



W.P.(MD) No.19018 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P.(MD) No.19018 of 2024
and
W.M.P.(MD)Nos.16095 and 16096 of 2024**

M.Pathinettan

... Petitioner

-VS-

1.The District Collector,
Madurai District.
Madurai.

2.The Tahsildar,
Melur Taluk,
Madurai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order issued by the second respondent dated 16.07.2024 and quash the same as unconstitutional and arbitrary and consequently direct the respondents to issue patta in respect of the property in Survey No. 568/13, situated in Kottakudi Village, Melur Taluk, Madurai District.

For Petitioner
For Respondents

: Mr.C.Thiruppathi
: Mr.S.P.Maharajan
Special Government Pleader



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ORDER

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

Mr.S.P.Maharajan, learned Special Government Pleader takes notice for the respondents.

2.The prayer in the Writ Petition reads as follows:-

“To issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order issued by the second respondent dated 16.07.2024 and quash the same as unconstitutional and arbitrary and consequently direct the respondents to issue patta in respect of the property in Survey No. 568/13, situated in Kottakudi Village, Melur Taluk, Madurai District.”

3.It is the claim of the petitioner that an order of eviction under Section 6 of the Land Encroachment Act, 1905, has been passed without issuing any notice under Section 7 of the Act, which has been held to be mandatory.

4.In view of the assertion made by the learned counsel for the petitioner that no notice under Section 7 was served on the petitioner, the learned Special Government Pleader was required to produce the records to show that Section 7 notice was served, was infact served.



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5.The learned Special Government Pleader upon instructions from the Revenue Inspector would submit that the Village Assistant who effected service, had retired and the acknowledgement could not be found.

6.We are afraid that we cannot accept such submission. When the Law requires a notice to be issued, notice has to be issued under proper acknowledgement. The revenue authorities cannot claim that they had served notice without acknowledgement. Therefore, the order passed under Section 6 without service of notice under Section 7 cannot be sustained.

7.Hence, the Writ Petition is allowed. The order impugned in the Writ Petition dated 16.07.2024, is set aside. It will be open to the respondents to proceed further for eviction of encroachment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

[R.S.M., J.]

[L.V.G., J.]

20.08.2024

NCC : No
Index : No
Internet : Yes
Mrn



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R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

Mrn

To

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The Tahsildar,
Melur Taluk,
Madurai District.

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