



W.P.(MD)No.17227 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2023

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.(MD)No.17227 of 2023

and

W.M.P(MD)No.14429 of 2023

Mariappan

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Sankarankovil Revenue Division,
Sankarankovil,
Tenkasi District.

2.The Tahsildar,
Sankarankovil Taluk,
Sankarankovil,
Tenkasi District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, forbearing the respondents and their subordinates in the revenue Departments by taking any coercive steps without disposing this petitioner's objection petition dated 04.11.2022 with respect to the property the parotta stall shop building and house in Natham S.No.357/1A1A, in Veerasigamani Village in Sankarankovil Taluk in Tenkasi District.

For Petitioner :Mr.F.X.Eugene
For R-1 & R-2 :Mr.M.Lingadurai,
Special Government Pleader



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ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

Heard Mr.F.X.Eugene, learned counsel for the petitioner and Mr.M.Lingadurai, learned Special Government Pleader, who takes notice for respondents 1 and 2.

2. The writ petition is filed by the petitioner seeking for issuance of a Writ of Mandamus, forbearing the respondents from taking any coercive steps without disposing of the objection petition filed by the petitioner, dated 04.11.2022 with respect to the property in which the petitioner is running a parotta stall in Natham S.No.357/1A1A of Veerasigamani Village, Sankarankovil Taluk, Tenkasi District.

3. The case of the petitioner is that he is running parotta stall in the building bearing Door No.77 in Veerasigamani Village and the parotta stall is facing towards the main road and on the rear side of the parotta stall, the petitioner is having his residential house.



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4. The further case of the petitioner is that he is in possession of the said shop for more than three decades and he purchased the said property vide registered sale deed, dated 18.09.2017. He admitted that he has filed a civil suit in O.S.No.53 of 2014 against the second respondent and the then District Collector of Tirunelveli District for permanent injunction. Though the suit in O.S.No.53 of 2014 was dismissed and the appeal filed by the petitioner in A.S.No.1 of 2016 was also dismissed, it is stated that the second appeal filed by the petitioner was allowed and the judgment and decree of the appellate Court confirming the judgment and decree of the trial Court, was set aside by this Court with a direction that the petitioner should be evicted in the manner known to law and that, his possession shall not be disturbed till then.

5. It is on the basis of the judgment made in the second appeal, the petitioner has now challenged the notice which is issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 (hereinafter referred to as 'the Act'), in this writ petition.

6. The petitioner earlier claimed title to the property and on the basis of his title, he prayed for permanent injunction against the respondents herein in the suit in O.S.No.53 of 2014 before the Principal District Munsif Court,



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Sankarankovil. The said suit was dismissed and the appeal preferred by the petitioner was also dismissed. Later, when the petitioner filed a second appeal, ultimately, the second appeal was disposed of on the question of law raised by the petitioner.

7. It is seen that the civil Court has categorically held that the petitioner, who was the plaintiff in the suit is an encroacher. The findings of the Courts below categorizing the petitioner as an encroacher, was confirmed by this Court in the second appeal. However, the respondents were directed to resort to the provisions of the Tamil Nadu Land Encroachment Act, 1905. Till such time the petitioner is evicted by due process of law, this Court directed the respondents not to disturb his possession. The second appeal was disposed of by this Court vide judgment, dated 22.09.2020. After the disposal of the second appeal, the second respondent Tahsildar, has issued a show cause notice under Section 7 of the Act. The petitioner has treated this notice as an order under Section 7 of the Tamil Nadu Land Encroachment Act and filed an appeal before the District Collector under Section 6 of the Act. When the appeal is pending before the District Collector, the petitioner has moved the above writ petition for the relief prayed for.



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8. The facts narrated in the affidavit filed in support of this writ petition is misleading. When the petitioner's possession is not lawful and the civil Courts have categorically rejected the plea of title, this Court in the second appeal filed by the petitioner, has directed that the petitioner cannot be dispossessed otherwise than by due process of law. When the respondents have taken action for eviction by following due process of law, the petitioner has immediately approached this Court by filing this writ petition challenging the show cause notice issued under Section 7 of the Act.

9. The conduct of the petitioner cannot be appreciated. The petitioner who is an encroacher has been squatting over the public property for several years and has now made an attempt to stall the proceedings in which he has no defence.

10. In that view of the matter, this Court finds that this writ petition is devoid of merits and the petitioner has approached this Court with unclean hands by suppressing the material facts. The entire affidavit filed by him in this writ petition is not only misleading but also mischievous in the sense that the petitioner, who has no defence in the proceedings initiated for eviction, has made an attempt to stall the eviction by due process of law.



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11. Therefore, this writ petition is dismissed with costs of Rs.5,000/-(Rupees Five Thousand Only) payable by the petitioner within a period of two weeks from the date of receipt of a copy of this order, to the account to be opened by the Registrar Judicial, Madurai Bench of Madras High Court, Madurai, in the Indian Bank, High Court Branch, Madurai, for donating law books to a Separate Section in the name of “Madurai Bench of Madras High Court” in Kalaignar Centenary Library, Madurai. Out of the funds collected under this Account, the Honourable Administrative Judge in consultation with the Committee of Judges consisting of three senior Honourable Judges, who are permanently stationed at Madurai will purchase the books of their choice and hand over the same to Library. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]
18.07.2023

Index : Yes / No
NCC : Yes/No

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To:

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Sankarankovil,
Tenkasi District.
- 2.The Tahsildar,
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Sankarankovil,
Tenkasi District.
- 3.The Registrar Judicial,
Madurai Bench of Madras High Court,
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