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W.P.(MD)No.8636 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.8636 of 2023 AND

W.M.P.(MD)No.7935 of 2023

S.Sankaravadivu

... Petitioner

Vs.

1. The District Collector,
Kanyakumari.

2. The Revenue Divisional Officer,
Thovalai,
Kanyakumari District.

3. The Tahsildar,
Thovalai,
At Boothapandi,
Kanyakumari District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 3rd respondent in his proceedings in Na.Ka.Aa2/3899/2020 dated 21.02.2023 and quash the same and consequently forbear the respondents from interfering with the



peaceful possession and enjoyment and construction of compound wall in the petitioner's property situated in Re Survey No.209/5 at Boothapandi Village, Thovalai Taluk, Kanyakumari District.

For Petitioner : Mr.M.P.Senthil

For Respondents : Mr.K.Balasubramani,
Special Government Pleader.

* * *

ORDER

Heard the learned counsel on either side.

2. The petitioner claims title over survey No.209/5 in Boothapandi Village, Thovalai Taluk. She is already having a residential house. She wants to put up further construction. She earlier filed W.P.(MD)No.27830 of 2022 challenging the notices issued by the authorities under the provisions of Tamil Nadu Land Encroachment Act 1905. The said writ petition was disposed of by this Court 09.12.2022 in the following terms:-

“ 6. Considering the submission made by both sides, we are of the view that the petitioner has already given explanation to the impugned notice dated



11.11.2022 and the consequential notices dated 12.11.2022 before the Tahsildar, Thoivalai and therefore, at this stage, there is no justification to quash the aforesaid proceedings. However, in the interest of the parties, we direct the Tahsildar, Thoivalai to consider the petitioner's explanation dated 17.11.2022 and pass orders in accordance with law, after providing opportunity to the petitioner, as early as possible, preferably, within a period of eight (8) weeks from the date of receipt of a copy of this order. It is also open to the petitioner to raise all the grounds, which has been agitated in the instant writ petition, before the Tahsildar, Thoivalai. Till such time, status quo prevailing as on date shall be maintained by both parties.”

3. Pursuant to the direction given by this Court, the petitioner's explanation dated 17.11.2022 was disposed of and the impugned order came to be passed. The Tahsildar, Thoivalai had made it clear that it is not possible to permit any further construction in the said survey number. Challenging the same, this writ petition came to be filed.



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4. The learned counsel appearing for the petitioner contended that the petitioner's husband purchased the property some 40 years ago and the names of the vendors are very much reflected in the revenue record as pattadars. Therefore, it is not proper on the part of the authorities to characterise the petitioner as an encroacher. He called upon this Court to set aside the impugned order.

5. The respondents have filed counter affidavit and the learned Special Government Pleader took us through its contents. He prays for dismissal of this writ petition.

6. We carefully considered the rival contentions and went through the materials on record.

7. On perusing 'A' Register entries, it is seen that even though survey No.209/5 in Boothapandi Village is shown as patta land, it has also been mentioned that it was a “ nilaviyal kulam ”. In other words, even though private persons have been shown as pattadhars, the character of the property has been shown as that of tank. When on



ground a water-body is existing, it is not open to the private individuals to obliterate its character. Therefore, the respondents have rightly negated the petitioner's request for putting up additional constructions. The impugned order dated 21.02.2023 passed by the Tahsildar, Thovalai is sustained. This writ petition stands dismissed.

8. However, the petitioner is given liberty to challenge the order dated 21.02.2023 issued by the Tahsildar under Section 6 of Tamil Nadu Land Encroachment Act. If any such challenge is mounted by the petitioner, it will be considered independently and on its own merits. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (B.PUGALENDHI, J.)

5th JULY 2023

NCS : Yes / No

Index : Yes / No

Internet : Yes / No

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To:

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