



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2022

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P(MD)Nos.1958 to 1964 of 2022

and

Connected Miscellaneous Petitions

Thambidurai	... Petitioner
	in WP(MD)No.1958 of 2022
Paramanandha Devasigamani	... Petitioner
	in WP(MD)No.1959 of 2022
Kathiravan	... Petitioner
	in WP(MD)No.1960 of 2022
Shanmugavel	... Petitioner
	in WP(MD)No.1961 of 2022
Samuvel	... Petitioner
	in WP(MD)No.1962 of 2022
Tamilselvi	... Petitioner
	in WP(MD)No.1963 of 2022
Kasirajan	... Petitioner
	in WP(MD)No.1964 of 2022

vs.

1) The District Collector,
Tirunelveli District.

2) The Commissioner,
Ambasamudram Panchayat Union,
Ambasamudram Taluk,
Tirunelveli District.

... Respondents in all WPs

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records in pursuant to the Impugned Notice issued by the 2nd respondent in his proceedings Na.Ka.A3/41/2020 dated 11.01.2022 and quash the same.

For Petitioner	: Mr.S.M.Mohan Gandhi
For Respondents	: Mr.P.Thilakkumar
	Government Pleader

COMMON ORDER

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

These writ petitions are filed by the petitioners who are
alleged to be the encroachers by the respondents.



2. The challenge is to the notices issued under Section 7 of the Tamilnadu Land Encroachment Act, 1905. The said notices state that all the petitioners have encroached upon the Government poramboke land in Survey No.108, Sivanthipuram, which is classified as kanmai poramboke (Alangari Amman Kulam) by constructing either a house or shop etc.

3. Section 7 of the Tamilnadu Land Encroachment Act, 1905, mandates that prior notice to person in occupation has to be issued before taking proceedings under Section 6. The notice has to specify the land so occupied and calling upon any encroacher to show cause before a certain date why he should not be proceeded against under Section 6 and the said notice also to be served in the manner prescribed under Section 25 of the Tamil Nadu Revenue Recovery Act, 1864.

4. It has been time and again held by this Court that non-issuance of such notice would vitiate the entire proceedings. All the eviction notices that are impugned in these writ petitions are verbatim the same excepting the names of the occupants and the extent. The said notices direct the petitioners to remove the encroachment within 21 days failing which the same would be removed by the 2nd respondent.

5. Section 6(2) of the Tamilnadu Land Encroachment Act, 1905, further provides that an eviction under this section shall be made in the manner prescribed. By serving a notice in the manner provided in Section 7 on the person who has encroached the land requiring him to give his objections before the authorities, the District Collector would hold a summary enquiry into the facts of the case. Only after the enquiry, if the objections are not accepted, the order of eviction has to be passed which is also appealable under Section 10 of the Act before the District Collector.

6. The impugned notices admittedly have not followed any of the procedure prescribed in the Act and straightaway ordered eviction. Though it is styled as a notice issued under Section 7, the content of the notice states that the petitioners will be evicted, that is, without issuing the show cause notice as contemplated under Section 7 which vitiates the entire proceedings.

7. So, in such circumstances, we are of the opinion that the impugned notices have to be set aside. However, it is open to the respondents to issue notices in the manner prescribed under Section 7 of the Tamilnadu Land Encroachment Act, 1905 and proceed further in evicting the petitioners, if they are found to be encroachers on Survey No.108. It is made clear that the petitioners should be given an opportunity of personal hearing before passing the order of



8. In the light of the above discussion, the impugned notices are set aside and the Writ Petitions are allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

- 1) The District Collector,
Tirunelveli District.
- 2) The Commissioner,
Ambasamudram Panchayat Union,
Ambasamudram Taluk,
Tirunelveli District.

+1 CC to M/s.SPL.GP (SR-3954[F] dated 03/02/2022)

COMMON ORDER MADE IN
W.P(MD)Nos.1958 to 1964 of 2022
DATED : 02.02.2022

IMS (CO)

GC(11.02.2022) 3P 4C