



WP(MD). No.26726 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 08.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.S. RAMESH
AND
THE HONOURABLE Dr.JUSTICE A.D.MARIA CLETE

**WP(MD). No.26726 of 2024
and WMP(MD) No.22661 of 2024**

T.Esakkimuthu

... Petitioner

Vs

**1. The District Collector,
Tirunelveli District,
Tirunelveli**

**2.The Tahsildar
Nanguneri Taluk
Nanguneri
Tirunelveli District**

**3.The President,
Idaiyankulam Village Panchayat,
Nanguneri Taluk
Tirunelveli District**

... Respondents

PRAYER :- Writ Petition, filed under Article 226 of the Constitution of India, praying this court to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned section 6 notice under the Land Encroachment Act 1905 dated 25.10.2024 issued by the 2nd

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respondent and affixed to the petitioner's land on 05.11.2024 in Natham Survey No.702/7, Idaiyankulam village, Nanguneri Taluk, Tirunelveli District and quash the same and consequently directing the respondents to call for the enquiry on the petitioner's explanation and objection dated 14.10.2024.

For Petitioner : Mr.S.Suresh Kumar
For Respondent : Mr.S.Shaji Bino
Special Government Pleader

ORDER

(Order of the Court was made by M.S.RAMESH,J.)

By consent of both sides, the writ petition itself is taken up for final disposal at the stage of admission itself.

2. Since no adverse orders are going to be passed against the 3rd respondent, notice to the 3rd respondent is dispensed with.

3. The impugned notice issued under Section 6 of the Tamil Nadu land Encroachment Act (hereinafter referred to as 'the Act') dated 25.10.2024 by the 2nd respondent is under challenge in this writ petition.



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4. When the Tahsildar was of the view that the petitioner had encroached upon 0.07.91 hectares out of 0.14.67 hectares, in S.No.702/7 Idaiyankulam Village, Nanguneri Taluk, Tirunelveli District, notice under Section 7 of the Act was issued to the petitioner calling for his objection in this regard. Pursuant to the same, the petitioner herein had submitted a detailed reply on 14.10.2024 putting forth all his objections to the notice under Section 7 of the Act. In spite of the objections given, the Tahsildar has now passed the impugned proceedings dated 25.10.2024 under Section 6 of the Act directing him to evict from the subject property.

5. The very object of Section 7 of the Act is to extend an opportunity to the encroachers to give their objections with regard to the proposed eviction proceedings. It is only after such a notice under Section 7 of the Act is given, the respondents may be empowered to proceed under Section 6. However, while passing such order, there is a duty cast upon them to consider the explanation rendered by the encroachers to the notice given under Section 7.



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6. A perusal of the order passed under Section 6 of the Act, dated 25.10.2024 reveals that, though the 2nd respondent seems to have received the explanation given by the petitioner to the notice under Section 7, the same has not been considered. We fail to understand as to how the respondents had come to the conclusion that the petitioner is an encroacher, more particularly, when he has raised objections to the proposed eviction proceedings.

7. In view of the same, the order impugned in the writ petition is deemed to be a non speaking order and hence, cannot be legally sustained. However, we are of the view that the respondents could be granted liberty to consider the petitioner's explanation dated 14.10.2024 and then take further course of action.

8. In the light of the above, the writ petition is partly allowed and the impugned order dated 25.10.2024 is quashed and the matter is remitted back to the 2nd respondent herein for fresh consideration. The second respondent shall consider the petitioner's explanation dated



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14.10.2024 and thereafter take further course of action in accordance with the provisions of the Act and pass a speaking order. Such an exercise shall be completed, within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to cost. Consequently connected Miscellaneous Petition is closed.

[M.S.R.,J]

[A.D.M.C.,J]

08.11.2024

NCC : Yes/No

Index : Yes/No

RR

TO

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Tirunelveli

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Nanguneri Taluk
Nanguneri
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