



W.P.(MD) No.2850 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.2850 of 2023

and

W.M.P.(MD)Nos.2647 and 2649 of 2023

Mala

... Petitioner

-Vs-

- 1.The District Collector,
Thoothukudi District, Thoothukudi.
- 2.The District Revenue Officer,
Thoothukudi District, Thoothukudi.
- 3.The Revenue Divisional Officer,
Thoothukudi.
- 4.The Tahsildar,
Srivaikuntam Taluk,
Thoothukudi District.
- 5.The Block Development Officer,
Karungulam Panchayat Union,
Thoothukudi District.

Page 1 of 8



W.P.(MD) No.2850 of 2023

WEB COPY

6.The President,
Alanda Village Panchayat,
Srivaikundam Taluk, Thoothukudi District.

7.K.Rajam

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the impugned notice of the fourth respondent dated 13.12.2022 and consequential impugned order of the fourth respondent in Na.Ka.A3/10219-C/2022 dated 12.01.2023 and consequential impugned notice of the fourth respondent in Na.Ka.A3/10219/2022 dated 30.01.2023 and quash the same as illegal and consequently forbearing the respondents 1 to 6 taking eviction process against the petitioner till the disposal of the connected civil suit in O.S.No.37 of 2019 on the file of the District Munsif, Srivaikuntam and connected Appeal proceedings for rectification of Patta, UDR and sketch in S.No.905A/1, Alanda Village, Srivaikuntam Taluk, Thoothukudi District pending on the file of the second and third respondents (Na.Ka.A1/48/2022).

For Petitioner : Mr.V.Thirumal

For R1 to R4 : Mr.P.T.Thiraviyam

Government Advocate



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W.P.(MD) No.2850 of 2023

ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

Challenging the show cause notice dated 13.12.2022 issued by the 4th respondent under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 (hereinafter referred to as 'the Act'), the rejection of the petitioner's objection / explanation to the said Section 7 notice, by the 4th respondent dated 12.01.2023 and the eviction notice dated 30.01.2023 issued by the 4th respondent under Section 6 of the Act, this Writ Petition is filed with a consequential direction to forbear the respondents 1 to 6 from proceeding with the eviction process against the petitioner, till the disposal of the connected Civil Suit in O.S.No.37 of 2019 on the file of the District Munsif, Srivaikuntam and connected Appeal proceedings for rectification of Patta, UDR and sketch in S.No.905A/1, Alanda Village, Srivaikuntam Taluk, Thoothukudi District pending on the file of the respondents 2 and 3.

2.By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

Page 3 of 8



W.P.(MD) No.2850 of 2023

WEB COPY

3.Mr.P.T.Thiraviyam, learned Government Advocate takes notice on behalf of the respondents 1 to 4. Considering the nature of order proposed to be passed in this Writ Petition, notice to the respondents 5 to 7 is dispensed with.

4.The learned counsel appearing for the petitioner submitted that the 4th respondent has not conducted summary enquiry, which is mandate before taking any steps for removal of the encroachment and there is a false entry in Patta, UDR and sketch, for which, the petitioner filed an appeal before the respondents 2 and 3 and the same is pending for enquiry. Without awaiting the result of the statutory patta proceedings, the present impugned orders are passed. Therefore, the impugned orders are liable to be set aside.

5.The learned Government Advocate appearing for the respondents 1 to 4 submitted that the Section 7 notice was issued to the petitioner, pursuant to the directions of this Court dated 22.11.2022 made in W.P.(MD)No.3671 of 2021, for which, the petitioner has given detailed explanation and the same was



W.P.(MD) No.2850 of 2023

WEB COPY

examined by the 4th respondent and rejected, stating that as on date, the revenue records clearly indicate that the land in question is classified as pathway. Therefore, the contentions of the petitioner are untenable and the same are liable to be quashed. He further submitted that if the petitioner is being aggrieved by the notice issued under Section 6 of the Land Encroachment Act, he has to file an appeal before the 1st respondent under Section 10 of the Act, however, without availing such remedy, the petitioner has approached this Court.

6.Considering the aforesaid submissions made on either side, we are of the view that the 4th respondent has not followed the procedures contemplated under the law. However, we are in agreement with the submission of the learned Government Advocate that if the petitioner is aggrieved by the notice issued under Section 6, he can file an appeal before the 1st respondent.

7.In view of the above, this Writ Petition stands disposed of, directing the petitioner to file an appeal before the 1st respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of such appeal,



W.P.(MD) No.2850 of 2023

the 1st respondent is directed to consider the same and pass appropriate orders on its own merits and in accordance with law, as early as possible, without any further delay. No costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K., J.] & [L.V.G., J.]

13.02.2023

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

MYR

To

1.The District Collector,
Thoothukudi District, Thoothukudi.

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

Page 6 of 8



W.P.(MD) No.2850 of 2023

WEB COPY

3.The Revenue Divisional Officer,
Thoothukudi.

4.The Tahsildar,
Srivaikuntam Taluk,
Thoothukudi District.



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W.P.(MD) No.2850 of 2023

D.KRISHNAKUMAR, J.

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MYR

W.P.(MD)No.2850 of 2023

13.02.2023

Page 8 of 8