



W.P.(MD)No.16156 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :21.07.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.P(MD)No.16156 of 2022
and
W.M.P(MD)Nos.11684 and 11685 of 2022

1.Nadhiya
2.Rajeshwari
3.Tasleem Begum
4.Kalimuthu

... Petitioners

Vs.

The Tahsildar,
Karaikudi Taluk,
Sivagangai District.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records relating to the impugned order of eviction made by the respondent in Na.Ka.A5/1508 of 2021, dated 14.06.2021 and quash the same as illegal.

For Petitioners	: Mr.M.Mahaboob Athiff
For Respondent	: Mr.S.P.Maharajan, Special Government Pleader



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ORDER

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

Challenging the impugned order of eviction passed by the respondent, dated 14.06.2021, the above writ petition is filed.

2. Heard Mr.M.Mahaboob Athiff, learned counsel for the petitioners and Mr.S.P.Maharajan, learned Special Government Pleader, who takes notice for the respondent.

3. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

4. The impugned order says that the petitioners and others have encroached into the house sites, which were assigned in favour of differently abled persons. Based on the representation of the members of the Association of differently abled persons and the report of the Revenue Inspector, dated 14.06.2022, it is stated that the respondent has passed the impugned order directing the petitioners to remove the encroachment within seven days.



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5. It is the case of the petitioners that the petitioners are the residents of Poyanpatti Village, Kovilur Group, Karaikudi Taluk, Sivagangai District and that they are in occupation of small extent of plots which are classified in the revenue records as Natham lands.

6. Though it is stated that the petitioners are in occupation of the plots for several decades, the learned Special Government Pleader appearing for the respondent, on instructions, submitted that the petitioners have no semblance of right and they have encroached the lands, which were assigned in favour of the landless differently abled persons.

7. Since it is a disputed fact, this Court is not inclined to go into the merits of the case. However, the impugned order is in violation of the principles of natural justice inasmuch as no opportunity of hearing was given to the petitioners before passing the impugned order, though this Court has time and again directed the Officials to remove encroachment only in accordance with law after following due procedure. In that view of the matter, the impugned order is liable to be set aside.



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8. In the result, this writ petition is allowed and the impugned order of the respondent dated 14.06.2021, is set aside. However, liberty is given to the respondent to proceed further with removal of encroachment. As it has been held by this Court earlier, the respondent is directed to conduct a survey after issuing notice to the petitioners and any other encroachers, to ascertain whether they are in encroachment of Government land. If the petitioners and other encroachers are unable to produce any patta or document of title or evidence to show their settled uninterrupted possession for statutory period, it can be presumed that the land belongs to the Government even though the classification of the land is Natham. After identifying the encroachment if any, it is open to the respondent to remove the encroachment by initiating action under the provisions of the Tamil Nadu Land Encroachment Act, 1905.

9. It is also made clear that before passing a final order of eviction under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, there shall be a show-cause notice. It is only after considering the objections or representations of the encroachers or the petitioners in response to the show-cause notice, final order can be passed under Section 6 of the Tamil Nadu Land Encroachment



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Act, 1905, after considering the objections. The entire exercise shall be commenced within a week from the date of receipt of a copy of this order. In case, the respondent finds that the petitioners encroached the Government land, the respondent is directed to initiate proceedings immediately and the exercise of removal of encroachment shall be completed within a period of four months from the date of receipt of a copy of this order. It is open to the petitioners to approach the civil Court if they can establish their independent title. No Costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.] [S.S.Y., J.]
21.07/2022

Index : Yes / No

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To

The Tahsildar,
Karaikudi Taluk,
Sivagangai District.



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