



W.P.(MD) No.17414 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2023

CORAM:

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

**W.P.(MD) No.17414 of 2023
and
W.M.P.(MD) Nos.14597 & 14598 of 2023**

K.T.Thilagar

... Petitioner

-vs-

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

2.The District Revenue Officer
District Collector Campus
Madurai District

3.The Revenue Divisional Officer
Office of the District Collector Office
Madurai District

4.The Tahsildar
Madurai North Taluk
Madurai District

5.The President / Executive Officer
Usilampatti Panchayat
Madurai West Panchayat Union
Madurai District

6.A.Gunasekaran

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the record pertaining to the order passed by the fourth respondent under Section 6 of the Land Encroachment Act 1905 dated 12.07.2023 and quash the same and further direct the respondents to conduct survey and measure the land and fix the boundaries in respect of the land in Survey No.42/1 located in Usilampatti Village, Koolapandi Pirka, Madurai North Taluk, Madurai District, measuring 29.50 Ares (74 cents) punja land.

For Petitioner : Mr.T.S.Mohamed Mohideen

For Respondents : Mr.D.Sachi Kumar
Additional Government Pleader for R1 to R4
Mr.P.Thilakkumar, Government Pleader for R5

ORDER

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

Mr.D.Sachi Kumar, learned Additional Government Pleader, takes notice for the respondents 1 to 4 and Mr.P.Thilakkumar, learned Government Pleader, takes notice for the fifth respondent.

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



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3. This writ petition is filed against the order, dated 12.07.2023, passed by the Tahsildar, Madurai North Taluk, under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 (hereinafter, referred to as “the Act”).

4. The brief facts, which are necessary for disposal of this writ petition, are as follows:

4.1. The petitioner claims title to the property in Survey No.43/8 of Usilampatti Village, which according to him is in his enjoyment. Though it is stated that the property in Survey No.43/8 is in the petitioner's enjoyment, he has no consistent case as regards his source of title. In the representation, dated 14.07.2023, given by the petitioner to the Tahsildar, he has contended that the land in Survey No.43/8 is part of the land in Survey No.42/1, which was purchased by his father. The encroachment by petitioner is in Survey No.66/1. In the affidavit, petitioner states that Survey No.66/1 is part of Survey No.42. Earlier, petitioner has stated that the land in Survey No.43/8 lies on the northern side of his patta



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land in Survey No.42/1 and that Survey No.43/8 was resurveyed as 66/1.

4.2. The petitioner earlier filed a writ petition in W.P.(MD) No.15160 of 2023 before this Court with an apprehension that the official respondents may evict him, without due process of law. Therefore, this Court, by order 23.06.2023, with an observation that the respondents will follow the procedures contemplated under Sections 7 and 6 of the Act, disposed of the said writ petition.

4.3. After disposal of the said writ petition, on 24.06.2023, a show cause notice was issued to the petitioner, under Section 7 of the Act. After hearing the objections / representation of the petitioner, the Tahsildar has passed the impugned order, dated 12.07.2023, under Section 6 of the Act, directing the petitioner to remove the encroachment on or before 19.07.2023.



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5. Since the petitioner states that the property in Survey No.43/8, which is in his enjoyment, is part of the property purchased by his father in Survey No.42/1 and the petitioner has now come forward with a different statement contrary to his earlier statement as to the source of his title, this Court finds that it will be appropriate for the petitioner to approach the Civil Court to establish his title in the manner known to law.

6. This Court finds no irregularity or lack of jurisdiction in passing the impugned order directing the petitioner to vacate the premises, which is encroached by him. However, the petitioner is permitted to approach the Civil Court to establish his title.

7. Since the petitioner is permitted to approach the Civil Court for appropriate relief, the impugned order, dated 12.07.2023, passed by the fourth respondent, shall be kept in abeyance for a period of fifteen days from the date of receipt of a copy of this order. If the petitioner fails to approach the Civil Court within the stipulated time, it is open to the official respondents to proceed further in the manner known law. The petitioner can resist eviction, only if he establish his title and the Court may grant any interim



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order, only if the petitioner establish his *prima facie* case on title and the conflicting / contradictory stands taken by petitioner may also be considered.

8. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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

[D.B.C., J.]

19.07.2023

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

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- 2.The District Revenue Officer,
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