



W.P.(MD)No.18998 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.08.2022

CORAM:

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

W.P(MD)No.18998 of 2022
and W.M.P.(MD) No.13876 of 2022

1.M.Jaya

2.Muthamilselvan

... Petitioners

Vs.

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The Tahsildar,
Kamuthi Taluk,
Ramanathapuram District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuing a Writ of Certiorari, calling for the records relating to the notice dated 19.07.2022 and 10.08.2022 on the file of the Tahsildar, Kamuthi, Ramanathapuram District, the Respondent No.2 herein issued under the provisions of the Tamil Nadu Land Encroachment Act, 1905 in respect of the land in S.No.141/23, Natham Village, Kamuthi Taluk, Ramanathapuram District and quash the same.



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For Petitioner

: Mr.Y.Prakash

For Respondents

: Mr.J.Ashok

Additional Government Pleader

ORDER

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

Challenging the impugned show cause notice dated 19.07.2022, issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, and the consequential order of eviction dated 10.08.2022, issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, the above Writ Petition has been filed.

2. Heard Mr.Y.Prakash, learned Counsel for the petitioner and Mr.J.Ashok, learned Additional Government Pleader, who accepts notice on behalf of the respondents. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3. It is the case of the petitioner that an extent of 119 square meters of land in S.No.141/23 in Natham Village, Kamuthi Taluk, Ramanathapuram District, was assigned in favour of one



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Kilavan, who is the father of the first petitioner. The first petitioner's father died on 22.01.2016 and her mother died on 26.09.2021. It is stated that the parents of the first petitioner have put up a house in a portion of the property assigned to them and the first petitioner and her brother are in possession and enjoyment of the same.

4. The first petitioner's father Kilavan earlier filed a civil suit against one Puyalrani and five other defendants, including the Panchayat President, Block Development Officer, Tahsildar and the State represented by the District Collector. The suit was for declaration and consequential relief of recovery of possession. The said suit in O.S.No.21 of 2006, on the file of the District Munsif cum Judicial Magistrate, Kamuthi, was decreed in favour of the first petitioner's father. It is admitted that the first appeal and the second appeal before this Court in S.A.(MD) No.928 of 2011 preferred by the defendants 1 and 2 were also dismissed confirming the decree of the trial court. It is also stated that the decree for recovery of possession was executed and the first petitioner's father was put in possession of the property in execution of the decree in the suit in O.S.No.21 of 2006.



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5. While so, the Tahsildar has issued a notice under Section 7 of Tamil Nadu Land Encroachment Act, 1905. Though a detailed reply was given by the first petitioner to the Tahsildar and the Revenue Divisional Officer, without considering the objections raised by the first petitioner an order under Section 6 of Tamil Nadu Land Encroachment Act, 1905, has been issued by the Tahsildar.

6. Learned Additional Government Pleader appearing for the respondents on instructions submitted that the first petitioner has leased out the property to the second petitioner. Since the land was assigned to the first petitioner's father subject to certain condition that the land should not be alienated to persons belonging to some other community, it is contended that the assignment was cancelled by the respondents earlier.

7. No document was produced to prove assignment or cancellation of assignment. Even in the earlier order passed under Section 7 of Land Encroachment Act, 1905, no reference was made as to cancellation of assignment. Hence, this Court is unable to believe the statement of learned Additional Government Pleader.



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In the absence of material produced before this Court to show that an opportunity was given to the first petitioner and her brother before cancelling the order of assignment, this Court is inclined to allow the Writ Petition.

8. Accordingly, the Writ Petition is allowed and the impugned orders dated 19.07.2022 and 10.08.2022, passed by the Tahsildar both under Sections 7 and 6 of Tamil Nadu Land Encroachment Act are quashed. However, liberty is given to the respondents to resume the land after cancellation of assignment in case the first petitioner and her brother have violated the conditions, if it is permissible in the manner known to law. Unless the assignment is cancelled, after issuing show cause notice to the first petitioner and her brother, in the manner known to law, the respondents cannot take coercive steps for evicting the petitioners or proceed under Tamil Nadu Land Encroachment Act, 1905. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.S.S.R., J.] [S.S.Y., J.]
23.08.2022

Index : Yes / No
sj



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S.S.SUNDAR, J.

and

S.SRIMATHY, J.

sj

To

- 1.The District Collector,
Ramanathapuram District,
Ramanathapuram.
- 2.The Tahsildar,
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