



W.P.(MD) No.11832 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.06.2024

CORAM:

THE HONOURABLE **MR.JUSTICE R.SURESH KUMAR**

AND

THE HONOURABLE **MR.JUSTICE G.ARUL MURUGAN**

W.P.(MD)No.11832 of 2024

and

W.M.P.(MD)No.10551 of 2024

M.Palani

... Petitioner

-Vs-

- 1.The District Collector,
Office of the District Collector,
Virudhunagar District.
- 2.The Revenue Divisional Officer,
Kariapatti Taluk,
Office of the District Collector,
Virudhunagar District.
- 3.The Tahsildar,
Office of Kariapatti Taluk,
Kariapatti, Virudhunagar District.
- 4.The Revenue Inspector,
Kariapatti, Kariapatti Taluk,
Virudhunagar District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned proceedings



W.P.(MD) No.11832 of 2024

of the 3rd respondent in his proceedings bearing Na.Ka.A8/4460/2023, dated 11.05.2024 and quash the same.

For Petitioner : M/s.K.Porkodi Karnan,
for M/s.Polax Legal Solutions
For Respondents : Mr.S.Shaji Bino,
Special Government Pleader

ORDER

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

The order of the 3rd respondent, dated 11.05.2024 issued under Section 6 of the Act III of 1905, is under challenge in this Writ Petition.

2.It is the case of the respondent / Revenue Department that the land in S.No.126/2 at Arasakulam Village, Kariapatti Taluk, Virudhunagar District is a Government poramboke land to the extent of 0.07.5 ares, which is being encroached upon by the petitioner. Therefore, in order to remove the encroachment, invoking provisions of the Act III of 1905 (hereinafter referred to as 'the Act'), a notice had been given. Though it has been styled as notice dated 21.02.2024, in the said notice, the petitioner had been directed to remove the encroachment. Therefore, challenging the same in the first round, the petitioner



W.P.(MD) No.11832 of 2024

had filed W.P.(MD)No.4697 of 2024 and the Division Bench of this Court has disposed of the said Writ Petition by passing final order dated 29.02.2024, where they have observed that the impugned notice issued by the 4th respondent under Section 7 of the Act shows that the said notice has been issued, asking the petitioner to vacate the subject land within seven days. Hence, the said notice cannot be construed as show cause notice and therefore, the same is directed to be treated as show cause notice. Accordingly, the petitioner was directed to give explanation by treating the said notice as show cause notice.

3.In response to the said order passed by the Division Bench of this Court, once again an order has been issued on 15.03.2024 by the 3rd respondent, granting three days time to the petitioner to respond. Immediately, the petitioner on 03.04.2024 has given a detailed reply, where he has stated that the land at S.No.126/2 is a Government Poramboke land, which is a vacant land used as a pathway to reach the agricultural land of various people, including the petitioner and during the agricultural activities, the agricultural produces might be placed in that vacant land that too in the harvesting season on temporary basis for a day or two days or few days not only by the petitioner but by others, who are having agricultural land in that locality.



W.P.(MD) No.11832 of 2024

WEB COPY

4. Therefore, at no point of time, there has been any encroachment in the said S.No.126/2 either by the petitioner or by any other agriculturists in that area. When that being the position, the notice that has been issued by invoking the provisions of the Act is nothing but a formal exercise, which has been undertaken by the Revenue Department in order to satisfy some other third party.

5. It is further to be noted that in the same S.No.126/2, some persons in the locality, who claim to be the devotees of the Temple called Pudhumai Udaiya Ayyanar & Karuppasamy Temple, wanted permission to construct public toilet and that permission was rejected by the proceedings of the Revenue Divisional Officer of Aruppukkottai on 03.03.2022, stating that the land in S.No.126/2 is a public pathway to be used by the agriculturists to reach various agricultural land.

6. When that being the position, all these issues had been touched upon by the petitioner in the detailed reply that has been given on 03.04.2024.

7. However, without considering that reply given by the petitioner, the 3rd respondent / Tahsildar in an usual manner has issued an order under Section 6 of the Act on 11.05.2024 in a format, where absolutely, there has been no whisper to



W.P.(MD) No.11832 of 2024

establish that the objections and the reply that have been given by the petitioner were considered by the 3rd respondent / Tahsildar before passing the said order.

8. Therefore, it has become quite clear that none of the reply or objection that has been filed or given by the petitioner through his reply dated 03.04.2024 has been considered by the 3rd respondent / Tahsildar. If those reply had been considered by the Tahsildar, he would have been known about the nature of the land at S.No.126/2 and the usage of the same by the agriculturists as a pathway and temporary usage on placing the procurements of agricultural produces and related activities.

9. Therefore, it cannot be construed as an encroachment. However, since a routine order in mechanical manner has been passed by the 3rd respondent, dated 11.05.2024, which is impugned in this Writ Petition, this Court has no hesitation to hold that the said order cannot be sustained.

10. Resultantly, the impugned order of the 3rd respondent dated 11.05.2024 is set aside and this Writ Petition is allowed. However, it is open to the 3rd respondent / Tahsildar to verify as to whether any permanent encroachment has been made by anyone including the petitioner. If so, such encroachment can



W.P.(MD) No.11832 of 2024

be removed. But temporary usage of vacant land either as a thrashing ground or procurements of the agricultural produces for shorter period during the agricultural activities cannot be construed as an encroachment. No costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J.] & [G.A.M., J.]
06.06.2024

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

Yuva

To

- 1.The District Collector,
Office of the District Collector,
Virudhunagar District.
- 2.The Revenue Divisional Officer,
Kariapatti Taluk,
Office of the District Collector,
Virudhunagar District.
- 3.The Tahsildar,
Office of Kariapatti Taluk,
Kariapatti, Virudhunagar District.
- 4.The Revenue Inspector,
Kariapatti, Kariapatti Taluk,
Virudhunagar District.



WEB COPY



W.P.(MD) No.11832 of 2024

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

Yuva

W.P.(MD)No.11832 of 2024

06.06.2024