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WP.Nos..26505, 26506 & 27128 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2023

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN
and
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition Nos. 26505, 26506 & 27128 of 2017
and
W.M.P. Nos. 2822, 28225, 28997, 38034, 38035, 35273 of 2017
& 6498 of 2019

WP No. 26505 of 2017

Muthayee Ammal

.. Petitioner

Veresus

1.The District Collector,
Villupuram District,
Villupuram.

2.The Revenue Divisional Officer,
Kallakurichi,
Villupuram District.

3.The Tahsildar,
Kallakurichi,
Villupuram District.

.. Respondents

WP No. 26505 of 2017:- Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari, calling for the records relating to the notice of the 3rd respondent in A4/12334/2009 dated 04.10.2017 and quash the same with respect to the petitioner's land comprised in Survey No.110/12 over an extent of 0.01.0 Hec./00092 Sq.m., in Namachivayapuram village, Kallakurichi Taluk, Villupuram District.



WP.Nos..26505, 26506 & 27128 of 2017

WP No. 26506 of 2017

Anbalagan

.. Petitioner

Versus

1.The District Collector,
Villupuram District,
Villupuram.

2.The Revenue Divisional Officer,
Kallakurichi,
Villupuram District.

3.The Tahsildar,
Kallakurichi,
Villupuram District.

4.The Tahsildar,
Chinna Salem, Villupuram District.

.. Respondents

WP No. 26506 of 2017:- Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari, calling for the records relating to the order of the 3rd respondent in A4/12334/2009 dated 04.10.2017 and quash the same with respect to the petitioner's land comprised in Survey No.109/12 over an extent of 0.06.50 Hec./00632 Sq.m., in Namachivayapuram village, Kallakurichi Taluk, Villupuram District.

WP. No. 27128 of 2017

Anbalagan

.. Petitioner

Versus

1.The District Collector,
Villupuram District,
Villupuram.

2.The Revenue Divisional Officer,
Kallakurichi,
Villupuram District.



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3.The Tahsildar,
Kallakurichi,
Villupuram District.

4.The Tahsildar,
Chinna Salem, Villupuram District.

.. Respondents

WP No. 26128 of 2017:- Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari, calling for the records relating to the order of the 4th respondent in A4(11184)2017 dated 06.10.2017 and quash the same with respect to the petitioner's land comprised in Survey No.152/2C over an extent of 0.07.0 Hectares in Thenchettiyenthal Village, Chinnasalem Taluk, Villupuram District.

For Petitioners : Mr. M. Muthappan
in all the writ petitions

For Respondents : Mr. A. Selvendran
Special Government Pleader
in all the writ petitions

COMMON ORDER

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

The petitioners have come forward with these Writ Petitions praying to issue a Writ of Certiorarified Mandamus to quash the notices dated 04.10.2017. 04.10.2017 and 06.10.2017 respectively issued under Section 6 of The Tamil Nadu Land Encroachment Act, 1905 with respect to the lands of the petitioners herein.



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2. The petitioner in WP No. 26505 of 2017 is the mother and the petitioner in WP Nos. 26506 and 27128 of 2017 is her son. According to the petitioners, the lands comprised in Survey No. 108/2 measuring an extent of 0.65.5 Hectares and Survey No. 109/1 measuring 1.37.0 hectares in Namachivayapuram Village were assigned to the petitioner in WP No. 26505 of 2017 and her husband Somasundara Gounder in the year 1970. However, the assignment was cancelled on the ground that Somasundara Gounder is in possession of his own land. Thereafter, on the representation made by the petitioner in WP No. 26506 and 27128 of 2017, a proposal was sent to the Commissioner of Land Administration to fix a sum of Rs.35,200/- as the fee for passing an order of assignment. Upon payment of the amount fixed, the assignment in respect of the land was once again made in favour of the petitioner in WP No. 26506 and 27128 of 2017. While so, due to dispute with respect to a pathway adjacent to the land in question, suits and writ petitions were filed by the petitioners herein and the private respondents against each other. While so, on the basis of the directions of the District Collector, Villupuram District, the notices dated 04.10.2017. 04.10.2017 and 06.10.2017 respectively were issued under Section 6 of The Tamil Nadu Land Encroachment Act. Aggrieved by the same, the present writ petitions are filed.



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3. The learned counsel for the petitioners submitted that the lands in question were assigned to the petitioners and patta was also issued to them in Patta No. 28 and therefore, the lands in question are their private lands. While so, the notices under Section 6 of the Act have been issued without jurisdiction and they are liable to be set aside.

4. On the other hand, the learned Special Government Pleader appearing for the respondents submitted that if the petitioners are aggrieved by the notices under Section 6 of the Act, they ought to have filed appeals under Section 10 of the Tamil Nadu Land Encroachment Act, 1905. The petitioners, without availing the statutory remedy, have come forward with these writ petitions and therefore, the writ petitions are not maintainable.

5. At this stage, 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



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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 before this Court in filing the writ petitions and dispose of the appeals on merits and in accordance with law after affording an opportunity of hearing to them as well as others, if any, concerned, within a period of eight weeks thereafter. No costs. Consequently, all 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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