



W.P(MD)No.2586 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.P(MD)No.2586 of 2024
and
W.M.P(MD)Nos.2612 & 2613 of 2024**

Singaraj

... Petitioner

VS.

- 1.The District Collector,
Collectorate Campus,
Madurai,
Madurai District.
- 2.The District Adi-Dravidar and Tribal Welfare Officer,
Collectorate Campus,
Madurai,
Madurai District.
- 3.The Tahsildar,
Peraiyur Taluk Office,
Peraiyur,
Madurai District.
- 4.The Revenue Inspector,
Sedpatti Firka,
Peraiyur Taluk,
Madurai District.



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5.The Block Development Officer,
Peraiyur Union,
Peraiyur,
Madurai District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned notice passed by the third respondent in No. (not mentioned) dated 29.01.2024 and quash the same and consequently directing the respondents to recognize the possession of the petitioner as lawful one based on the petitioner's representation to the first respondent dated 23.01.2024.

For Petitioner : Mr.P.Manokaran

For Respondents : Mr.S.Shaji Bino
Special Government Pleader

ORDER

(Order of the Court was made by R.SURESH KUMAR, J.)

The prayer sought for herein is to quash the impugned notice issued by the third respondent, dated 29.01.2024, and consequently, to direct the respondents to recognize the possession of the petitioner as lawful one based on the petitioner's representation to the first respondent, dated 23.01.2024.



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2.In respect of the Grama Natham land at Survey No.335/40 at Perungamanallur Village to an extent of 0.79.50 cents, a notice under Section 6 of the Act, 1905, ie., the Land Encroachment Act, had been issued by the third respondent on 29.01.2024 to the petitioner, demanding him to vacate the said land, as the same, according to the third respondent, has been encroached upon by the petitioner. Challenging the same, the present Writ Petition has been filed.

3.Heard Mr.P.Manokaran, learned counsel appearing for the petitioner, who would submit that, the petitioner had been in possession and enjoyment of the property for nearly about 20 years, that too, after getting an assignment order properly from the Government and such order of assignment had been given on 08.04.1999 itself and a copy of which has also been produced before this Court in the typedset of documents.

4.The learned counsel would further submit that the land in question has already been classified as Grama Natham, where the petitioner being a landless poor, has been assigned the land by way of assignment order and since then, he has been in possession and enjoyment of the land, where when he made an attempt to complete the construction of the dwelling house, that attempt was thwarted by the revenue authority immediately, which was triggered to issue the



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impugned notice, therefore, it is without jurisdiction, as the petitioner cannot be termed as an encroacher within the meaning of the provisions of the Act, 3 of 1905.

5.Per contra, Mr.S.Shaji Bino, learned Special Government Pleader, appearing for the respondents, on the basis of the written instructions given by the third respondent, dated 06.02.2024, has submitted that the land, as per the revenue records, has been shown as 'Chavadi', that is meant for common community purpose in the locality.

6.Moreover, as per the said written instructions, dated 06.02.2024, the petitioner was able to get the assignment order by suppressing certain things and the order of assignment said to have been given in favour of the petitioner is not a proper assignment, therefore, the same can be reviewed at any time by the revenue authority, as per the law which is in vogue.

7.Moreover, when a plan was made to construct a community hall in the adjacent land which belongs to the Government, after 20 years of the alleged assignment order, now, the petitioner wanted to make construction in the said disputed land and in that guise, he wanted to scuttle the attempt of the respondents to construct the community hall for the welfare of the people in that



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locality. Therefore, that triggered the third respondent to verify the revenue records, based on which, since it has been categorized as Chavadi, definitely it can only be construed as an encroachment on the part of the petitioner, hence, the provisions of the Act, 3 of 1905 can very well be invoked, accordingly, the third respondent, having invoked the same, had issued the impugned communication, therefore, it does not warrant any interference at the hands of this Court, he contended.

8.We have considered the said rival submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

9.Even as per the impugned order, dated 29.01.2024, it has been specifically mentioned that the land in question is a 'Grama Natham' at Survey No. 335/40 at Perungamanallur Village to an extent of 0.79.50 cents.

10.In respect of the very same land, already assignment order had been issued on 08.04.1999 in favour of the petitioner. When that being so, it cannot be stated that the petitioner had been in encroachment of the property in question and since the assignment order had been issued 25 years back and since then, it is the claim of the petitioner that he has been in possession and enjoyment



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of the land in question, all of a sudden, the respondents, especially, the third respondent cannot come to a sudden conclusion to treat it as an encroachment on the part of the petitioner and accordingly, he ought not to have issued the notice under Section 6 of the Act, 3 of 1905.

11.If at all the reasons given by the third respondent to make such interference to issue such notice by treating him as an encroacher on the ground that under the revenue records, it shows as a Chavadi and therefore, the assignment given in the year 1999 itself is a wrong assignment, steps have to be taken by the revenue authorities to conduct an enquiry and to verify the facts and ultimately, if they satisfied that the issuance of the patta assignment in favour of the petitioner is a wrong order, that can be cancelled only after adopting the procedure of conducting an enquiry by giving an opportunity of being heard to the petitioner, without which, it cannot be construed that the possession or occupation of the petitioner as an encroachment for the purpose of invoking the provisions of the Act, 3 of 1905. Therefore, this Court has no hesitation to hold that the impugned notice issued under Section 6 of the said Act, 1905, is unlawful and without jurisdiction, therefore, the same is liable to be interfered with.



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12.In the result, the impugned order, dated 29.01.2024 passed by the third respondent is set aside. The Writ Petition is allowed. However, allowing of this Writ Petition will not preclude the right of the respondents, especially, the third respondent to conduct an enquiry as to on what basis the assignment has been given on 08.04.1999 to and in favour of the petitioner and accordingly, take a decision by giving an opportunity of being heard to the petitioner and thereupon act on the basis of such a decision to be taken by the third respondent.

13.With these observations, this Writ Petition is allowed accordingly. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

[R.S.K.,J.] [G.A.M.,J.]
02.04.2024

NCC : Yes / No
Index : Yes / No
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R.SURESH KUMAR,J.
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ORDER MADE IN
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