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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.07.2023**

CORAM:

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

**W.P(MD)NO.18515 of 2023
and
W.M.P(MD)Nos.15344 to 15346 of 2023**

S.Thirugnanam

:Petitioner

.VS.

- 1.The District Collector,
Pudukottai,
Pudukottai District.
- 2.The Tahsildar,
Ponamaravathi Taluk,
Pudukottai District.
- 3.The Block Development Officer,
Ponamaravathi Panchayat Union,
Ponamavarathi Taluk,
Pudukottai District.
- 4.The Thottiyampatti Village Panchayat,
represented by its Panchayat President,
Thottiyampatti Village,
Ponamavarathi Panchayat Union,
Ponamaravathi Taluk,
Pudukottai District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of



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India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to Na.Ka.No.6 of 2023, dated 21.7.2023 on the file of the respondent No.4 and to quash the same as illegal and consequently to forbear the respondents 1 to 4 from removing the Kallam used as thrashing floor for harvesting paddy in S.No.792/1, Ponamaravathi West Village, Ponamaravathi Taluk, Pudukottai District without following the due process of law.

For Petitioner :Ms.J.R.Annie Abinaya

For Respondents :Mr.T.Villavan Kothai
1 and 2 Addl.Govt.Pleader

For Respondents :Mr.D.Sachikumar
3 and 4 Addl.Govt.Pleader

O R D E R

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

This Writ Petition is filed seeking issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to Na.Ka.No.6 of 2023, dated 21.7.2023 on the file of the respondent No.4 and to quash the same as illegal and consequently to forbear the respondents 1 to 4 from removing the Kallam used as thrashing floor for harvesting paddy in S.No.792/1, Ponamaravathi West Village, Ponamaravathi Taluk, Pudukottai District without following the due process of law.



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2.Mr.T.Villavan Kothai, learned Government Pleader takes notice for the respondents 1 and 2 and Mr.D.Sachikumar, learned Additional Government Pleader takes notice for the respondents 3 and 4. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3.This Writ Petition is filed challenging the impugned order, dated 21.7.2023 passed by the fourth respondent/Panchayat President, Thottiyampatti Village Panchayat, directing the Petitioner to remove the encroachment within a period of seven days from the date of receipt of notice, on the premise that the entire extent of 0.84.5 ares in Ponmerku village, Thottiyampatti Village Panchayat, Ponamaravathi Panchayat Union, Pudukottai District is "Mayanam".

4.The case of the Petitioner is that the respondents without conducting any survey in the presence of the Petitioner, issued the eviction notice. It is stated that the fourth respondent/Panchayat President has no jurisdiction to issue such notice,as the power is vested with the Tahsildar concerned to initiate action for removal of encroachment under the Tamil Nadu Land Encroachment Act,1905.



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5.This Court is of the view that the impugned order cannot be issued by the fourth respondent, as he has no jurisdiction to deal with the removal of encroachment made in the public property, especially, when it is submitted that the land in question is a Mayanam. The fact whether the property encroached upon by the Petitioner is a Mayanam, is in dispute. Therefore an opportunity should be given to the Petitioner by the authorities concerned, to raise all his objections before passing an order for eviction.

6.Having regard to the facts as narrated above, this Writ Petition is disposed of on the following lines:

1.the order passed by the fourth respondent, dated 21.7.2023 is set aside.

2.however, the second respondent is directed to conduct survey of the land in question after issuing notice to the Petitioner as well as to the local body.

3.the survey should be conducted in the presence of the Petitioner to find out or identify actual encroachment if any in



Survey No.792/1, Ponamaravahi West Village and the report regarding encroachment pursuant to the survey shall be served to the Petitioner.

4.if the second respondent is of the view that the property in question is classified as Mayanam and the same is being encroached upon by the Petitioner, he shall take appropriate action by initiating proceedings under the Tamil Nadu Land Encroachment Act, for removal of encroachment, in the manner known to law.

No costs. Consequently, connected Miscellaneous Petitions are closed.

[S.S.S.R.,J.] [D.B.C,J.]
31.07.2023

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

vsn

To

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Pudukottai District.

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Pudukottai District.



3.The Block Development Officer,
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4.The Thottiyampatti Village Panchayat,
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S.S.SUNDAR, J.

AND

D.BHARATHA CHAKRAVARTHY, J.

vsn

ORDER MADE IN

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