



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.05.2022

CORAM :

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

AND

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.9984 & 9985 of 2022

and

W.M.P. (MD) .Nos.7117 & 7118 of 2022

Arjunan ...Petitioner in W.P.(MD).No.9984 of 2022

Mallika ...Petitioner in W.P.(MD).No.9985 of 2022

Vs.

1.The District Collector,
Thanjavur District, Thanjavur.

2.The Tahsildar,
Orathanadu Taluk,
Thanjavur District.

3.The Revenue Inspector,
Thekur Firka,
Orathanadu Taluk,
Thanjavur District.

...Respondents in both Petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the third respondent issued under Section 7 of the Act, dated 01.09.2021 and impugned proceedings of the second respondent issued under Section 6 of the Act in Na.Ga.10253/2020 B4, dated 03.03.2022, quash the same and consequently direct the respondents herein to correct the wrong classification of Survey No.297/15 as comprised of a pathway and natham land after due field enquiry and usage.

For Petitioners	:	Mr.V.S.Kumaraguru
For Respondents	:	M/s.D.Farjana Ghoushia, Special Government Pleader (in both Writ Petitions)

COMMON ORDER

(Common Order of the Court was made by ABDUL QUDDHOSE, J.)

These writ petitions have been filed challenging the notices dated 01.09.2021 and 03.03.2022 passed by the third



respondent and second respondent, issued under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905 against the petitioners respectively.

2. The case of the petitioners is that aggrieved by the aforementioned orders, the petitioners have filed a Statutory Appeal under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, before the first respondent. The petitioners have also filed stay applications before the first respondent seeking stay of the impugned orders dated 01.09.2021 and 03.03.2022 passed under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, against them respectively. According to them, the said stay applications have not been considered till date. In such circumstances, they have filed these writ petitions.

3. The petitioners have raised the following grounds for challenging the orders dated 01.09.2021 and 03.03.2022 passed by the third respondent and second respondent respectively :

a) the respondents failed to see that there is no cause of action for exercise of powers under Section 7 or Section 6 of the Act, since the respondents 2 and 3 having stated that occupation of the petitioners is a natham land. The said occupation of natham land cannot be treated as an encroachment as the natham land is meant for occupation of villagers concerned.

b) the respondents have failed to consider the explanations submitted by the petitioners in reply to the notices issued under Section 7 or Section 6 of the Act that a wrong classification has been made in the revenue record with regard to Survey Nos.297/15 as if the said survey No.297/15 in entirety is a pathway. According to the petitioners, in the absence of any pathway in entirety in Survey No.297/15, the alleged encroachment is base less.

4. The explanations submitted by the petitioners have not been considered by the respondents and the respondents have passed a non-speaking order. Admittedly, a Statutory Appeal has been filed aggrieved by the impugned orders, which is the subject matter of these writ petitions. The said Statutory Appeal is pending before the first respondent. The petitioners have filed an application under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, seeking stay of the impugned orders dated 01.09.2021 and 03.03.2022 passed by the third respondent and second respondent respectively, which are challenged in these writ petitions.

5. No prejudice would be caused to the respective parties, if direction is issued by this Court to the first respondent to dispose of the Statutory Appeal filed by the petitioners under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, within a time to be fixed by this Court.



6. The learned Special Government Pleader appearing for the respondents, on instructions, would submit that since the Statutory Appeal has already been filed by the petitioners, aggrieved by the impugned orders dated 01.09.2021 and 03.03.2022, the eviction of the petitioners from the premises has not been enforced. The said submission is also recorded.

7. After recording the submissions made by the learned Special Government Pleader appearing for the respondents, this Court is of the considered view that no prejudice would be caused to the respondents, if the petitioners interest with regard to their possession over the property is protected till the disposal of the Statutory Appeal by the first respondent.

8. As indicated earlier, no prejudice would be caused, if a direction is issued to the first respondent to dispose of the Statutory Appeal filed by the petitioners within a time frame to be fixed by this Court.

9. For the forgoing reasons, this Court directs the first respondent to pass final orders on the petitioners' Statutory Appeal dated 22.03.2022 filed under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, aggrieved by the impugned orders, dated 01.09.2021 and 03.03.2022 passed by the third respondent and second respondent respectively, on merits and in accordance with law, within a period of 12 weeks from the date of receipt of a copy of this order, after affording a fair hearing to the petitioners including granting them the right of personal hearing. Till the Statutory Appeal is disposed of, there shall be an order of stay of the impugned orders, dated 01.09.2021 and 03.03.2022 passed by the third respondent and second respondent respectively.

10. With the aforementioned direction, these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The District Collector,
Thanjavur District, Thanjavur.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Tahsildar,
Orathanadu Taluk,
Thanjavur District.

3.The Revenue Inspector,
Thekur Firka,
Orathanadu Taluk,
Thanjavur District.

+1 CC to M/s.SPL.GP (SR-23817,SR-23816[F] dated 19/05/2022)

+2 CC to M/s.V.S. KUMARAGURU, Advocate (SR-23887,SR-23888[F] dated
20/05/2022)

W.P (MD) Nos. 9984 & 9985 of 2022
18.05.2022

RD(31.05.2022) 4P 7C