



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.05.2022

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CORAM :

**THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
AND
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.P(MD)No.9762 of 2022
and
W.M.P. (MD) .No.6990 of 2022**

V.Karuthasamy ...Petitioner/Petitioner
Vs.

1.The Thasildar,
Devakottai Taluk,
Sivagangai District.

2.The Zonal Deputy Thasildar,
Devakottai Taluk,
Sivagangai District.

...Respondents/Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertains to the impugned order of the second respondent dated 29.04.2022 and quash the same as illegal.

For Petitioner : Mr.S.Sukumar

For Respondents : Mrs.D.Farjana Ghoushia,
Special Government Pleader.

O R D E R

(Order of the Court was made by S.SRIMATHY, J.)

This Writ Petition has been filed challenging the impugned notice under Section 7 of Tamil Nadu Land Encroachment Act dated 29.04.2022.

2. The contention of the petitioner is that the property in Survey Nos.52/2, 52/3 and 52/4A of Mangalam Village, Vengalur group belongs to the petitioner in which he has put up house



construction and living with his family. The petitioner is paying house tax, water tax and electricity charges and he is having patta in Patta Nos.130, 1569, 1594. According to the petitioner, in front of his house property there is a vacant land called 'Sarkar Natham' in S.No.433/1 of Mangalam Village, wherein, the petitioner has occupied the land to an extent of 0.01.52 Ares and enjoying the same for the past 30 years in which the petitioner had grown up 4 coconut trees, 2 neem trees, garden and also constructed a water tab and enjoyed the same without any disturbances. The contention of the petitioner is that due to false representation made by the villagers, the second respondent had issued an eviction notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. The petitioner had challenged the said notice in W.P.(MD).No.9496 of 2021 and the same was disposed of on 19.05.2021 to treat the eviction notice as show cause notice and the petitioner was directed to submit his explanation. Based on the said order, the second respondent conducted an enquiry and it was reported that the petitioner was in possession and enjoyment of the lands to an extent of 0.01.52 Ares in Survey No.433/1. However, the respondents failed to issue patta in favour of the petitioner to the said land. The contention of the petitioner is that he has been in occupation of the land for more than 30 years and he has valid right over the land. The land in question is earmarked as Natham which never vested with the respondents and the respondents have no right to take any action under the Land Encroachment Act. Further contention of the petitioner is that as per Section 7 of the Act, the authority has the power to issue show cause notice and thereafter call for explanation from the alleged encroacher and if the authority concerned found any encroachment, then action shall be taken under Section 5 and 6 of the Act. Whereas, in the present case, the second respondent again issued impugned eviction order under Section 7 of the Act, but straight away directed to evict the land. Challenging the said order, the present Writ Petition has been filed.

3. The learned counsel for the petitioner submitted that subsequently, the second respondent passed an order dated 31.08.2021, based on the earlier Writ Petition order passed in W.P. (MD).Nos.9495 and 9496 of 2021 dated 19.05.2021. Wherein, it is stated that to reach the common pathway, the land in occupation is the only way and therefore the petitioner was directed to remove the fencing which has been fenced covering the area of 0.00.68 Ares. The contention of the petitioner is that the petitioner is occupying the said place for more than 50 years with the knowledge of the respondents. Moreover, the land in question is classified as Natham and Natham is meant for occupation by the villagers. Hence, the respondents are not having any right to evict the petitioner.



4. Heard Mr.S.Sukumar, learned counsel for the petitioner and Mrs.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents.

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5. It is seen that the impugned notice has been issued under Section 7 of the Act. However, the contents of the notice states that the respondents have directed the petitioner to evict from the disputed site. Under Section 7 of the Land Encroachment Act, the authorities are having power to issue show cause notice. Once the show cause notice is issued, the encroacher ought to submit the reply, thereafter, after considering the rival claims, the respondents ought to issue notice under Section 6 directing the encroacher to evict from the place. It is seen from the records that the respondents had issued notice under Section 7, but has directed the petitioner to evict from the place and it is not the show cause notice. Therefore, the petitioner prayed to quash the notice issued under Section 7 by the respondents.

6. However, the petitioner has submitted an order dated 31.08.2021, wherein, it has been held that based on the earlier order passed in the writ petition, the petitioner was granted an opportunity to submit his explanation. The petitioner has attended the enquiry and submitted his explanation stating that he is in occupation of the land for the past 50 years and also prayed to issue patta. The respondents have stated in the order that the petitioner is not entitled to any patta because the land in question is connecting the common pathway. Therefore, the petitioner is not entitled to cover the land by fencing the land and also directed the petitioner to remove the fence. After passing this order, the respondents ought to issue notice under Section 6, but the respondents have issued notice under Section 7 and has directed the petitioner to evict from the place.

7. Therefore, the case is remitted back to the authorities again to re-consider the entire issue. The respondents shall also consider the contention of the petitioner that the land in question is classified as Natham. The impugned notice dated 29.04.2022 shall be treated as show cause notice under Section 7. The petitioner is directed to submit his reply with all evidence that he is inclined to rely on. Thereafter, the respondents are directed to conduct personal hearing and pass a speaking order. While passing the order the respondents shall take into consideration the plea of the petitioner that the land in question is classified as Natham. The respondents are directed to conduct enquiry and pass orders within a period of eight (8) weeks from the date of receipt of a copy of this



8. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

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Sd/-

Vacation Officer/
Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

To

1.The Thasildar,
Devakottai Taluk,
Sivagangai District.

2.The Zonal Deputy Thasildar,
Devakottai Taluk,
Sivagangai District.

+1 CC to M/s.S. SUKUMAR, Advocate (SR-23892[F] dated 20/05/2022)

+1 CC to M/s.SPL.GP (SR-23934[F] dated 20/05/2022)

ORDER MADE IN
W.P (MD) No. 9762 of 2022
19.05.2022

nsn(CO)
TR(31.05.2022) 4P 5C