



WEB COPY

W.P.(MD) No.16166 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.(MD) No.16166 of 2023

and

W.M.P.(MD) No.13561 of 2023

S.Ramaiah

... Petitioner

-vs-

1.The Tahsildar
Thirumayam Taluk
Pudukottai District

2.The Revenue Inspector
Thirumayam Circle
Thirumayam Taluk
Pudukottai District

3.K.Kumaravelu

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records relating to the impugned order in the form of notice passed by the first respondent under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 in his proceedings Nil dated 27.06.2023 and quash the same as illegal and arbitrary and in violation of the principles of natural justice.



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For Petitioner : Mr.B.Saravanan, Senior Counsel
assisted by Mr.D.Kirubakaran

For Respondents : Mr.M.Lingadurai
Special Government Pleader for R1 & R2

ORDER

[Order of the Court was made by S.VAIDYANATHAN, J.]

Mr.M.Lingadurai, learned Special Government Pleader, takes notice for the respondents 1 & 2.

2. Since we are not passing any adverse orders, notice to the third respondent is dispensed with.

3. With the consent of both sides, this writ petition is taken up for final hearing at the admission stage itself.

4. Challenge in this writ petition is to the order dated 27.06.2023, passed by the first respondent, under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 (for brevity, “the Act”).



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5. According to the learned Senior Counsel appearing for the petitioner, when the occupation of the land in question is an unobjectionable, either it can be given to him on lease or assessment can be done under Section 5 of the Act. He would draw our attention to the Revenue Standing Orders, more particularly BSO 26, which deals with unauthorised occupation of Government land. He has also made reference to Sub-Clause (4) of BSO 26, which is extracted hereunder:

“4. Cases of unauthorized occupation of Government land.-

Unauthorized occupation of Government land may be arranged into the following classes:

(a) Cases in which the occupation, whether permanent or temporary, is unobjectionable.

(b) Cases in which temporary occupation, is unobjectionable but permanent occupation is objectionable.

(c) Cases in which the occupation, whether permanent or temporary is objectionable.”

6. The learned Senior Counsel appearing for the petitioner would further contend that when the occupation of the land in question is an unobjectionable, the request of the petitioner can be considered.



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7. The above issue need not be gone into by us in this writ petition as the petitioner has got an efficacious alternative remedy under Section 10 of the Act.

8. Hence, leaving all the issues both factual and legal, open, we permit the petitioner to prefer appeal, before the Appellate Authority, within a period of thirty days from today, in case under the Act the statutory limitation period is expired. On filing such appeal, the Appellate Authority shall consider the same and pass necessary orders on merits and in accordance with law, within a period of three months from the date of filing of the appeal.

9. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[S.V.N., J.]

[D.B.C., J.]

04.07.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To:

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Thirumayam Taluk,
Pudukottai District.
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