



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2022

CORAM:

**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND**

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P(MD)No.934 of 2022

and

W.M.P. (MD) No.768 of 2022

M/s.Officer's Recreation Club,
Rep. by its Secretary, Mr.T.Krishnamoorthy,
S/o.Thirumalai,
20 C, Extension, Kudil Road,
Turaiyur,
Trichy - 621 010.

... Petitioner

Vs.

- 1.The District Collector,
Trichy District.
- 2.The Revenue Divisional Officer,
Musiri Revenue Divisional Office,
Musiri, Trichy District.
- 3.The Tahsildar,
Taluk Office,
Turaiyur Taluk,
Trichy District.
- 4.The Deputy Tahsildar,
Taluk Office,
Turaiyur Taluk,
Trichy District.
- 5.The Revenue Inspector,
Turaiyur Taluk,
Trichy District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned eviction order, passed by the 3rd respondent dated 05.01.2022, which was affixed on the club premises on 05.01.2022, under Section 6 of the Tamil Nadu Land Enforcement Act, 1905, and quash the same as being arbitrary, illegal and without application of mind and consequently issue a direction to the respondents not to interfere with the peaceful possession and enjoyment of the land in Survey No.243/2 in Thuraiyur, Tiruchirappalli District.



For Petitioner : Mr.R.Singaravelu
Senior Counsel
for M/s.D.Selvanayagam

For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by Mr.S.R.A.Ramachandran
Additional Government Pleader

O R D E R

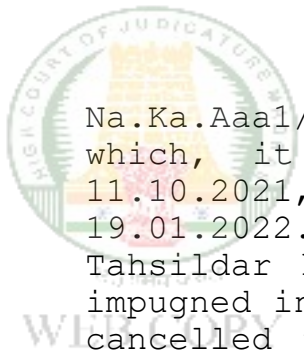
(Order of the Court was made by PUSHPA SATHYANARAYANA, J.)

Heard Mr.R.Singaravelu, learned Senior Counsel, appearing for the petitioner and Mr.R.Baskaran, learned Additional Advocate General, appearing for the respondents and perused the materials available on record.

2.The writ petitioner, which is a Club, had filed W.P.(MD) No.16812 of 2021, challenging the notice issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 (hereinafter referred to as "the Act") dated 31.07.2021, which was affixed on the petitioner's premises on 08.09.2021. The earlier notice was issued under Section 7 of the Act, calling upon the petitioner to show cause on or before 02.08.2021 as to why the petitioner should not be evicted. Without waiting for the explanation to be given by the petitioner, the Tahsildar had passed a final order on 31.07.2021 itself. Therefore, this Court had set aside the said order and directed the third respondent to consider the petitioner's explanation sent to him on 14.09.2021 and pass orders as per Section 6 of the Act, after giving an opportunity of hearing to the petitioner. Thereafter, the Tahsildar had issued the order of eviction under Section 6 of the Act on 05.01.2022, which is now impugned in this Writ Petition.

3.When the earlier order had specifically directed the Tahsildar to conduct an enquiry after giving opportunity of hearing to the petitioner, the order impugned was passed by the Tahsildar without conducting any enquiry. Therefore, this Court had set aside the said order and directed the Tahsildar, Turaiyur to appear before this Court today (03.02.2022).

4.In the meanwhile, as the order was passed under Section 6 of the Act, as per the Act, an appeal remedy is available under Section 10 of the Act. Therefore, the petitioner has sent a representation to the District Collector, Trichy, on 13.01.2022, putting forth their objections, that is also said to be pending before the District Collector. In the meanwhile, the Tahsildar had passed yet another detailed order in Na.Ka.Aaa2/6541/2021, dated 19.01.2022, rejecting the representation of the petitioner dated 14.01.2022. Thereafter, the District Collector in his proceedings in



Na.Ka.Aaa1/30863/2021, dated 21.01.2022, has passed an order, in which, it is stated that there was an enquiry conducted on 11.10.2021, after which, the order was passed by the Tahsildar on 19.01.2022. But even before the final order could be passed, the Tahsildar had issued notice under Section 6 of the Act, which is impugned in the Writ Petition. Therefore, the District Collector had cancelled the order, which is impugned in the Writ Petition, and directed the Tahsildar to follow the procedure and conduct eviction proceedings. Pursuant to the said directions, the Tahsildar once again issued order under Section 6 of the Act on 24.01.2022. When it is also stated that the Appeal is pending before the District Collector, the District Collector ought to have verified the pendency of the appeal before passing such order. Even otherwise, the subsequent notice by the Tahsildar once again under Section 6 of the Act is un-warranted and the same is issued without application of mind.

5.Be that as it may, by virtue of the order passed by the District Collector on 21.01.2022, wherein the order impugned in the Writ Petition is cancelled, the Writ Petition has become infructuous. Whether the order passed by the Tahsildar on 19.01.2022 has been communicated to the petitioner, is not known. Even otherwise, the subsequent order passed on 21.01.2022 by the District Collector supersedes the order of the Tahsildar, Turaiyur. Now, what remains is the notice issued under Section 6 of the Act issued by the Tahsildar on 24.01.2022. As already stated notice has been issued and the petitioner has also made his objections by way of a representation on 13.01.2022, the petitioner may be called for an enquiry and afforded an opportunity of personally hearing and considering the objections raised by him and the documents to be filed by him, a detailed order may be passed by the Tahsildar, which should be done within a period of three weeks from today. If the petitioner is in any way aggrieved by the order to be passed by the Tahsildar, there is an appeal remedy under Section 10 of the Act.

6.In view of the above, the Writ Petition is dismissed as infructuous. The Tahsildar, Turaiyur is directed to proceed with the enquiry based on the representation given by the petitioner dated 13.01.2022, as directed above, and pass a detailed order and communicate the same to the petitioner. The above said exercise shall be completed within a period of three weeks from the date of receipt of a copy of this order. Till such time, no coercive action should be taken. Consequently, connected Miscellaneous Petition is closed. No costs.

7.We would also like to record herein that the Tahsildar, Turaiyur and the District Collector, Trichy District, have been passing orders without any co-ordination and application of mind, despite the fact that the petitioner has moved this Court earlier and also when this Writ Petition is pending before this Court. We



only warn the Tahsildar, Turaiyur, who has passed the order, that he should be careful in future before passing any order and verify the details before sending any statutory notice or order.

Sd/-

Assistant Registrar (AE)

WEB COPY

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

sj

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,
Trichy District.
- 2.The Revenue Divisional Officer,
Musiri Revenue Divisional Office,
Musiri, Trichy District.
- 3.The Tahsildar,
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Turaiyur Taluk,
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- 4.The Deputy Tahsildar,
Taluk Office,
Turaiyur Taluk,
Trichy District.
- 5.The Revenue Inspector,
Turaiyur Taluk,
Trichy District.

+1 CC to M/s.D.SELVANAYAGAM, Advocate (SR-4134[F] dated 04/02/2022)

+1 CC to M/s.SPL.GP (SR-4214[F] dated 04/02/2022)