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W.P.(MD) No.2168 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2023

CORAM:

**THE HON'BLE MR.T.RAJA, THE ACTING CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR**

**W.P.(MD) No.2168 of 2023
and
W.M.P(MD)No.1953 & 1955 of 2023**

Esaravel

... Petitioner

-VS-

1.The District Collector,
Thoothukudi District.

2.The Revenue Divisional Officer,
Tiruchendur,
Thoothukudi District.

3.The Tahsildar,
Sathankulam Taluk,
Thoothukudi District.

4.Sankarapandi

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned notice dated 25.01.2023 in Na.Ka.Aa5/4582/2022 issued by the 3rd respondent and quash the same and consequently forbearing the respondents 1 to 3 from interfering in the peaceful possession and enjoyment of the subject property in Old Resurvey No.



221/B, New Resurvey No.491/1, Pannamparai Village, New Natham Survey No.595/1 and 2, Door No.2/1, Vedha Kovil Street, South Pannamparai Village, Sathankulam Taluk, Thoothukudi District.

For Petitioner : Mr.TR.Jeyapalam

For Respondents : Mr.M.Sarangan,
Addl. Government Pleader for R1 to R3

ORDER

**[Order of the Court was made by
The Hon'ble The ACTING CHIEF JUSTICE]**

Petitioner, who is a resident of Vedha Kovil Street, Pannamparai, Thoothukudi, has filed this Writ Petition, challenging the impugned proceedings issued by the third respondent in Na.Ka.Aa5/4582/2022, dated 25.01.2023, with a consequential direction, forbearing the respondents 1 to 3 from interfering in the peaceful possession and enjoyment of the subject property in Old Resurvey No. 221/B, New Resurvey No.491/1, Pannamparai Village, New Natham Survey No.595/1 and 2, Door No.2/1, Vedha Kovil Street, South Pannamparai Village, Sathankulam Taluk, Thoothukudi District.



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2. Learned counsel for the petitioner would submit that the subject property in Old Resurvey No.221/B, New Resurvey No.491/1, Pannamparai Village, New Natham Survey No.595/1 and 2, Door No.2/1, Vedha Kovil Street, South Pannamparai Village, Sathankulam Taluk, Thoothukudi District, absolutely belongs to the petitioner's father. The said property has been classified as Natham land. The petitioner's father and his ancestors were in possession and enjoyment of the said property from the year 1947. The said property measures North to South 100 feet and East to West 70 feet, admeasuring 7000 square feet. The petitioner's grandfather has constructed a residential building and obtained an electricity service connection. Thereafter, the property tax has also been assessed and the petitioner has been regularly paying the same.

3. Learned counsel for the petitioner would further submit that the petitioner's father had settled the subject property in favour of his mother, by a registered gift settlement deed dated 21.09.2001, bearing Document No.863 of 2001. After some time, the petitioner's father passed away on 26.04.2022, leaving behind the petitioner's mother, one son and six daughters. Thereafter, a dispute arose between the President of Pannamparai Panchayat and the petitioner's mother, regarding the title over



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the subject property. Therefore, the petitioner's mother filed a civil suit in O.S.No.5 of 2003, on the file of the District Munsif Court, Sathankulam against the first respondent and the Block Development Officer, Sathankulam, Panchayat Union and the President, Pannamparai Panchayat, for permanent injunction. Accepting the case, the suit has also been decreed vide judgment dated 29.08.2003. In the meanwhile, the fourth respondent filed a writ petition in W.P.(MD)No.26411 of 2022, for issuance of a Writ of Mandamus, directing the first respondent to remove the encroachment made by the petitioner's father, on the drinking water area situated in Vedha Kovil Street, Pannamapari Village, Sathankulam Taluk, Tuticorin District. In the said Writ Petition, this Court by order dated 23.11.2022, directed the third respondent to pass orders on merits and in accordance with law. On the basis of the said order, the third respondent has issued a survey notice dated 26.12.2022, to survey the subject property. The petitioner has also cooperated for the said survey, by producing the documents. After conducting survey, the third respondent has not passed any final order, till date. The grievance of the petitioner in sofaras the impugned notice dated 25.01.2023 is concerned, the third respondent has mentioned that the property had been classified as Government Natham Poramboke. Therefore, when the petitioner has been



in possession and enjoyment of the land, shown as Natham Poramboke, the third respondent cannot issue the impugned notice. Hence, the petitioner has filed this Writ Petition.

4. In reply, the learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that the land in Survey No.595/2 has been originally classified as Natham Proamboke and the Resurvey No. 491/1 has been classified as Street and the petitioner has encroached in the said street and therefore, a survey notice dated 26.12.2022 has been issued to survey the land. After conducting survey, the encroachment has been brought to light and thereafter, the present impugned noticed dated 25.01.2023, under Section 7 of the 'Tamil Nadu Land Encroachment Act, 1905' (hereinafter referred to as 'the Act') has been issued, calling upon the petitioner to file his objections. Only after the enquiry, if the objections are not accepted, the order of eviction has to be passed which is also appealable under Section 10 of the Act before the District Collector. At this stage, the petitioner has approached this Court, without giving explanation to the said impugned notice and therefore, this Writ Petition itself is a premature and the same is liable to be dismissed.



5. In view of the above submissions, we direct the petitioner to file his objections / reply to the impugned notice dated 25.01.2023 before the third respondent, along with all supporting materials, within a period of two (2) weeks from the date of receipt of a copy of this order. After receipt of the same, the third respondent shall consider such objection and if it is not satisfactory, then conduct a proper enquiry and thereafter, shall pass orders for eviction of encroachment, if any, by due process of law within a period of four weeks thereafter.

6. With the above direction, this Writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[T.R., A.C.J.] [D.K.K., J.]
03.02.2023

NCC : Yes / No
Index : Yes / No
Internet: Yes / No

vsm/ps

Note: Issue order copy today (03.02.2023)



W.P.(MD) No.2168 of 2021



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To

- 1.The District Collector,
Thoothukudi District.
- 2.The Revenue Divisional Officer,
Tiruchendur,
Thoothukudi District.
- 3.The Tahsildar,
Sathankulam Taluk,
Thoothukudi District.



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W.P.(MD) No.2168 of 2023:

T.RAJA, A.C.J.
and
D.KRISHNAKUMAR, J.

vsm/ps

ORDER MADE IN
W.P.(MD) No.2168 of 2023

DATED : 03.02.2023