



W.P.(MD)No.17219 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.17219 of 2023
and
W.M.P(MD)Nos.14421 and 14422 of 2023

S.Murugan

... Petitioner

Vs.

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Thasildhar,
Nanguneri Taluk,
Tirunelveli District.

3.The Revenue Inspector,
Kalakad,
Nanguneri Taluk,
Tirunelveli District.

4.E.Taniya Raja

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records in pursuant to the impugned eviction order issued by the second respondent dated 10.07.2023 and quash the same.



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For Petitioner :Mr.S.M.Mohan Gandhi
For R-1 to R-3 :Mr.M.Lingadurai,
Special Government Pleader

ORDER

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

Heard Mr.S.M.Mohan Gandhi, learned counsel for the petitioner and Mr.M.Lingadurai, learned Special Government Pleader, who takes notice for respondents 1 to 3.

2. In view of the nature of the order going to be passed, notice to the fourth respondent is dispensed with.

3. The writ petition is filed by the petitioner challenging the impugned eviction order issued by the second respondent, dated 10.07.2023.

4. The case of the petitioner is that the land in Survey No.126 belongs to the petitioner's parents by virtue of few sale deeds



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which were obtained either by the petitioner's father or his predecessor in interest. It is his further case that the house which is in his possession was constructed in the land owned by him after getting building plan approval from the Executive Officer of Panchayat, Kalakad. The second respondent has issued a notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, directing the petitioner to remove encroachment in an extent of 0.00.57 sq. mts., in Survey No.126/5, which is classified as 'Sarkaar Poramboke'. The grievance of the petitioner is that no show-cause notice was issued before passing the impugned order.

5. The learned Additional Government Pleader is unable to get instructions as to the issuance of a show-cause notice under Section 7 of the Tamil Land Encroachment Act, before passing the impugned order.

6. Be that as it may, the petitioner has raised serious issues claiming title to the property which is in his enjoyment, namely, the residential house put up by him after getting building plan approval. It is a case where there is a dispute with regard to title over the property.



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Therefore, the respondents before initiating summary proceedings should confirm encroachment after conducting a survey in the presence of the alleged encroacher, namely, the petitioner in the present case. However, the impugned order does not indicate any survey being conducted in the presence of the petitioner before initiating proceedings under the Tamil Naud Land Encroachment Act.

7. In that view of the matter, this writ petition is allowed and the impugned order is quashed. However, liberty is given to the respondents to proceed afresh. When the survey in the presence of petitioner indicates that the petitioner is in encroachment, it is for the petitioner to prove his ownership over the property by approaching civil Court. It is needless to say that the petitioner shall co-operate when survey and demarcation is done. No Costs. Consequently, connected miscellaneous petitions are closed.

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

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Index : Yes / No

NCC : Yes/No



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