



WEB COPY



WP No. 29666 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2023

CORAM :

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

Writ Petition No.29666 of 2018
and
W.M.P. Nos. 34626 & 34628 of 2018

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P. Ilayappan

.. Petitioner

Versus

1. The District Collector
Dharmapuri District
Collectorate
Dharmapuri – 636 705.
2. The Revenue Divisional Officer
Salem Bypass, Periyar Nagar
Harur, Dharmapuri District – 636 903.
3. The Tahsildar
Pappireddipatti Taluk
Dharmapuri District – 636 905

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records relating to the notices dated 10.12.2017 and 09.01.2018 issued by the third respondent to the petitioner under Section 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905 in connection with the land measuring an extent of 1.90.5 hectares in S.No.117/1 in Vellalapatii Village, Pappireddypatti Taluk, Dharmapuri District and quash the same as barred by limitation and violative of the fundamental rights of the Petitioner



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under articles 14 and 21 of the Constitution of India and consequently direct the third respondent to issue patta for the said land in the name of the petitioner.

For Petitioner : Ms. C. Uma
For Respondents : Mr. A. Selvendran,
Special Government Pleader.

ORDER

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

The prayer made in this Writ Petition is to quash the notices dated 10.12.2017 and 09.01.2018 issued to the petitioner under Sections 7 & 6 of Tamil Nadu Land Encroachment Act, 1905 (Act III of 1905) respectively and consequently direct the third respondent to issue patta for the said land in his name.

2. It is stated by the petitioner that he is the owner of the land in Survey No.117/1 in Vellalapatti Village, Pappireddypatti Taluk, Dharmapuri District measuring 1.71.0 hectares where he is carrying on agricultural activities for several years. It is also stated that the petitioner had planted 100 coconut and other trees and put up a farm house in the said land. According to the petitioner, for the purpose of irrigating the agricultural land, he had obtained electricity service connection in his name and using it for pumping the water from the well. While so, the



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third respondent issued a notice dated 10.12.2017 under Section 7 of the Tamil Nadu Land Encroachment Act alleging that the petitioner had illegally occupied government land in Survey No.117/1 measuring 1.90.5 hectares. On receipt of the notice dated 10.12.2017, the petitioner submitted his explanation on 22.12.2017, however, without considering the same, the third respondent issued the subsequent notice dated 09.01.2018 under Section 6 of the said Act, calling upon him to remove the encroachment, hence, the petitioner has filed this writ petition.

3. The learned counsel for the petitioner would contend that the petitioner is in occupation of the land in question for over a period of 50 years and he has made lot of improvement in the land to make it fertile and fit for agricultural operations. The third respondent, without considering the explanation of the petitioner dated 22.12.2017 issued the notice under Section 6 of the Act to remove the alleged encroachment made by him in the land in question. The learned counsel for the petitioner therefore prayed for allowing the writ petition by setting aside the notices which are impugned herein.



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4. Per contra, the learned Special Government Pleader submitted that as against the notice dated 09.01.2018 issued under Section 6 of The Tamil Nadu Land Encroachment Act, there is an alternative remedy of appeal available to the petitioner under Section 10 of the said Act before the District Collector. The petitioner, without exhausting such remedy, has filed this writ petition under Article 226 of The Constitution of India and it is not maintainable, therefore, the learned Special Government Pleader therefore prayed for dismissal of the writ petition.

5. The learned counsel for the petitioner fairly conceded the submission of the learned Special Government Pleader appearing for the respondents and sought time to enable the petitioner to file an Appeal before the Appellate Authority under Section 10 of The Tamil Nadu Land Encroachment Act.

6. In view of the above submission, this Writ Petition is 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



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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)
21.02.2023

ay/rsh

Index: Yes / No

Speaking Order / Non-speaking Order

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