



W.P.No.25283 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.25283 of 2022

K.Baskaran

.. Petitioner

Vs

1 The District Collector
Myladuthurai District - 609 001.

2 The Revenue Divisional Officer
Sirkali, Myladuthurai District - 609 110.

3 The Tahsildar
Taluk Office
Sirkali, Myladuthurai District - 609 110.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records of the impugned order in TA.PA 28/2021/A8, dated 30.08.2022 passed by the 3rd respondent and quash the same in respect of land in S.No.313/1 of Manigramam Village, Sirkali Taluk, Mayiladuthurai District.



W.P.No.25283 of 2022

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For the Petitioner : Mr.M.V.Venkataseshan

For the Respondents : Mr.P.Muthukumar
State Government Pleader

ORDER

(Order of the Court was made by
the Hon'ble Acting Chief Justice)

This writ petition has been filed challenging the impugned order in TA.PA 28/2021, dated 30.08.2022 issued by the Tahsildar, Sirkali calling upon the petitioner to remove the encroachment made in the land covered in S.No.313/1 belonging to the Co-operative Society.

2. Assailing the impugned order, Mr.M.V.Venkataseshan, learned counsel for the petitioner, submitted that the petitioner's family has been in occupation of the land in Door No.103, which is nothing but a small hut, for more than 50 years, wherein his predecessors were also in occupation and subsequently, he is in continuous possession. When the petitioner has been in



W.P.No.25283 of 2022

unobjectionable occupation of the hut, he has been assessed with property tax by Mani Gramam Panchayat and he is paying the property tax. He has also obtained electricity service connection for the hut from TANGEDCO. The land covered in S.No.313/1 was assigned to the Co-operative Society and the Society is having its fertilizers godown in S.No.313/1 and this has been admitted by the respondents in their notice also.

3. Learned counsel for the petitioner further submitted that the petitioner and his predecessors have been in possession of the hut situated in S.No.313/1 for over 50 years and, therefore, the provisions of the Tamil Nadu Land Encroachment Act, 1905 [for brevity, "*the Act of 1905*"] cannot be applied and consequently the impugned notice issued invoking the provisions of the Act of 1905 is untenable.

4. It is also submitted that the petitioner earlier filed W.P.No.2529 of 2021 for issuance of a writ of mandamus forbearing the respondents therein from evicting him under the Act of 1905 in respect of the land covered in S.No.313/1 of Manigramam Village,



W.P.No.25283 of 2022

Sirkali Taluk. This Court, by the order dated 3.12.2021, taking note of the fact that the petitioner was having a right of appeal, dismissed the writ petition with liberty to file an appeal. This Court further observed that if the appeal is filed, the same shall be disposed of on merits and in accordance with law by the appellate authority. Pursuant thereto, the petitioner has also filed the appeal before the first respondent District Collector and the first respondent has also passed an order on 1.6.2022 holding that the land covered in S.No.313/1 belongs to the Co-operative Society and, therefore, the officials of the Co-operative Society alone can initiate suitable action in respect of the land covered in S.No.313/1.

5. Learned counsel for the petitioner would submit that in respect of the land covered in S.No.313/2 although action has been initiated under Section 6 of the Act of 1905, the same has to be set aside, as no notice under Section 7 of the Act of 1905 was issued to him.

6. Mr.P.Muthukumar, learned Government Pleader, produced the relevant records before this court during the post-lunch session,



W.P.No.25283 of 2022

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when the matter was taken up on his request.

7. A perusal of the records would show that notice under Section 7 of the Act of 1905 in respect of the land in S.No.313/1 belonging to the Co-operative Society was issued, however, no record has been shown to us that the same procedure was followed in respect of the land covered in S.No.313/2. Anyhow, the petitioner has not challenged the action in respect of the land covered in S.No.313/2 in this writ petition. Therefore, we do not find any infirmity in the impugned notice, which was issued in respect of the land covered in S.No.313/1.

For the foregoing reasons, the writ petition fails and it is, accordingly, dismissed. There will be no order as to costs. Consequently, W.M.P.No.24248 of 2022 is closed.

(T.R., ACJ.) (D.K.K., J.)
27.09.2022

Index : Yes/No
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W.P.No.25283 of 2022

To:

WEB COPY

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WEB COPY



W.P.No.25283 of 2022

T.RAJA, ACJ
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bbr

W.P.No.25283 of 2022

27.09.2022