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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.08.2023**

CORAM:

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

**W.P(MD)NO.20716 OF 2023
and
W.M.P(MD)No.17136 of 2023**

S.Victor Xavier Jameela :Petitioner

.VS.

1.The District Collector,
Collectorate,
Tirunelveli District.

2.The Tahsildar,
Radhapuram Taluk,
Tirunelveli District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned order, dated 7.8.2023 issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, on the file of the second respondent and to quash the same as illegal

For Petitioner :Mr.I.Pinaygash

For Respondents :Mr.M.Linga Durai
1 and 2 Special Government Pleader



ORDER

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This Writ Petition is filed challenging the order of eviction issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, by the proceedings of the second respondent, dated 7.8.2023.

2.Mr.M.Linga Durai, learned Special Government Pleader takes notice for the respondents 1 and 2. By consent of both parties,the Writ Petition is taken up for final disposal at the admission stage itself.

3.The Petitioner has challenged the order impugned herein only on the ground that the impugned order passed under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 is not in order and that there is total non-application of mind, as to the objections raised by the Petitioner to the show-cause notice issued to the Petitioner under Section 7 of the Tamil Nadu Land Encroachment Act, 1905.

4.The case of the Petitioner is that an extent of 83 cents of



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land originally belong to St. Michael Adi Thoothar Church situated at S.Nos.29/1 and 29/2 at South Kallikulam, Radhapuram Taluk, Tirunelveli District. The Petitioner also admits that on 12.07.1961, the Church had executed a Gift Deed in respect of five cents of land out of the total extent of 83 cents in favour of the District Collector, representing the State, for the purpose of erecting a drinking water well for the usage of common public. The Gift Deed was also registered in Document No.64/1961 before the Sub-Registrar, Radhapuram.

5.It is the case of the Petitioner that the Church is in possession of the entire land from time immemorial by planting coconut trees and other plants by exercising the right of ownership over the entire land. Since the well was situated in the middle of the church property, it is stated by the Petitioner that the well which was dug for public use, got to be closed long back and that the entire property is now enjoyed by the Church, even after admitting the gift and the conveyance by a registered instrument of Gift Deed. The Petitioner claims ownership on behalf of the community or Church on the ground that they are in possession of the property for a long number of years.



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6.The second submission of the learned counsel for the Petitioner is that the impugned order is an order without considering any of the objections raised by the Petitioner in response to the notice issued by the second respondent under Section 7 of the Tamil Nadu Land Encroachment Act. No doubt, it is true that the second respondent has passed the impugned order without considering any of the contentions raised by the Petitioner in the objections to the notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. The Petitioner has even after admitting the absolute title of the Government by virtue of the Gift Deed, still says that the revenue officials have no right to initiate any action under the provisions of the Tamil Nadu Land Encroachment Act. The reason stated by the Petitioner is that the Petitioner is in enjoyment of the land. When the title of the said land in favour of the Government is not in issue, the Petitioner's enjoyment is only as an encroacher, who has no right over the said land. The objections before this Court as well as in the reply to the show cause notice clearly indicate that the Petitioner's possession is unauthorized. The justification for the stand taken by the Petitioner on the ground that the Gift Deed was executed only for the purpose of digging the well to provide drinking water to the



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villagers and that the respondents cannot claim any right over the property, because the well is not in use, cannot be a valid defense.

Merely because the well which was dug by the revenue pursuant to the Gift Deed, is not in existence in the place, the conveyance and transfer of property in favour of the revenue will not come to an end. There cannot be an automatic reversion of the Gift Deed already executed in favour of the State. The Petitioner, cannot as a matter of fact, seek reconveyance of the land in question, after accepting the Gift Deed.

7. In such circumstances, this Court finds no merit in the objections raised by the Petitioner. Though it is an irregularity that the objections raised is not being considered in the impugned order, that does not vitiate the order, in view of the facts admitted. This Court finds that no useful purpose will be served even if the matter is remitted back to the respondents, for fresh consideration. The Petitioner has no valid defense for driving out the respondents from the said land. On the admitted facts, this Court is unable to interfere with the order of eviction issued under Section 6 of the Tamil Nadu Land Encroachment Act passed by the second respondent and hence the Writ Petition is devoid of merit and the



same is liable to be dismissed.

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8. Accordingly, the Writ Petition stands dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

[S.S.S.R.,J.] [D.B.C,J.]
24.08.2023

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

vsn

To

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2.The Tahsildar,
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Tirunelveli District.



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S.S.SUNDAR, J.

AND

D.BHARATHA CHAKRAVARTHY, J.

vsn

ORDER MADE IN

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