.67 sq.metre. The learned Counsel for the petitioner in support of his submission pleaded that Section 6 of the Act clearly shows that if there is any encroachment found in the land belonging to the Government poromboke or Panchayat land



only the Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government in this behalf can initiate action against the encroacher. But in the present case, the president of the Kandhampalayam Panchayat has issued the impugned notice who is not a competent authority to issue the same.

4. It is, at this stage, the learned Special Government Pleader for the respondents 1 and 2 fairly supporting the case of the petitioner to a limited extent pleaded that though the petitioner is also an encroacher, but the impugned notice issued by the 3rd respondent does not have any jurisdiction, as a matter of fact, only Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government in this behalf has only got jurisdiction to issue the impugned notice, therefore, sought for liberty to issue a fresh notice.

5. In view of the above, we hereby quash the the impugned notice issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 (Chennaipattinam 1905 Act 3 of 1905) by the 3rd respondent herein as the President of the Village Panchayat has no jurisdiction to issue the same as per Section 6 of the Tamil Nadu Land Encroachment Act, 1905 with a liberty to the Tahsildar or any other authorized officer to proceed against the petitioner, if there is any encroachment in the Government or Panchayat land by the petitioner herein.

6. With the above observation and direction, the Writ Petition is allowed to a limited extent as indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Erode District.
2. The Tahsildar,
Perundurai Taluk,
Erode District.



3. The President,
Kandhampalayam Panchayat,
Perundurai Taluk, Erode District.

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+1cc to Mr.R.S.Anandan, Advocate, S.R.No.18062

+1cc to the Government Pleader, S.R.No.18788

W.P.No.6023 of 2022

KK(CO)
SU(25/04/2022)