



W.P.(MD) No.24760 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

AND

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.(MD)No.24760 of 2022

and

W.M.P.(MD)No.18847 of 2022

Deivasigamani

... Petitioner

-Vs-

1.The Divisional Engineer (Highways),
Virudhunagar, Virudhunagar District.

2.The Assistant Engineer (Highways),
Thiruchuli, Virudhunagar District.

3.The Assistant Divisional Engineer (Highways),
Thiruchuli, Virudhunagar District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the impugned order dated 19.10.2022 under Reference Ku.No.194/2022/A1, passed by the 3rd respondent

Page 1 of 6



W.P.(MD) No.24760 of 2022

in respect of Survey No.248/2B situated at M.Pudhukulam, Group Naloor Village and quash the same as illegal and erroneous forthwith.

For Petitioner : Mr.S.Palani Velayutham
For Respondents : Mr.G.V.Vairam Santhosh,
Additional Government Pleader.

ORDER

[Order of the Court was made by R.MAHADEVAN, J.]

Challenging the eviction notice issued by the 3rd respondent dated 19.10.2022 under Reference Ku.No.194/2022/A1 to remove the alleged encroachments in Survey No.248/2B, M.Pudhukulam, Group Naloor Village within 15 days, the petitioner has filed this Writ Petition.

2. Mr.G.V.Vairam Santhosh, learned Additional Government Pleader takes notice for the respondents. By consent of both parties, this Writ Petition is taken up for final disposal at the admission stage itself.

3. It is the specific contention of the learned counsel for the petitioner that without issuing any show cause notice under the Tamil Nadu Land



W.P.(MD) No.24760 of 2022

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Encroachment Act, 1905 (hereinafter referred to as 'the Act') calling for the objections of the petitioner, the authorities measured the property in question behind the back of the petitioner and based on the same, the present impugned eviction notice has been issued ignoring the long possession of the petitioner over the property in question for more than 40 years and therefore, the impugned notice is liable to be set aside.

4. Section 7 of the Act mandates that prior notice to person in occupation has to be issued before taking proceedings under Section 6 of the Act. The notice has to specify the extent of the land so occupied and calling upon the encroacher to show cause before a certain date that why should he not be proceeded with under Section 6 of the Act and the said notice also to be served in the manner prescribed under Section 25 of the Tamil Nadu Revenue Recovery Act, 1864.

5. Section 6(2) of the Tamil Nadu Land Encroachment Act, 1905, further provides that an eviction under this Section shall be made in the manner prescribed. By serving a notice in the manner provided in Section 7 of the Act



W.P.(MD) No.24760 of 2022

WEB COPY

on the person who has encroached the land requiring him to give his objections before the authorities, the District Collector would hold a summary enquiry into the facts of the case. Only after the enquiry, if the objections are not accepted, the order of eviction has to be passed which is also appealable under Section 10 of the Act before the District Collector.

6. At this juncture, the learned counsel for the respondents fairly submitted that the impugned notice may be treated as show cause notice and the petitioner may be directed to submit his objection, which will be considered by the authorities concerned and only then, appropriate action will be taken for removal of encroachment, if any, in the place in question.

7. Recording the above submission, the impugned notice is treated as a show cause notice and the petitioner is directed to file his objection / reply to the same before the authorities concerned, along with all supporting materials, within a period of two (2) weeks from the date of receipt of a copy of this order. After receipt of the same, the authorities concerned shall consider such objection and if it is not satisfactory, then conduct a proper enquiry and thereafter, shall pass orders for eviction of encroachment, if any, by due process of law within a



W.P.(MD) No.24760 of 2022

period of four weeks thereafter. Till such time, *status quo* prevailing as on date shall be maintained by both parties.

8. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] & [J.S.N.P., J.]
01.11.2022

Index : Yes / No

Internet : Yes / No

VSM

To

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Page 5 of 6



WEB COPY



W.P.(MD) No.24760 of 2022

R.MAHADEVAN, J.

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VSM

W.P.(MD)No.24760 of 2022

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