



WEB COPY



W.P.No.33709 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No.33709 of 2023
and W.M.P.No.33565 of 2023

Murugesan alias Palanisamy,
S/o.Nachi.

.. Petitioner

Vs.

1.The District Collector,
Erode.

2.The Assistant Executive Engineer,
Water and Resources Department,
Lower Bavani, Sub-Division 1,
Erode – 2.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari to call for the records relating to
the notice issued under Section 6 of the Tamil Nadu Land Encroachment
Act, 1905, dated 27.09.2023, on the file of the second respondent and quash
the same.



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For Petitioner	: Mr.Ayyadurai for Mr.D.Rajkumar
For R1	: Mr.P.Muthukumar, Government Pleader
For R2	: Mr.E.C.Ramesh

ORDER

(Order of the Court was made by R. Mahadevan, J.)

The petitioner has filed this writ petition praying to set aside the notice issued by the second respondent under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 (for brevity “the Act”), dated 27.09.2023.

2.According to the petitioner, he is owner of the patta land in S.F.No.739, Pannaikinaru, Vadukapatti Post, Modakuruchi Taluk, Erode District and he has constructed a house in his patta land fifty years before and he has not encroached the Government land. While that being so, the second respondent issued notice dated 07.09.2023 under Section 7 of the Act, for which the petitioner had given explanation. But, another notice dated 27.09.2023 under section 6 of the Act, was issued by the second



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respondent to the petitioner directing him to vacate the premises. Hence, this writ petition.

3.The learned counsel for the petitioner submitted that the petitioner owns a patta land covered by New S.No.739 and Old S.No.931/1. It is further submitted that the notice has actually been issued to remove the encroachments in S.No.734/3 and that, since the petitioner has not encroached the land in S.No.734/3, he has no grievance, if the authorities remove the encroachments in S.No.734/3. Thus, he submitted that a survey has to be made by the authorities in the presence of the petitioner so that the truth will come to light. It is also submitted that the second respondent has no authority to issue such notice as he has no authority to invoke the provisions of the Tamil Nadu Land Encroachment Act, 1905.

4.This Court has also heard the submissions of the learned Government Counsel appearing for the respondents.



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5.The impugned notice has been issued stating that the petitioner has encroached Survey No.734/3, but the case of the petitioner is that he is residing in the land comprised in New S.No.739 (Old S.No.931/1) and not S.No.734/3. The submission of the learned counsel for the petitioner is that since the petitioner has not encroached the land in S.No.734/3, he has no grievance, if the authorities remove the encroachments in S.No.734/3. Therefore, this Court, without going into merits of the case, directs the respondent authorities to remove the encroachment, if any, after issuing due notice to the petitioner as well as any other interested parties and affording an opportunity of being heard to them, in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

6.Accordingly, this writ petition stands disposed of. No costs.

Connected W.M.P. is closed.

(R.M.D., J.) (M.S.Q., J.)
01.12.2023

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
nsd

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