



WP.No.37028 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.No.37028 of 2024
and
W.M.P. No.39999 of 2024 in W.P. No.37028 of 2024

C.Nallaiyan

... Petitioner

VS

- 1.The Secretary to Government,
Revenue Department,
Fort St. George, Chennai – 9.
- 2.The Secretary to Government,
Law Department,
Fort St. George, Chennai – 9.
- 3.The District Collector,
Salem, Salem District.
- 4.The Tahsildar,
Omalur Taluk, Salem District.
- 5.The Revenue Inspector,
Karuppur, Omalur Taluk,
Salem District.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India

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praying to issue a Writ of Certiorarified Mandamus to call for the records relating to proceeding/notice dated 20.11.2024 passed by the fifth respondent, quash the same and consequently direct the respondents 1 and 2 to frame a Rule under Section 8(c) (d) (e) (f) and (g) of the Land Encroachment Act, 1905 for declaring the land in Survey No.16/3 and 16/4 an extent of 1.13.50 Hecs. at Vellalapatti Village, Omalur Taluk, Salem District as unobjectionable/patta land by considering the petitioner's representation dated 25.11.2024.

For Petitioner : Mr.M.Elango

For Respondents : Mr.V.Ravi,
Special Government Pleader

ORDER

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

Captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity) has been filed assailing a notice under Section 7 of 'The Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905)' {hereinafter 'said 1905 Act' for the sake of brevity} and a scanned reproduction of the same is as follows:



1905 ஆம் ஆண்டு தமிழ்நாடு IIIஆவது சட்டத்தின் 7 வது
பிரிவின் கீழ் அறிவிப்பு

சேலம் மாவட்டம், ஒமலூர் வட்டம், கொல்லப்பட்டி கிராமம் என்ற முகவரியில் வசிக்கும் திரு.சின்னுசாமி மகன் நல்லையன் என்பவர் வெள்ளாளப்பட்டி கிராம புல எண்.16/3ல் பரப்பு 0.60.5 ஹெக்டேர் மற்றும் புல எண் 16/4ல் பரப்பு 0.53.0 ஹெக்டேர் அரசு புறம்போக்கு தரிக எண் வகைபாடு செய்யப்பட்ட நிலத்தில் ஆக்கிரமிப்பு செய்துள்ளார்.

சேலம் மாவட்டம், ஒமலூர் வட்டம், வெள்ளாளப்பட்டி கிராமம், புல எண்கள் 16/3 மற்றும் 16/4, அரசு புஞ்சை தரிக எண் வகைபாடு கொண்ட அரசு நிலம் தொடர்பாக தங்களால் மாண்புமிகு சென்னை உயர்நீதிமன்றத்தில் தொடரப்பட்ட வழக்கின் (வழக்கு எண் W.P. 16393/2024 and W.M.P.No.17952/2024) தீர்ப்புரை பின்வருமாறு பகரப்பட்டுள்ளது.

"The respondents, before evicting the petitioner, shall follow strict compliance of due process of law. It is also made clear that without following any due process of law, the petitioner cannot be evicted as a matter of right."

தமிழ்நாடு ஆக்கிரமிப்பு சட்டம் 1905ம் ஆண்டு 3வது சட்டத்தின் 5 வது பிரிவின்கீழ் தாங்கள் ஆக்கிரமிப்பு செய்யப்பட்டுள்ள நிலத்திலிருந்து அப்புறப்படுத்தி அதிலுள்ள பயிர்கள் விளைச்சல்கள், கட்டிடங்கள், கட்டுமானங்கள் அதில் விட்டு வைத்திருக்கப்பட்டவை ஆகிய இனங்கள் ஏதுமிருக்குமாயின் சட்டத்தின் 6வது பிரிவின் கீழ் ஏன் பறிமுதல் செய்யக்கூடாது என்பதற்காக தங்களுக்கு ஒரு வாய்ப்பு அளிக்கும்பொருட்டு ஆக்கிரமிப்பு ஏதும் இருப்பின் அறிவிப்பு கிடைக்கப்பெற்ற 7 தினங்களில் தாங்களாகவே அகற்றிக்கொள்ள இதுன்மூலம் அறிவிப்பு செய்யப்படுகிறது.



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விவர அட்டவணை

கிராமம்	அளவை எண் உட்பிரிவு	நிலத்தின் முழு விவரம்	முழு பரப்பு ஹெக்டேர்ஸ்	ஆக்கிரமித்து ள்ள பரப்பு	ஆக்கிரமிப்பின் தன்மை
கொல்லப் பட்டி	1843	அரசு புஞ்சை தரிக	0.60.0	0.60.0	-
கொல்லப் பட்டி	1844	அரசு புஞ்சை தரிக	0.53.0	0.53.0	-


 வருவாய் அலுவலர்
 கருப்பூர்

பெறுதல்
 திரு. நவ்ஸையன் து. பெ. சின்னசாமி.
 கொல்லப்பட்டி கிராமம், ஒமலூர் வட்டம்,
 சேலம் மாவட்டம் -636012

2. Adverting to the 'aforesaid notice dated 20.11.2024' (hereinafter 'impugned notice' for the sake of convenience and clarity), Mr.M.Elango, learned counsel on record for writ petitioner submitted that the impugned notice though issued under Section 7 of said 1905 Act instead of show causing the writ petitioner, has called upon the writ petitioner to remove the alleged encroachment within



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seven days.

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3. Issue notice to the respondents.

4. Mr.V.Ravi, learned Special Government Pleader accepted notice for all five respondents. Learned Special Government Pleader submitted that seven days mentioned in the impugned notice is for the writ petitioner to respond as the notice clearly mentions about further proceedings under Section 6.

5. Owing to the limited scope of the captioned WP, with the consent of learned counsel on both sides, the main WP was taken up in the Admission Board.

6. Learned counsel for writ petitioner predicated his arguments on three points and they are as follows:

(i) As already alluded to supra, Section 7 notice instead of show causing the writ petitioner to show cause before a particular date has straight



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away called upon the writ petitioner to remove the alleged encroachment;

(ii) the notice pertains to lands comprised in Survey No.16/3 (admeasuring 0.60.5 hectares) and Survey No.16/4 (admeasuring 0.53.0 hectares) in Vellalapatti Village, Omalur Taluk, Salem District is being held by the writ petitioner by way of a grant from the Government and is therefore saved under Section 2(1)(e) of said 1905 Act;

(iii) the second proviso to Section 7 provides for a report in writing from the Revenue Inspector according to the Rules and Rules have not been framed under said 1905 Act.

7. We carefully considered the three points.

8. As regards the first point, we record the submission of learned State counsel that seven days time has been granted for the writ petitioner to show cause. This means that the impugned notice shall now be treated as a 'Show Cause Notice' ('SCN') and the writ



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petitioner shall send an additional reply on or before 12.12.2024, if so advised and so desired. To be noted, writ petitioner has already sent a reply dated 25.11.2024. If additional reply is not sent, reply sent on 25.11.2024 shall be treated as reply. This douses the first point argument.

9. The second point pertains to saving of said lands vide Section 2(1)(e) of said 1905 Act. We are of the considered view that the writ petitioner has only been show caused and therefore this point can be raised by the writ petitioner in response to the SCN and authorities will obviously consider the same on its own merits and in accordance with law. This puts an end to Point No.2.

10. The third point turns on second proviso to Section 7 which talks about a report from the Revenue Inspector (R5 in the case on hand). The argument that Rules have not been framed does not hold water as careful perusal of second proviso to Section 7 makes it clear that the report will be either in accordance with the Rules or communication under Section 8 to the Collector. In any event, this second proviso to Section 7 talks only about *inter se* report qua the revenue authorities and therefore this point does not hold water.

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11. The narrative, discussion and dispositive reasoning thus far make it clear that certiorari prayer cannot be answered in the affirmative but we put in a rider that the impugned notice shall now be treated as SCN. As regards the mandamus limb, all that is subject to proceedings/orders under Section 6 of said 1905 Act (which is appealable/revisable vide statutory appeal/revision) and therefore the mandamus limb does not arise at this SCN stage.

12. Apropos, we make the following order:

12.1 Impugned notice being notice dated 20.11.2024 issued by R5 shall now be treated as SCN ;

12.2 It is open to the writ petitioner to show cause (show further cause) within seven days from today i.e., by 12.12.2024. We are saying further cause as writ petitioner has



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already shown cause vide reply dated 25.11.2024. If the writ petitioner does not reply within seven days, the 25.11.2024 reply already sent will be treated as reply;

12.3 Post seven days, order under section 6 shall be made. If an order under Section 6 is made, depending on the nature of the order, the matter will either be given quietus or there can be further proceedings under said 1905 Act i.e., appeal/revision under Section 10/10-A as this Court has repeatedly held that said 1905 Act is a self contained Code;

12.4 As the impugned notice shall now be treated as SCN, further proceedings qua removal of alleged encroachment (if any) shall obviously be subject to and depending on the orders under Section 6 and further proceedings, if any.



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13. Ergo, sequitur is, certiorari limb of the prayer is not answered in the affirmative as impugned notice is sustained *albeit* with a rider that the same will now be treated as SCN and the mandamus limb is dismissed as premature. Captioned WP is dismissed. Consequently, captioned Writ Miscellaneous Petition (WMP) also perishes and the same is also dismissed. There shall be no order as to costs.

(M.S.,J.) (K.R.S.,J.)

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Index : Yes / No
Neutral Citation : Yes / No
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To

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Karuppur, Omalur Taluk, Salem District.

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**M.SUNDAR, J.,
and
K.RAJASEKAR, J.,**

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