



W.P.(MD) No.27830 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD) No.27830 of 2022
and W.M.P.(MD)Nos.21918 & 21919 of 2022

S.Sankaravadivu

... Petitioner

Vs.

1.The District Collector,
Kanyakumari.

2.The Revenue Divisional Officer,
Thovalai,
Kanyakumari District.

3.The Tahsildar,
Thovalai,
At Boothapandi,
Kanyakumari District.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 3rd respondent in his proceedings in Na.Ka.ஆ2/3899/2016, dated 11.11.2022 and consequent notice under Section 7 of the Tamil Nadu Land Encroachment Act, dated 12.11.2022 for house property measuring 0.01.50 Ares in Re-survey No.209/5 in Boothapandi Village, and consequent Notice under Section 7 of the Tamil Nadu Land Encroachment Act, dated 12.11.2022 for construction activity in land measuring 0.05.13 Ares in Re-survey No.209/5 in Boothapandi Village and quash the same.

For Petitioner : Mr.M.P.Senthil

For Respondents : Mr.V.Nirmalkumar,
Government Advocate.

ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

Challenging the impugned order passed by the third respondent in Na.Ka.ஆ2/3899/2016, dated 11.11.2022 and the consequential notices dated 12.11.2022, the petitioner has filed this Writ Petition.



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2. Heard Mr.M.P.Senthil, learned counsel for the petitioner and Mr.V.Nirmal Kumar, learned Government Advocate, who takes notice for the respondents.

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

4. It is the case of the petitioner that her husband has purchased a land measuring to an extent of 24.5 cents, through a registered sale deed dated 29.04.1982, vide Document No.633 of 1982. The petitioner's vendor acquired title over the property for a registered sale deed along with his brother one Boothalingam Pillai for the total extent of 59 cents. According to the petitioner, as per the revenue records, the property was mutated by a joint in patta No.211 by the proceedings of the Tahsildar, dated 10.12.2010. The petitioner's deceased husband has constructed a residential house in the aforesaid property about 37 years back and he paid all the taxes to the Department. In the revenue records, though the individuals name find place in the ownership column, the land has



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been classified as “Nilaviyal Kulam”. As per the classification, the third respondent has issued the impugned proceedings to stop the construction of the compound wall. Thereafter, two consequential notices dated 12.11.2022 have been issued. According to the petitioner, the aforesaid two consequential notices have been served to the petitioner's husband, who expired on 31.08.2020 and her son, who is a permanent resident of Singapore and therefore, the impugned order dated 11.11.2022 and the consequential notices dated 12.11.2022 are liable to be set aside.

5. The learned Government Advocate appearing for the respondents drew the attention of this Court to the explanation submitted by the petitioner dated 17.11.2022 before the authorities, wherein the petitioner has admitted that she is in possession of the property and the aforesaid notices, addressed to the petitioner's husband and her son, have been received by the petitioner and therefore, the aforesaid ground taken by the petitioner is not sustainable. He further submitted that the petitioner has no right to encroach upon the water bodies and the petitioner has also already given explanation before the



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authorities concerned and the same will be considered and appropriate action will be taken by the respondents in accordance with law.

6. Considering the submission made by both sides, we are of the view that the petitioner has already given explanation to the impugned notice dated 11.11.2022 and the consequential notices dated 12.11.2022 before the Tahsildar, Thovali and therefore, at this stage, there is no justification to quash the aforesaid proceedings. However, in the interest of the parties, we direct the Tahsildar, Thovalai to consider the petitioner's explanation dated 17.11.2022 and pass orders in accordance with law, after providing opportunity to the petitioner, as early as possible, preferably, within a period of eight (8) weeks from the date of receipt of a copy of this order. It is also open to the petitioner to raise all the grounds, which has been agitated in the instant writ petition, before the Tahsildar, Thovalai. Till such time, *status quo* prevailing as on date shall be maintained by both parties.



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Consequently, connected miscellaneous petitions are closed.

[D.K.K., J.] [R.V., J.]

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Index : Yes / No

Internet : Yes / No

vsm



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