



W.P.Nos.30895 and 30898 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2022

CORAM :

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

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.Nos.30895 and 30898 of 2022

Muthusamy

.. Petitioner
in WP:30895/2022

Thangavel

.. Petitioner
in WP:30898/2022

Vs

- 1 The District collector
Namakkal, Namakkal District.
- 2 The Tahsildar
Thiruchengode Taluk
Namakkal District
- 3 The Revenue Inspector
Molasi Revenue Village, Molasi
Thiruchengode Taluk, Namakkal District. .. Respondents

Prayer: Petitions filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records of the impugned notice dated 19.10.2022 issued by the 3rd respondent under section 7 of the Tamil Nadu Land Encroachment Act, 1905 and quash the same as it has been issued without jurisdiction.



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For the Petitioners : Mr.Sukumaran
for M/s.S.Senthil

For the Respondents : Mr.A.Selvendran
Special Government Pleader

COMMON ORDER

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

The petitioners, who are siblings, have filed these writ petitions challenging the impugned notices dated 19.10.2022 issued by the third respondent under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 [for brevity, "*the Act*"].

2. Learned counsel for the petitioners submits that the petitioners are residents of Varakoorampatti Village of Namakkal District and their family is cultivating the land comprised in S.No.102/5B, which is classified as "Arasu Poramboke Thoppu", for more than 60 years and are paying house tax for more than 30 years. The petitioners have invested huge sum of money and constructed ACC Sheet house, tiled roof weaving loom, etc. and they have absolute right over a portion of 0.13.75 Hectares in



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S.No.102/5B by way of adverse possession for more than 60 years.

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3. It is submitted that, all of a sudden, the third respondent issued a notice dated 19.10.2022 alleging that the land in S.No.102/5B of Varakoorampatti Village vests with the government. The petitioners submitted their detailed objection on 26.10.2022 stating that they have perfected their title over the property by way of adverse possession. The petitioners also enclosed house tax receipts and electricity bills along with the objection. The petitioners also raised an objection regarding the jurisdiction of the third respondent to serve the impugned notice on the ground that as per Revenue Standing Order 18(3) and Section 134 of the Tamil Nadu Panchayat Act, 1994, the land classified as "Arasu Thoppu Poramboke" vests with the village pachayat and, therefore, the third respondent has no jurisdiction. It is the submission of learned counsel for the petitioners that the said detailed objection dated 26.10.2022 has not been considered by the respondents till date and, therefore, the present writ petitions have been filed for the relief stated supra.



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4. When the matter was taken up today, the notice issued under Section 6 of the Act was produced. As the issuance of notice under Section 6 of the Act was subsequent to the filing of the writ petition, the petitioners were unable to challenge the same. Learned counsel for the petitioners submitted that the notices issued under Sections 7 and 6 of the Act need to be set aside for the simple reason that the objection raised by the petitioners to the notice issued under Section 7 of the Act has not been considered by the authorities by applying their mind and, therefore, there is gross violation of the elementary principles of natural justice.

5. Mr.A.Selvendran, learned Special Government Pleader appearing on behalf of the respondents, submitted that though the petitioners claim to be in possession and enjoyment of the land in question for more than 60 years, no document has been filed to fortify their stand.

6. On a perusal of the notice issued under Section 6 of the Act,



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it is apparently clear that the objection given by the petitioners to the notice issued under Section 7 of the Act has not been considered. When the petitioners have submitted a detailed objection stating that they have been in possession of the land in question for over 60 years and have been paying house tax for 30 years, by enclosing house tax receipts, the third respondent ought to have considered the same on merits after affording an opportunity of hearing to the petitioners.

7. In such view of the matter, these writ petitions are disposed of by directing third respondent to consider the objection dated 26.10.2022 submitted by the petitioners to the notice dated 19.10.2022 issued under Section 7 of the Act and pass appropriate orders on merits and in accordance with law, after affording an opportunity of hearing to the petitioners, within four weeks from the date of receipt of a copy of this order. Inasmuch as the notice under Section 6 of the Act has been issued without considering the objection submitted by the petitioners, the notice under Section 6 of the Act dated 14.11.2022 is set aside.



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There will be no order as to costs. Consequently,
W.M.P.Nos.30292 and 30294 of 2022 are closed.

(T.R., ACJ.) (D.K.K., J.)
18.11.2022

Index : Yes/No
sasi

To:

- 1 The District collector
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T.RAJA, ACJ.
AND
D.KRISHNAKUMAR,J.

(sasi)

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