



WEB COPY



W.P.No.25513 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.08.2023

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.P.No.25513 of 2023
AND
W.M.P.No.24901 of 2023

S.Kamalasekharan

.. Petitioner

Vs.

1.The District Collector
Namakkal District

2.The Tahsildar
Thiruchengode Taluk
Namakkal District

3.The Revenue Inspector
Molasi Revenue Village
Molasi, Thiruchengode Taluk
Namakkal District

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records relating to the impugned notice dated 24.08.2023 issued by the 2nd respondent u/s.6 of the Tamil Nadu Land Encroachment Act, 1905 and quash the same as illegal, arbitrary, without jurisdiction and violation of principles of natural justice and consequentially direct the respondents not to initiate any proceedings with



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respect to the subject matter property in Natham S.No.408/13, Kudi Theru, Patlur Village, Tiruchengode Taluk, Namakkal District, as per the provisions of the Act.

For Petitioner : Mr.P.Dinesh Kumar
For Respondents : Mr.Karthik Jagannath
Government Advocate

ORDER

(Order of the court was made by R. MAHADEVAN, J.)

This writ petition has been filed by the petitioner to quash the notice dated 24.08.2023 issued by the 2nd respondent under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 and consequently, direct the respondents not to initiate any proceedings with respect to his property in Natham S.No.408/13, Kudi Theru, Patlur Village, Tiruchengode Taluk, Namakkal District.

2. It is the case of the petitioner that he is residing in the subject property for the past 45 years and in view of his continuous possession, patta was also issued in his favour in the year 1995, by the Special Tahsildar, Natham Scheme. According to the petitioner, the land in natham S.No.408/13 which is adjacent to his property, is the only access to reach his house from the cement road and



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is earmarked as காலிமனை in the revenue record. In the said natham

S.No.408/13, 500 meter cement road was also laid for usage of the residents of Kudi Theru, in order to reach their respective houses; and that, in order to form a connection between the road and his house in S.No.408/12, the petitioner constructed a ramp, which is very much necessary for his ingress and egress. While so, one K.P.Mahendran and Loganathan were creating problem to the petitioner and other adjacent land owners by sending representations to the revenue officials alleging that the petitioner had encroached the Government land. Feeling aggrieved, the petitioner and others filed O.S.No.145 of 2023 on the file of the District Munsif Court, Tiruchengode, for permanent injunction against the respondents and the said suit is pending.

3. It is the grievance of the petitioner that the 3rd respondent, without considering the aforesaid facts and circumstances of the case, issued a notice on 09.08.2023 under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, directing him to demolish the ramp in the subject property, treating the petitioner as an encroacher. Upon receipt of the same, he sent a detailed objection dated 21.08.2023 to the said notice, which was received by the respondents on 23.08.2023. However, without considering the objection so filed by the petitioner, the 2nd respondent issued the impugned notice dated



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24.08.2023 under section 6 of the Act, calling upon him to submit his reasons on or before 31.08.2023, as to why he should not be evicted from the subject property, challenging which, the petitioner is before this Court with the present writ petition.

4. The main contention of the learned counsel for the petitioner is that the 2nd respondent, without considering the objections submitted by the petitioner, mechanically issued the impugned notice, which is arbitrary, illegal and in violation of the principles of natural justice. Referring to the order dated 11.10.2018 passed by a Co-ordinate Bench of this court in WP.Nos.26234 and 26237 of 2018, the learned counsel further submitted that the subject property is grama natham and the Government has no vested right over the same and hence, the petitioner cannot be treated as an encroacher. Therefore, the learned counsel sought to quash the notice impugned herein and allow this writ petition.

5. On the other hand, the learned Government Advocate appearing for the respondents submitted that the petitioner has filed this petition, even without availing his appeal remedy as provided under Section 10 of the Act and hence, the prayer made in this writ petition, need not be entertained by this court.



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6. Heard both sides and perused the documents enclosed in the typed set of papers.

7. In the impugned notice dated 24.08.2023 sent by the second respondent, there is no whisper about the consideration of the objections filed by the petitioner to the notice issued under section 7 of the Act and hence, the same is liable to be set aside, as it is arbitrary, illegal and contrary to the principles of natural justice. Accordingly, the impugned notice is set aside and the matter is remanded to the 2nd respondent, who shall consider the objections dated 21.08.2023 filed by the petitioner to the notice dated 09.08.2023 issued by the third respondent under section 7 of the Act, and thereafter, pass orders afresh, after providing an opportunity of being heard to the petitioner. Such an exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

8. With the above directions, this writ petition is disposed of. No costs. Connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
29.08.2023

Neutral Citation : Yes/No
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R. MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

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To

1.The District Collector
Namakkal District

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Thiruchengode Taluk
Namakkal District

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Molasi
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