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WP Nos. 25799 & 25800 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2023

CORAM

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

Writ Petition Nos. 25799 & 25800 of 2017
and
W.M.P. Nos. 27223 & 27224 of 2017

A. Paavayi .. Petitioner in W.P.No.25799
P. Kanniyappan .. Petitioner in W.P.No.25800

Versus

1. The Tahsildar,
Edappadi Taluk,
Edappadi,
Salem District.

2. The Revenue Inspector,
Konganapuram,
Edappadi Taluk
Salem District

.. Respondents in both
the Writ Petitions

WP No. 25799 of 2017:- Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari, calling for the records of the first respondent issuing of notice vide proceedings Nil dated 05.06.2017 under Section 6 of Tamil Nadu Land Encroachment Act, 1905 (Act III of 1905) directing the Petitioner to vacate from the Petitioners' land in Survey No.458 measuring an extent of 0.0050.0 sq.mtrs., out of the total extent of 2.89 hectares, situated at Koranampatti Village, Edappadi Taluk, Salem District and quash the same as illegal and without jurisdiction.

WP No. 25800 of 2017:- Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari, calling for the records of



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the first respondent issuing of notice vide proceedings Nil dated 05.06.2017 under Section 6 of Tamil Nadu Land Encroachment Act, 1905 (Act III of 1905) directing the Petitioner to vacate from the Petitioners' land in Survey No.458 measuring an extent of 0.0068.0 sq.mtrs., out of the total extent of 2.89 hectares, situated at Koranampatti Village, Edappadi Taluk, Salem District and quash the same as illegal and without jurisdiction.

For Petitioners : Mr. G. Nagarajan
For Respondents : Mr. A. Selvendran
Special Government Pleader

COMMON ORDER

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

The prayer made in these Writ Petitions is to quash the notices dated 05.06.2017 issued by the first respondent under Section 6 of Tamil Nadu Land Encroachment Act, 1905 (Act III of 1905) with respect to the petitioners' lands comprised in Survey No. 458, measuring 0.0050.0 square meters and 0.0068.0 square meters respectively out of the total extent of 2.89 hectares situated in Koranampatti Village, Edappadi Taluk, Salem District.

2. In the affidavits filed in support of the above writ petitions, it is stated by the petitioners that the lands comprised in Survey No. 458, measuring 0.0050.0 square meters and 0.0068.0 square meters respectively out of the total extent of 2.89 hectares situated in Koranampatti Village, Edappadi Taluk, Salem District are *Meichal Tharai* lands and are classified as "Gramanatham" in the revenue records. According to the petitioners, they are



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residing in the aforesaid lands by putting up a superstructure and obtaining electricity service connection as well. While so, the first respondent issued the notices dated 12.05.2017 under Section 7 of the Tamil Nadu Land Encroachment Act, calling upon the petitioners to show cause as to why they should not be evicted from such lands. On receipt of the notices, the petitioners have submitted their explanation on 18.05.2017, but without considering the same, the notices, which are impugned in these writ petitions, have been issued under Section 6 of the Act.

3. The learned counsel for the petitioners submitted that even in the annexure to the notices dated 12.05.2017 issued under Section 7 of the Tamil Nadu Land Encroachment Act, it is clearly stated that the lands which are in occupation of the petitioners are classified as "Gramanatham" in the revenue records, while so, the invocation of the provisions of the Tamil Nadu Land Encroachment Act to make it as if the petitioners have encroached the public lands is improper. Therefore, it is submitted that the notices, which are impugned in these writ petitions, have been issued by the first respondent without jurisdiction and they are liable to be set aside.



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4. On the other hand, the learned Special Government Pleader appearing for the respondents would submit that as against the notices, which are impugned in these writ petitions, the petitioners have an alternative and effective remedy by way of appeal before the District Collector under Section 10 of the Act. The petitioners, without filing such an appeal, have filed the present writ petitions under Article 226 of The Constitution of India and they are not maintainable. Thus, the learned Special Government Pleader prayed for dismissal of the writ petitions.

5. The learned counsel for the petitioners fairly conceded the submission of the learned Special Government Pleader appearing for the respondents and sought four weeks time for filing Appeals.

6. In view of the above submission, these Writ Petitions are disposed of granting four weeks time to the petitioners, from the date of receipt of a copy of this order, to file Appeals under Section 10 of the said Act before the Appellate authority. If any such appeals are filed, the appellate authority shall entertain the same by excluding the time spent by the petitioners in prosecuting the present writ petitions before this Court. The Appellate Authority is further directed to dispose of the Appeals that may be preferred by the petitioners after



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affording opportunity of hearing to them, on merits and in accordance with law, within a period of eight weeks from the date of filing the appeal (s). No costs. Consequently, the connected Miscellaneous Petitions are closed.

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

01.02.2023

ay/rsh

Index:Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

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