



W.P.(MD)No.17952 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2022

CORAM:

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

W.P.(MD)No.17952 of 2022
and W.M.P.(MD) No.13107 of 2022

Muthupandian

... Petitioner

Vs.

1.The District Collector,
Tirunelveli.

2.The Revenue Divisional Officer,
Tirunelveli.

3.The Tahsildar,
Manur Taluk Office,
Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings issued by the 3rd Respondent under Section 6 of the Tamilnadu Land Encroachment Act, 1905 in his proceedings No.Nil dated 29.07.2022 and quash the same and consequently direct the Respondents to forbear from taking any coercive action in removing the petitioner from his property situated in Survey No.1306/15 and 1306/22, at Vannikonendal Village, Manur Taluk, Tirunelveli District pending disposal of the



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Civil case filed by the petitioner in O.S.No.142 of 2020 on the file of the Hon'ble Sub Judge, Sankarankovil, Tirunelveli District.

For Petitioner : Mr.M.P.Senthil

For Respondents : Mr.J.Ashok
Additional Government Pleader

ORDER

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

This Writ Petition is filed challenging the order passed by the Tahsildar, directing the petitioner to remove the encroachment under Section 6 of the Tamil Nadu Land Encroachment Act, 1905.

2. Heard Mr.M.P.Senthil, learned counsel for the petitioner and Mr.J.Ashok, learned Additional Government Pleader, appearing for the respondents.

3. As per the impugned notice, the petitioner is directed to remove the encroachment by showing the encroachment into two items. As per the schedule attached to the impugned order, it is seen that the petitioner has encroached 43 square meters by putting up shed in S.No.1320/1 in Vannikkonendal Village, Manur



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Taluk, which is described as a street. The second item indicates that the petitioner has encroached to an extent of 65 square meters in S.No.1306/14 by putting up a compound wall and shed.

4. Earlier the petitioner filed a writ petition before this Court in W.P.(MD) No.15515 of 2022, challenging the notice issued by the Executive Officer / President of Panchayat under Section 131(2) of Tamil Nadu Panchayats Act, 1994. This Court while dismissing the Writ Petition directed the Tahsildar concerned to proceed under the provisions of the Tamil Nadu Land Encroachment Act, 1905. The operative portion of the reads as follows:-

“7. Accordingly, the Writ Petition is dismissed. However, the third respondent - Tahsildar is directed to initiate action under the provisions of Tamil Nadu Land Encroachment Act, 1905. It is made clear that the survey conducted earlier by the Tahsildar is valid and the encroachment had already been noticed after conducting survey in the presence of the petitioner. The Tahsildar is directed to issue show cause notice to the petitioner under Section 7 of Tamil Nadu Land Encroachment Act, 1905 and thereafter, pass



final order considering the representation or objections of the petitioner within a period of six weeks from the date of receipt of such representation / objections. The Tahsildar is directed to complete the entire exercise of removing the encroachment within a period of two weeks from the date of passing final order under Section 6 of Tamil Nadu Land Encroachment Act, 1905. No costs. Consequently, connected Miscellaneous Petition is closed.”

5. Thereafter, the Tahsildar issued notice under Section 7 of Tamil Nadu Land Encroachment Act, 1905. After considering the objections, the Tahsildar has passed an order under Section 6 of Tamil Nadu Land Encroachment Act, 1905. The petitioner has also filed an appeal before the Revenue Divisional Officer as against the Show Cause Notice. However, the said appeal petition is also dismissed by the Tahsildar. Since no appeal is maintainable as against the show cause notice, the order passed by the Tahsildar may not have any legal consequences affecting the interest of any of the parties.



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6. Be that as it may, the petitioner is unable to convince this Court that he is the undisputed owner of the property in respect of which proceedings for removal of encroachment has been initiated. It is stated that the petitioner has already filed a civil suit in O.S.No.142 of 2020 before the Sub Court, Sankarankovil, wherein the suit property has been described as a house bearing door No.15, situated in S.No.1129/1A, New Natham Survey No. 1306/22 and 1306/14.

7. Learned counsel appearing for the petitioner states that the petitioner is not claiming any right or title in S.No. 1320/1. Therefore, the petitioner himself admitted that he would remove the encroachment in S.No.1320/1, measuring an extent of 43 sq. meters. However, citing the pendency of suit in respect of the property in S.No.1306/22 and 1306/14, the removal of encroachment in S.No.1306/14 cannot be prevented.

8. Learned counsel appearing for the petitioner states that he may be given protection for some time till the interlocutory application said to have been filed in the suit in



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relation to the property is decided. Unfortunately, the petitioner has not filed the interlocutory application stated to have been filed before the civil Court. In such circumstances, this Court is unable to pass any order.

9. It is also to be noted that the petitioner has described the suit property as a residential building along with four shops in an extent of 4400 square feet. The entire property is comprised in two different survey numbers, namely, S.Nos.1306/22 and 1306/14. Unless the petitioner has document of title in respect of both the survey numbers, this Court cannot accept the exclusive title of the petitioner to the entire extent. It may be open to the petitioner to work out his remedy as is available under common law before civil Court. However, this Court cannot pass any interim order without being convinced of petitioner's absolute right.

10. In view of the above, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed. However, liberty is reserved to the petitioner to establish his title and seek interim order before civil Court in respect of one of the item, namely S.No.1306/14 i.e., the construction he has made



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in land comprised in S.No.1306/14, Vannikkonendal Village, Manur

Taluk, Tirunelveli District.

[S.S.S.R., J.] [S.S.Y., J.]
10.08.2022

Index : Yes / No

sj

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