



W.P.(MD) No.19079 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2024

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.19079 of 2016

and

W.M.P.(MD) No.13782 of 2016

N.Jebasinghmani

.. Petitioner

Vs.

1.The District Collector,
District Collector's Office,
Korampallam, Thoothukudi District.

2.The Inspector of Police,
Thoothukudi District.

3.The Tahsildar,
Srivaikundam,
Thoothukudi District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the respondents not to evict the Petitioner from the Grama Natham land in Survey Nos. 198, 151, 37 situated in Kongarayakurichi Village, Srivaikundam Taluk, Thoothukudi District.



W.P.(MD) No.19079 of 2016

For Petitioner : Mr.I.Robert Chandrakumar
For R1 & R3 : Mr.B.Saravanan
Additional Government Pleader
For R2 : Mr.M.Viakkam Karunanithi

ORDER

The petitioner seeks a mandamus against the respondents not to evict him from the Gramanatham lands in S.Nos.198, 151 and 37 situate in Kongarayakurichi Village, Srivaikundam Taluk, Thoothukudi District.

2. The petitioner's contention is that an extent of 2 acres in the aforesaid survey numbers belongs to the Government. The petitioner's father, in the year 1978, had constructed a hut and was cultivating the remaining land. He had been in possession of the said land ever since then. The house constructed therein has been assessed to property tax and the same has also been paid by the petitioner. On 17.06.2005, his father Navamani had sent a representation to the first respondent stating that since he has been residing in the said property from 1978 and cultivating crops, he may be granted a patta in respect of the said lands.



W.P.(MD) No.19079 of 2016

His father had made several representations, which yielded no reply from the concerned authorities and ultimately, his father passed away on 26.09.2013. The petitioner would submit that the tax receipts earlier paid had been lost in the floods in the year 1992 and the petitioner being uneducated did not get the duplicate copies. On 24.12.2015, at around 11.00 am, the third respondent along with the Inspector of Police and Constables of Srivaikundam, trespassed into the property, threatened the petitioner and stated that the petitioner has encroached in the Government land and they would remove the trees.

3. The petitioner would submit that he did not receive any prior notice in this regard. Even as per the Land Encroachment Act, 1905, before eviction, principles of natural justice have to be followed and the person concerned is entitled to a prior notice. Therefore, the petitioner once again renewed the request for grant of patta on 31.12.2015 and there has been no response to the same. However, the threat of dispossession continues. Therefore, the petitioner has come forward with the present writ petition.



W.P.(MD) No.19079 of 2016

WEB COPY

4. A counter affidavit has been filed by the third respondent-Tahsildar, Srivaikundam Taluk, wherein the third respondent would submit that the petitioner is in occupation of the property, which is classified as the Thamiraparani River poramboke and he has encroached into the water course poramboke land and has constructed a hallow block hut and encircled it with thorny bund. He would submit that since the petitioner has encroached into poramboke land, which is under the maintenance and control of the Public Works Department (Thamiraparani Irrigation Division), every year, revenue officials would evict the petitioner and he would continue to occupy the property in question. However, the counter is silent about the fact as to whether they have taken steps for eviction after issuing notice to the petitioner.

5. Heard the learned counsel on either side.

6. Section 7 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, contemplates notice be issued to the encroacher



W.P.(MD) No.19079 of 2016

calling upon him to remove the encroachment before a date given.

Where he has not vacated within the time given, then under Section 6(2) of the said Act, the officer can remove the encroachment and take possession of the land within the boundaries of the land encroached upon. Even under the Land Encroachment Act, the encroacher is entitled to notice prior to being evicted. In these circumstances, the petitioner is entitled to a mandamus. Therefore, the respondents are restrained from evicting the writ petitioner except by due process of law.

7. In the result, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

08.08.2024

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

abr



WEB COPY



W.P.(MD) No.19079 of 2016

P.T.ASHA, J.

abr

To

- 1.The District Collector,
District Collector's Office,
Korampallam, Thoothukudi District.
- 2.The Inspector of Police,
Thoothukudi District.
- 3.The Tahsildar,
Srivaikundam,
Thoothukudi District.

W.P.(MD) No.19079 of 2016

Dated: 08.08.2024