



W.P.(MD) No.23995 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2023

CORAM:

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

W.P.(MD) No.23995 of 2022

and

W.M.P.(MD)No.18082 of 2022

1.M.Arumugam @ Arumugathammal

2.M.Sathishkumar

: Petitioners

-vs-

1.The District Collector,
Madurai District, Madurai.

2.The Tahsildar,
Madurai East,
Madurai District.

3.The Block Development Officer,
Madurai East Block,
Madurai District.

4.The President of Village Panchayat/Executive Officer,
Rajakoor Village Panchayat,
Rajakoor Post-625 107.
Madurai District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the fourth respondent pertaining to the impugned notices dated 12.10.2022 in respect of an area of 0.00.13 in S.No.220/1 and the other notice dated 12.10.2022 in respect of an area of 0.00.59 in S.No.219/6 respectively of Alagunachiyarpuram Village, Madurai East Taluk, Madurai District and



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quash the same and consequently, direct the respondents to conduct enquiry on the petitioners' objection petition dated 14.10.2022 sent to the respondents.

For Petitioners : Mr.C.Dhanaseelan

For Respondents : Mr.T.Villavan Kothai
Additional Government Pleader

ORDER

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

This Writ Petition is filed for issuance of Writ of Certiorarified Mandamus to quash the impugned notices dated 12.10.2022 passed by the fourth respondent in respect of an area of 0.00.13 in S.No.220/1 and the other notice dated 12.10.2022 in respect of an area of 0.00.59 in S.No. 219/6 respectively of Alagunachiyarpuram Village, Madurai East Taluk, Madurai District and to direct the respondents to conduct enquiry on the petitioner's objection petition dated 14.10.2022.

2. The petitioners challenge in the present writ petition, a notice purported to have been issued under Section 131(2) r/w Section 222 of the Tamil Nadu Panchayat Act, dated 12.10.2022. By the impugned order, the fourth respondent in the writ petition namely, the Panchayat President has noted that the petitioners are in encroachment of public pathway by putting up a house and compound wall. A direction was issued to the



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petitioners to remove the encroachment before 18.10.2022. However, it is also indicated that in case the petitioners refused to remove encroachment, encroachment will be removed on 19.10.2022. It is true that under the provisions of the Tamil Nadu Panchayat Act, the local body has no jurisdiction to issue further direction after an order requiring the encroacher to remove the encroachment. However the act contemplates proceedings to be initiated by the revenue officials under the provisions of the Tamil Nadu Land Encroachment Act, 1905. It is in the said circumstances, this Court has examined the submissions of the petitioners' counsel.

3. In the affidavit filed in respect of the petitioners, the petitioners have stated that the property in S.No.220/1 and 219/6 of Rajakoor Village is the exclusive property of the petitioners and that they have constructed their house with a compound wall. It is the further case of the petitioners that the impugned order has been issued by the fourth respondent without even issuing a show cause notice or conducting a survey. It is further stated that the entire land is classified as a house site in a property described as 'Natham'. The first petitioner also claim title through her husband over an extent of 925 sq.ft under the Will dated 09.02.1986 executed by his father, by name, Ayyachi, who in turn had acquired the property by a sale deed dated 05.06.1956. It is the further case of the



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petitioners that the petitioners predecessor in interest were in enjoyment of the property by constructing a old house, which is in the patta land of the petitioners predecessor in interest. It is the further case of the petitioners that the second petitioner who is the son of the first petitioner claimed to have purchased adjacent 4 ½ cents in the same survey number as per the sale deed dated 12.11.2020. It is contended by the petitioners that the respondents have initiated proceedings under the Tamil Nadu Land Encroachment Act, 1905, when the petitioners started putting up construction in the vacant land purchased by the second petitioner. Though the first petitioner has raised several grounds, this Court is not convinced that the petitioners have produced enough documents to substantiate their case on their title to the entire extent. From the own record namely, the rough patta alleged to have been obtained by the petitioners under Natham settlement, the petitioners possession was notified only for an extent of 31 sq.mtrs. It is in the said circumstances, this Court is unable to accept the contention in the absence of any further evidence that to show the petitioners' enjoyment or title to a large extent.

4. The grievance of the petitioners is that the respondents are not competent to pass an order without even conducting a survey or spot inspection. It is also stated that the petitioners should be given a fair opportunity to establish their case of title, having regard to the title deed as



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well as their enjoyment for the long time. In this case, the impugned order does not refer to any survey being conducted by the Tahsildar concerned. This Court has already seen that the Tahsildar alone is competent at this stage to proceed further even if the petitioners refuse to hand over possession of the property to the local body to remove the encroachment, pursuant to the direction issued by the fourth respondent in the impugned order.

5. Having regard to the over all circumstances, this Court is inclined to dispose of the writ petition with the following directions:

(a) The impugned order is quashed. However, it is open to the Tahsildar concerned to proceed further in accordance with the provisions of the Tamil Nadu Land Encroachment Act, 1905 as contemplated under Section 131(2) of the Tamil Nadu Panchayat Act;

(b) Before initiating action under the Tamil Nadu Land Encroachment Act, 1905, the Tahsildar shall conduct a survey and a local inspection to find out whether the petitioners are in encroachment of any public road or whether the construction put up by the petitioners is in



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their private land;

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(c) When a survey is conducted, the Tahsildar is directed to issue notice to the petitioners as well as the local body and the Tahsildar shall also serve a copy of the report drawn pursuant to the enquiry conducted by him as per the directions of this Court;

(d) In case, the Tahsildar finds encroachment pursuant to the survey and the due enquiry as directed by this Court, the Tahsildar shall initiate further proceedings as indicated under the provisions of the Tamil Nadu Land Encroachment Act, 1905;

(e) If the petitioners are aggrieved by any proceedings, the petitioners are given liberty to establish their title before the civil Court. Except the liberty to approach the civil Court to establish their title, the petitioners' objection may not stall the revenue officials from proceeding further in the manner indicated above;



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(d) When the petitioners actually file a civil suit, the civil Court may consider the case purely on merits and dispose of the same uninfluenced by any of the observations by this Court in this order.

No costs. Consequently, connected miscellaneous petition is closed.

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

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

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