



W.P.(MD) No.15602 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2023

CORAM:

**THE HON'BLE MR.R.SUBRAMANIAN
and
THE HON'BLE Mrs.JUSTICE L.VICTORIA GOWRI**

**W.P.(MD) No.15602 of 2023
and WMP(MD) No.13108 of 2023**

S.Balamurugan

... Petitioner

-VS-

1.The District Collector
Office of the District Collector
Thoothukudi District

2.The Tahsildar
Ettayapuram Taluk
Thoothukudi District

3.The Revenue Inspector,
Muthalapuram
Ettayapuram Taluk
Thoothukudi District

4.Pappammal

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned order passed by



W.P.(MD) No.15602 of 2023

the 2nd respondent signed on 19.06.2023 herein and to quash the same.

For Petitioner : Ms.P.Jessi Jeeva Priya
For Respondents : Mr.S.P.Maharajan
Special Government Pleader

ORDER

[Order of the Court was made by R.SUBRAMANIAN, J.]

Challenge in the writ petition is to the order passed under Section 6 of the Land Encroachment Act, 1905 dated 19.06.2023. The claim of the petitioner is that this order was not preceded by a notice under Section 7 requiring the petitioner to show cause as to why encroachment should not be removed.

2. The Land Encroachment Act has been in vogue for 130 years. We had in our order dated 20.02.2023 expressed our anguish with the manner in which the said Act is abused and misused by the revenue authorities in colluding and connivance with the encroachers. The same status continues even today. In view of the specific plea taken by the petitioner that the order under Section 6 dated 19.06.2023 was not preceded with a notice under Section 7 as required under that



W.P.(MD) No.15602 of 2023

WEB COPY

law, namely, the Land Encroachment Act, 1905, he had required the concerned Tahsildar to produce the original files. The Tahsildar, Ettayapuram, is present and she has also produced the original files relating to the eviction proceedings. As expected, we find that Section 7 notice has not been properly served on the petitioner.

3. There is a Section 7 notice available in the files, which bears an endorsement, “கிராம நிர்வாக அலுவலரின் மூலம் சார்பு செய்து அனுப்பப்பட்டுள்ளது” dated 09.06.2023, but there is nothing to show that this notice was served on the encroachers. The Tahsildar, who is present, would submit that notice was sent to the Village Administrative Officer for service, but he did not serve it personally. It is claimed that the notice had been sent through ordinary post. Any notice that is required to be served under law has to be served either in person or by registered post with acknowledgment due. In the absence of such acknowledgment, we cannot presume that the notice has been served. In the absence of any record to show that the notice has been served, we have to necessarily conclude that the order under Section 6 has been passed without proper notice under Section 7 of the said Act. Therefore, the order impugned in



W.P.(MD) No.15602 of 2023

the writ petition is quashed. It will be open to the respondents to take appropriate action as per law.

4. The writ petition is allowed and the order impugned is quashed. However, there is no order as to costs. consequently connected Miscellaneous Petition is closed.

[R.S.M, J.] [L.V.G, J.]
28.06.2023

NCC : Yes / No

Index : Yes / No

RR

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W.P.(MD) No.15602 of 2023

R.SUBRAMANIAN, J.
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W.P.(MD)No.15602 of 2023

28.06.2023