



W.P.(MD)No.14819 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2023

CORAM

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.(MD)No.14819 of 2023

and

W.M.P(MD)No.12511 of 2023

A.S.Thangamuthu

: Petitioner

Vs.

- 1.The District Collector,
Collectorate,
Thoothukudi 628 101.
Thoothukudi District.
- 2.The Assistant Director,
Office of the District Land Survey,
Collectorate,
Thoothukudi 628 101.
Thoothukudi District.
- 3.The District Revenue Officer,
Collectorate,
Thoothukudi 628 101.
Thoothukudi District.
- 4.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Tiruchendur, Thoothukudi District.
- 5.The Tashildar,
Taluk Office,
Tiruchendur,
Thoothukudi District.



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6. The Executive Officer,
Kaanam Town Panchayat,
Office of Kanam Town Panchayat,
Tiruchendur Taluk,
Thoothukudi District-628 201.

: Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records and to set aside the impugned memo dated 12.06.2023 issued by the sixth respondent and further direct the fourth respondent to correct the Patta No.69 in Kaanam Village in accordance with Field Measurement Book (FMB) Sketch and conduct the survey with the help of District Surveyor in Survey No.229/4 in Kaanam Village.

For Petitioner : Mr.V.Rajiv Rufus

For Respondents : Mr.T.Villavankothai
Additional Government Pleader

ORDER

(order of the Court was made by D.BHARATHA CHAKRAVARTHY, J.)

This Writ Petition is filed challenging the order of the sixth respondent dated 12.06.2023 in and by which, the writ petitioner was required to remove the encroachment of an extent of 22 sq.mtrs in Kaanam Village in S.No.229/4, Tiruchendur Taluk, Thoothukudi District. Before passing the above order, a show cause notice, dated



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18.05.2023 was issued to the writ petitioner and the writ petitioner had submitted his objections. The objections have been rejected in the impugned order by stating that there is no scope for considering the objections in the matter.

2. The case of the petitioner is that he has put up the construction of his house and premises in the land belonging to him in S.No.229/4 in respect of which patta stands in his name. He has not made any encroachment whatsoever in any Government land or pathway. As a matter of fact, it is stated that he has put up the construction of his house after due plan approval. According to him, proceedings itself were initiated only upon the vexatious petition by one Lingam with whom he has other disputes.

3. During the course of the hearing of the writ petition, a communication, dated 28.11.2022 by the sixth respondent is also produced before this Court, whereunder, it is mentioned that S.No. 229/19 does not belong to the Town Panchayat and is not entered in any register as a public road belonging to the Town Panchayat. The Revenue Department has also not informed them that it belongs to the Town Panchayat and survey if any conducted by the Tashildar,



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the Town Panchayat is ready to co-operate for the survey. However, it seems that a writ petition in W.P.(MD)No.6205 of 2023 is filed pursuant to which these proceedings were initiated. In the impugned order itself, it is mentioned that the survey number in which, the petitioner has encroached is 229/19. Absolutely nothing else is mentioned in the impugned order regarding the nature of S.No.229/19.

4. Under the said circumstances, we are of the view that the impugned order cannot be sustained for the following reasons:

(i) The impugned order is passed by the Executive Officer of the Town Panchayat/sixth respondent and we have already held repeatedly that the executive officer under the relevant statute, has no jurisdiction whatsoever in ordering removal of encroachment unilaterally without an enquiry;

(ii) Secondly, this Court has repeatedly held following in the Judgment of the Hon'ble Supreme Court of India in ***Madhavrao Scindia (Dead) By Lrs Vs. Ramesh Jatav and Others [(2006) 1 SCC 379]***, that the encroachment has to be determined by



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conducting a survey in the presence of the aggrieved parties.

Only when encroachments in any Government poromboke land is identified after due survey in the presence of the parties, after drawing a report and serving on the concerned parties, further proceedings can be initiated under the Tamil Nadu Land Encroachment Act, 1905, in accordance with law;

(iii) In the instant case, the impugned order does not refer to any survey whatsoever which is conducted by the appropriate authority namely, the fifth respondent in the writ petition. This apart, it is the case of the petitioner that the building is in survey No.229/4, whereas the proceedings has been initiated in respect of the S.No.229/19 and there is absolutely no record, which is produced before us to show that the survey No.229/19 is a Government poromboke land so as to initiate summary proceedings.

5. In that view of the matter;

(i) The writ petition succeeds and the impugned order dated 12.06.2023 stands quashed;



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(ii) However, it will be open for the fifth respondent to conduct a survey in respect of the field in the presence of the writ petitioner and any such party/parties who may be interested in respect of the land in question and draw a report and after serving such report, can either consider the further prayer of the petitioner to correct his patta in the manner known to law or take further proceedings under the Tamil Nadu Land Encroachment Act, 1905, if there is any encroachment depending on the outcome of such survey;

(iii) There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.]

[D.B.C., J.]

24.07.2023

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