



W.P(MD)No.216 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P(MD)No.216 of 2023
and
W.M.P(MD)Nos.178 & 179 of 2023**

M.Ramasamy Thevar

... Petitioner

VS.

1.The Tahsildar,
Virudhunagar Taluk,
Virudhunagar District.

2.The Revenue Inspector,
Vachakkarapatti,
Virudhunagar District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent's impugned order dated 23.12.2022 quash the same and consequently forbearing the respondents in interfering with Survey No.245/1 to the extent of hectares 0.82.0 in Kadambankulam Village, Virudhunagar District.



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For Petitioner : Ms.S.Mahalakshmi

For Respondents : Mr.K.Balasubramani
Special Government Pleader

ORDER

(Order of the Court was made by D. KRISHNAKUMAR, J.)

The prayer in this Writ Petition is seeking for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order dated 23.12.2022 passed by the first respondent and consequently forbearing the respondents from interfering in Survey No.245/1 to an extent of hectares 0.82.0 in Kadambankulam Village, Virudhunagar District.

2.According to the petitioner, the property in Survey Nos.245/1, 245/2, 245/3 and 246/7 to an extent of 5 acres 2 cents of punja and nanja lands in Kadambankulam Village, Virudhunagar District, belonged to him and his brother and they are cultivating the said land and obtained patta. While being so, the second respondent issued a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, calling upon the petitioner to



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submit his reply within a period of 7 days as to why he should not be evicted from Survey No.245/1 at Kadambankulam Village, Virudhunagar District on the ground that he is encroaching upon the said property. In response to the said notice, dated 22.11.2022, the petitioner submitted a detailed reply, dated 25.11.2022 to the respondents. The petitioner also enclosed the acknowledgment proof for the aforesaid reply. The first respondent, without conducting any enquiry and without giving sufficient opportunity to the petitioner, has issued the impugned notice, dated 23.12.2022 under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, directing the petitioner to remove the encroachment within a period of 7 days, failing which, action will be taken to remove the encroachment. Challenging the same, the petitioner has filed the present Writ Petition.

3.The learned counsel appearing for the petitioner submitted that the aforesaid property in question is the patta land of the petitioner.

4.The learned Special Government Pleader appearing for the respondents submitted that as per the revenue records, the said survey number is classified as 'Nilaviyal Pathai' and hence, Section 7 notice has been issued to the petitioner.



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5.Heard the learned counsel appearing on either side and perused the materials available on record.

6.On a perusal of the materials available on record as well as the submission made by the learned counsel appearing on either side, it is seen that with regard to the notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, dated 22.11.2022 by the second respondent, the petitioner submitted his reply on 25.11.2022 to the respondents. Without considering the same, the first respondent issued the notice, dated 23.12.2022 under Section 6 of the Tamil Nadu Land Encroachment Act, 1905. Therefore, there is a force in the contention of the petitioner that without providing an opportunity to the petitioner, the first respondent has passed the impugned order, dated 23.12.2022. Accordingly, the notice issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, dated 23.12.2022 is liable to be set aside and the same is liable to be remitted to the file of the first respondent.



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7. In view of the above, the impugned order, dated 23.12.2022 passed by the first respondent is set aside and the same is remitted back to the first respondent. After considering the petitioner's reply, dated 25.11.2022, the first respondent is directed to pass appropriate orders as expeditiously as possible within a period of eight weeks from the date of receipt of a copy of this order. If it is found that there is any encroachment, appropriate orders be issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, on merits and in accordance with law.

8. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

[D.K.K.,J.] [R.V.,J.]
05.01.2023

Index : Yes / No
Internet : Yes
ps

To

1. The Tahsildar,
Virudhunagar Taluk,
Virudhunagar District.
2. The Revenue Inspector,
Vachakkarapatti, Virudhunagar District.

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D.KRISHNAKUMAR,J.
and
R.VIJAYAKUMAR,J.

ps

ORDER MADE IN
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DATED : 05.01.2023