



WP No.11160 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MS. JUSTICE P.T. ASHA

Writ Petition No. 11160 of 2017
and
W.M.P. No. 12089 of 2017

Belukurichi Kongu Community Welfare Trust
Represented by its President,
Mr.B.R.Arul Prakasam,
Door No.9/165, Belukurichi,
Senthamangalam Taluk,
Namakkal District.

.. Petitioner

Versus

1. The Tahsildar,
Senthamangalam Taluk,
Taluk Office,
Senthamangalam,
Namakkal District.

2. The President,
Belukurichi Panchayat,
Belukurichi,
Senthamangalam Taluk,
Namakkal District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a
Writ of Certiorari, to call for the records leading to the impugned proceedings



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of the first respondent dated 16.03.2017 issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and quash the same.

For Petitioner : Mr. N.C. Ashok Kumar.

For Respondents : Mr. A. Selvendran,
Special Government Pleader for R1.

ORDER

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

The petitioner has come forward with this writ petition seeking to issue a Writ of Certiorari to quash the notice dated 16.03.2017 issued by the first respondent under Section 7 of The Tamil Nadu Land Encroachment Act, 1905.

2. The case of the petitioner is that during the year 2011, the petitioner trust had put up a building in the land comprised in Survey No.390/1 measuring 870 square feet = 2 cents out of 9.56 hectares = 23.61 acres in Belakurichi Village, which is classified as "Grama Natham" in the "A" Register. It is stated that the petitioner trust has been formed for the welfare and benefit of Kongunattu Gounder community, where charitable activities have been undertaken by them. It is further stated that the building constructed by the petitioner Trust has been assessed to property tax and they have been paying property tax from the assessment year 2011-2012. Further, electricity service connection has been obtained in the name of the Petitioner Trust and they are



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the owner of the land and building aforesaid. However, the then President of the second respondent, due to unknown reasons, refused to receive the property tax tendered by the petitioner Trust for the assessment years 2012-2013 and 2013-2014, therefore, a suit in O.S. No. 68 of 2014 was filed by them before the District Munsif Court, Namakkal for a Mandatory Injunction directing the second respondent to receive the property tax amount and issue receipts in respect of the properties owned by the Petitioner Trust in Door Nos. 4/95, 4/95-1 and 4/95-2. However, the suit was dismissed against which A.S. No. 8 of 2017 was filed before the Sub Court, Namakkal and it is pending. While so, the impugned notice dated 16.03.2017 was issued by the first respondent under Section 7 of The Tamil Nadu Land Encroachment Act, 1905 by treating the petitioner Trust as an encroacher of the public land. Immediately, the petitioner Trust submitted their explanation on 29.03.2017 stating that the land which is in their occupation is classified as "*Grama Natham*" in the revenue records, while so, the notice issued under Section 7 of the Act is legally not sustainable. After submitting the reply dated 29.03.2017, apprehending that the petitioner Trust may be dispossessed forcibly, they have filed the present writ petition to quash the notice dated 16.03.2017 issued by the first respondent.



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3. The learned counsel for the petitioner would contend that the first respondent has no jurisdiction to issue the impugned notice dated 16.03.2017 inasmuch as the land in question has been classified as "Grama Natham". When once a land is classified as *Gramanatham*, then such land is fit for human dwelling. In such circumstances, the first respondent has no jurisdiction to treat the petitioner Trust as an encroacher to issue the notice under Section 7 of the Act. In this context, the learned counsel for the petitioner placed reliance on the decision of this Court in the case of **A.K. Thillaivanam and other vs. District Collector, Chengai Anna District and others** reported in **1998 (3) Law Weekly 603** wherein it has been held that the Land Encroachment Act or the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act cannot be invoked in respect of lands classified as *Grama Natham* which is in occupation by general public. The learned counsel also relied on the Division Bench decision of this Court in the case of **The Executive Officer, Kadathur Town Panchayat, Harur Taluk, Dharmapuri District vs. V. Swaminathan and others** reported in **2004 (3) CTC 270** wherein it has been held that when once a land is classified as *Grama Natham* then it cannot be construed as the one vested with the Government. By placing reliance on the aforesaid decisions, the learned counsel for the petitioner submits that the impugned notice dated 16.03.2017 issued by the first



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respondent is legally not sustainable and therefore, it has to be quashed.

Accordingly, the learned counsel prayed for allowing this writ petition.

4. On the contrary, the learned Special Government Pleader appearing for the first respondent, by placing reliance on the counter affidavit of the first respondent, would contend that the petitioner Trust encroached into the land in question and put up an unauthorised construction without obtaining any planning permission from the competent authorities. Therefore, the petitioner Trust cannot assume that they are the owner of the land in which the construction had been put up. It is further stated that even though the *nomenclature* of the land in question is *Gramanatham*, it is classified only as a Poromboke land and therefore, the occupation in such land has to be regularised. Even otherwise, the notice which is impugned in this writ petition was issued calling upon the petitioner to submit their explanation. Even though an explanation was submitted by the petitioner on 29.03.2017, before the first respondent could initiate further action, they have filed the present writ petition before this Court. Therefore the learned Special Government Pleader appearing for the first respondent prayed for dismissal of the writ petition.

5. We have heard the learned counsel for the petitioner and the



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learned Special Government Pleader appearing for the first respondent and perused the materials placed on record.

6. It is not in dispute that the notice dated 16.03.2017 has been issued by the first respondent invoking Section 7 of the Land Encroachment Act. According to the petitioner, the land in which they have put up a construction is a *Grama Natham* land and therefore the first respondent has no jurisdiction to issue such notice. On the contrary, the learned Special Government Pleader contends that the petitioner had put up an unauthorised construction without obtaining any planning permission from the competent authority while so, they cannot assert any right over the land and building in question.

7. Be that as it may. The petitioner Trust has only challenged a notice dated 16.03.2017 issued by the first respondent under Section 7 of the Tamil Nadu Land Encroachment Act calling upon them to submit their explanation. The petitioner Trust also submitted their explanation on 29.03.2017 and it is pending consideration by the first respondent. Therefore, without going into the merits of the case, the first respondent is directed to consider the petitioner's reply dated 29.03.2017, if not considered earlier, and



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pass appropriate orders on merits and in accordance with law, after affording an opportunity of hearing to all the parties concerned, within a period of eight weeks from the date of receipt of a copy of this Order.

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

(R.M.D., J) (P.T.A., J)

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

Copy to

The Tahsildar,
Senthamangalam Taluk,
Taluk Office,
Senthamangalam,
Namakkal District.



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and
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