



WEB COPY



WP Nos.25593 & 25596/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2023

CORAM :

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

Writ Petition Nos. 25593 & 25596 of 2018
and
W.M.P. Nos. 29767, 29743 & 29744 of 2018

S.I. Amaladoss

.. Petitioner in both the petitions

Versus

1. The Collector
Thiruvallur District
Thiruvallur
2. The Assistant Engineer
Public Works Department
Irrigation Section II
Water Resource Organization
Thiruvallur District
Thiruvallur
3. The Tahsildar
Thiruvallur Taluk
Thiruvallur
4. The Block Development Officer
Kadambathur Panchayat Union
Kadambathur
Thiruvallur District

.. Respondents in both the
Writ Petitions

Petitions filed under Article 226 of the Constitution of India praying for
a Writ of Certiorarified Mandamus, calling for the records pertaining to



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Na.Ka.Nos.3082/2017/B3 & 2103/2016/A6 dated 18.07.2018 & 09.05.2017 respectively of the third & fourth respondents and quash the same.

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For Petitioner : Mr. D.S.Ramesh
in both the writ petitions

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

COMMON ORDER

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

Among the two writ petitions filed by the petitioner, WP No. 25593 of 2018 is filed challenging the notice dated 18.07.2018 issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 (Act III of 1905), while the Writ Petition No. 25596 of 2018 has been filed assailing the notice dated 09.05.2017 issued under the provisions of The Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007.

2. According to the petitioner, he is the owner of the land together with a building thereon comprised in Survey No. 274/2, bearing Door No. 67, Thiruvallur Road, Perambakkam, Thiruvallur District measuring 64 square meters. It is stated that the petitioner is in possession of the aforesaid land and building for more than 23 years and he had rented out the building to one Mr.

M.S. Rahim, who is running a shop in the name and style of Taj Automobiles.



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While so, a notice dated 18.09.2015 was served on the petitioner by the third respondent under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 to show cause as to why he should not be evicted from the land in Survey No.274/2 which is classified as Government Poromboke land. Aggrieved by the same, the petitioner filed WP No. 35701 of 2015 before this Court and by order dated 04.11.2015, the writ petition was disposed of with a direction to the petitioner to submit his objection within two weeks and thereafter, the third respondent was directed to consider it and pass orders thereon. Accordingly, the petitioner submitted his explanation on 17.03.2016 stating *inter alia* that he is in occupation of the land and building for more than 23 years by paying taxes and patta also issued in his name. After receipt of the explanation dated 17.03.2016, no action was taken by the respondents. However, on 09.05.2017, a notice was issued invoking the provisions of The Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 stating that the petitioner had encroached the land in Survey No.274 which is classified as cart track and directed him to remove the encroachments. Following the notice dated 09.05.2017, a further notice dated 18.05.2018 was issued under Section 6 of the Tamil Nadu Land Encroachment Act directing the petitioner to remove the encroachments made by him. Aggrieved by the said notices, the petitioner is before this Court with these writ petitions.



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3. The learned counsel for the petitioner would contend that the land which is in occupation of the petitioner is classified as "*Gramanatham*" and therefore, the invocation of the provisions of The Tamil Nadu Land Encroachment Act or The Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 is not proper. It is further stated that in response to the notice issued under Section 7 of the Act, a detailed objection was given by the petitioner on 17.03.2016, but without considering the same, the subsequent notice dated 18.07.2018 was issued under Section 6 of the Tamil Nadu Land Encroachment Act. Above all, the revenue department, recognising the possession of the petitioner, issued patta to him and the land in question is his private property. The petitioner is also paying taxes to the authorities concerned, while so, at any stretch of imagination, it could be said that the petitioner is an encroacher of the public land. The learned counsel for the petitioner therefore prayed for allowing these writ petitions by setting aside the notices dated 09.05.2017 and 18.07.2018.

4. Per contra, the learned Special Government Pleader submitted that as against the notice dated 18.07.2018 issued under Section 6 of The Tamil Nadu Land Encroachment Act, there is an alternative remedy of appeal under Section 10 of the said Act before the District Collector. The petitioner, without



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exhausting such remedy, has filed WP No. 25593 of 2018 and it is not maintainable. The learned Special Government Pleader therefore prayed for dismissal of the writ petition as not maintainable.

5. The learned counsel for the petitioner fairly conceded the submission of the learned Special Government Pleader appearing for the respondents and sought time for filing an Appeal.

6. In view of the above submission, these Writ Petitions are disposed of granting four weeks time to the petitioner to file an Appeal under Section 10 of the said Act before the Appellate authority. If any such appeal is filed, the Appellate Authority shall consider it and pass orders thereof on merits and in accordance with law, after affording an opportunity of hearing to the petitioner and other parties, if any, concerned, within a period of six weeks thereafter. No costs. Consequently, all the connected Miscellaneous Petitions are closed.

(R.M.D., J) (M.S.Q., J)
15.02.2023

ay/rsh
Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

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R. MAHADEVAN, J
and
MOHAMMED SHAFFIQ, J

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To

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