



W.P.(MD)No.10462 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

and

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.(MD)No.10462 of 2024

R.Renganathan

: Petitioner

Vs.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Assistant Director (Panchayats),
Department of Rural Development,
Collectorate,
Thoothukudi.

3.The Tahsildar,
Kovilpatti,
Thoothukudi District.

4.The Block Development Officer,
Kovilpatti,
Thoothukudi District.



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5.The President,
Uthupatti Panchayat,
Thoothukudi District.

6.A.Saravanamurugan : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the first respondent to consider the petitioner's representation dated 03.01.2024 and further to direct first respondent to remove the encroachment made by the fifth and sixth respondent and subsequently to take steps to construct the Public Distribution System Shop (Ration Shop) in accordance with the resolution (dated 01.05.2022) passed by the fifth respondent before the villagers.

For Petitioner : Mr.V.Rajiv Rufus

For Respondents 1 to 5 : Mr.P.Thilak Kumar,
Special Government Pleader

O R D E R

[Order of the Court was made by R.SURESH KUMAR, J.]

The prayer sought for herein is for a Writ of Mandamus, directing the first respondent to consider the petitioner's representation dated 03.01.2024 and to remove the encroachment



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made by the fifth and sixth respondents and subsequently to take steps to construct the Public Distribution System Shop (Ration Shop) in accordance with the resolution dated 01.05.2022, passed by the fifth respondent before the villagers.

2.In S.No.357/33 to the extent of 1337.50 sq. mt land is available at Oothupatti Village, South Kumarapuram, Kovilpatti, Thoothukudi District. The said land has been categorised as Sarkar Poramboke Nathan Vacant land.

3.Since it is a Natham land, where the sixth respondent has already constructed a dwelling house to the extent of 240 sq.mt that was considered to be an encroachment and therefore, a notice under Section 7 of the Act 3 of 1905, was issued by the Revenue authorities dated 07.06.2022, which was under challenge in W.P. (MD)No.7853 of 2023.

4.A Division Bench of this Court by order dated 06.04.2023, has passed the following order:

“5. Section 2 of the Tamil Nadu Land Encroachment Act, 1905, which provides vesting of communal lands in the Government, excludes a house site, which is occupied as



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backyard or a dwelling house and such land does not vest in the Government. Therefore, the Government, not being the title-holder, cannot take proceedings for eviction of the land classified as "Natham" and occupied as house site or backyard.

6.In view of the above, the writ petition is allowed and the notice dated 07.06.2022, issued by the second respondent, is quashed. No costs. Consequently, connected miscellaneous petition is closed."

5. Therefore, the Section 7 notice has been quashed on the ground that this land meant for dwelling house, as Natham land in villages are to be exempted from the purview of the provisions of the land encroachment Act. When that being the decision, it cannot be stated that the occupation of the sixth respondent to the extent of 240 sq.mt in the said survey number is an encroachment.

6. In this context, the learned Counsel for the petitioner has brought to our notice that in the village Grama Sabha meeting where the President and the sixth respondent also attended, a resolution unanimously has been passed to construct a Fair Price Shop in the very same survey number ie., S.No.357/33. When that being so, if this 240 sq.mt occupied by the sixth respondent by



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putting up construction is not removed, the said purpose of the resolution to construct the Fair Price Shop would get affected. Therefore, to that extent, the learned Counsel for the petitioner seeks indulgence of this Court to issue a Mandamus as sought for hereinabove.

7.We have heard the learned Government Pleader appearing for the official respondents and in view of the order we propose to pass in this writ petition, notice to the sixth respondent is dispensed with.

8.There are totally 1337.50 sq.mt land available in the said survey number, out of which only 240 sq.mt land is in occupation by the sixth respondent and in respect of this occupation, though an attempt has been made by the revenue department by issuing notice under Section 7 of Act 3 of 1905, that has been quashed by this Court as stated supra. When that being the position, the occupation of 240 sq.mt by the sixth respondent cannot be construed as a mere encroachment, as it is in the Natham land. Therefore, to that extent, the sixth respondent's occupation can be considered and regularised by the authorities concerned.



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9.Insofar as the remaining land is concerned, which is more than 1000 sq.ft, certainly that land can be utilised for this common purpose like the one for which the Grama Sabha meeting has been conducted and a resolution for construction of the Fair Price Shop has been made. It is also to be noted that, for the purpose of constructing the said fair price shop, they require only 1031 sq. mt. Therefore, that land can be carved out from the remaining land, for which survey can be taken by the revenue authorities at the request of the villagers and accordingly, the said land can be allotted to the Village Panchayat. When that being the position, the prayer sought for by the petitioner to disturb the sixth respondent is thoroughly unjustified and not at all required.

10.With the aforesaid observation, this Writ Petition is dismissed. There shall be no order as to costs.

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

29.04.2024

Neutral Citation : Yes/No

Index : Yes/No

Internet : Yes/No

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and
G.ARUL MURUGAN, J.

MR

ORDER MADE IN
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