



W.P(MD)No.13827 of 2024

**WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 28.06.2024**

**CORAM:**

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

**W.P(MD)No.13827 of 2024  
and  
W.M.P(MD)No.12162 of 2024**

Viswanathan

... Petitioner

VS.

- 1.The Block Development Officer,  
Radhapuram Panchayat Union,  
Radhapuram,  
Tirunelveli District.
- 2.The President,  
Karaichuthu Village,  
Radhapuram Panchayat Union,  
Tirunelveli District.
- 3.The Tahsildar,  
Thisaiyanvilai,  
Tirunelveli District.

... Respondents

**PRAYER :** Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the impugned order in Na.Ka.No.A3/470/2023 dated 18.06.2024 of the first respondent and consequential impugned order dated 18.06.2024 on the file of the second respondent and quash the same.



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For Petitioner

: Mr.G.Prabhu Rajadurai

For Respondents

: Mr.S.Shaji Bino  
Special Government Pleader  
for R.1 & R.2

: Mr.N.Satheesh Kumar  
Additional Government Pleader  
for R.3

**ORDER**

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

The prayer sought for herein in this Writ Petition is for a Writ of Certiorari, to quash the impugned order in Na.Ka.No.A3/470/2023, dated 18.06.2024 on the file of the first respondent and consequential impugned order, dated 18.06.2024 on the file of the second respondent and quash the same.

2.It is the contention of the respondents that the petitioner had been in occupancy of Survey No.369/2 at Karaichuthu Village, Thisaiyanvilai Taluk, Tirunelveli District. Therefore, in the earlier occasion, the President of the Panchayat of Karaichuthu Uvari Village, had issued notice purported to have been issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, that was under challenge in W.P(MD)No.16494 of 2023 filed by the very same petitioner on the ground of jurisdiction.

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3.A Division Bench of this Court, having gone through the same, has ultimately held that the Panchayat President or the Block Development Officer concerned may have power under Section 131(2) of the Tamil Nadu Panchayats Act, 1994, to take action against the removal of encroachment or retrieval of the land belonged to the Panchayat, such a power is not coupled with the power of the revenue authorities, as vested under the provisions of the Tamil Nadu Land Encroachment Act, 1905. Therefore, on that ground for want of jurisdiction, the order passed by the Village President has been quashed and it was directed to conduct the survey by the revenue authorities and to initiate action if there has been any encroachment.

4.Only pursuant to the said order passed by the earlier Division Bench of this Court, dated 10.07.2023, survey has been conducted, ultimately, according to the respondents, they found that there has been encroachment in Survey No.369/2. Therefore, the present impugned orders had been issued by the Block Development Officer as well as the Village Panchayat President, the first and second respondents, directing the petitioner to vacate and remove the encroachment in Survey No.369/2 on



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or before 29.06.2024, failing which, action would be initiated to remove such encroachment at 11.00 a.m., on 29.06.2024. Only at this juncture, the present Writ Petition has been filed challenging those orders.

5.Heard Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner, Mr.S.Shaji Bino, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.N.Satheesh Kumar, learned Additional Government Pleader appearing for the third respondent.

6.The learned counsel appearing for the petitioner would contend that the petitioner has been in occupancy of the land at Survey No. 370/2B alone and not in Survey No.369/2. It is also his claim that a portion of Survey No.369/1 also has been in occupancy of the petitioner where he has put up some fence. Therefore, only due to personal animosity, the third respondent/Village Panchayat President, in order to help some individuals in the locality, is trying to evict the petitioner as if the petitioner has been in occupancy on the encroachment of land at Survey No.369/2 but factually it is incorrect.



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7.However, the learned Special Government Pleader appearing for the respondents 1 and 2, having relied upon the detailed report given by the first respondent, ie., the Block Development Officer, has stated that after conducting a survey only, it was found that there has been encroachment in Survey No.369/2, therefore, it has to be removed. For the purpose of removal of such encroachment only, the impugned orders have been passed, based on which, on 29.06.2024 action would be taken to remove such encroachment.

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

9.Insofar as Survey No.369/2 is concerned, which is according to the respondents, is in the occupancy or encroachment of the petitioner, it is a categorical case on the part of the petitioner that he has not been in occupancy of Survey No.369/2. He has been in occupancy at Survey No.370/2B alone.



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10. Under the guise of removal of encroachment at Survey No.369/2, they may remove the petitioner's occupancy in Survey No. 370/2B and a small portion in Survey No.369/1.

11. In this context, a survey has already been conducted but it is challenged by the petitioner stating that the survey was not properly conducted, as it was conducted only at the behest of the second respondent, ie., the President of the Village Panchayat, to help some third parties.

12. Be that as it may, now since it is a categorical case of the petitioner that he has not been in occupancy of Survey No.369/2, it is open to the respondents to take action to remove whatever encroachments which are available in Survey No.369/2. In this context, in order to confirm once again such encroachment, a limited survey of three survey numbers, namely, Survey Nos.370/2B, 369/2 and 369/1 can be undertaken by the third respondent with the help of the Taluk Surveyor in the presence of the petitioner, the second respondent as well as the individuals, who have been in similar occupancy in the neighbouring lands as well as in the same lands and accordingly, after clearly demarcating the occupancy or encroachment



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of the petitioner or any other persons in Survey No.369/2, action can immediately be taken to remove such encroachment. The needful as indicated above shall be undertaken by the respondents, especially, the third respondent, within a period of four weeks from the date of receipt of a copy of this order.

13.With this direction, the Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

**[R.S.K.,J.]      [G.A.M.,J.]**  
**28.06.2024**

NCC : Yes / No  
Index : Yes / No  
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To

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**R.SURESH KUMAR,J.**  
**and**  
**G.ARUL MURUGAN,J.**

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**ORDER MADE IN**  
**W.P(MD)No.13827 of 2024**

**DATED : 28.06.2024**