



W.P.(MD).No.27064 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 13.11.2024

CORAM

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

W.P.(MD).No.27064 of 2024
and
W.M.P.(MD).No.22981 of 2024

Karuppazhagu

... Petitioner

Vs.

The Tahsildar,
Kovilpatti Taluk,
Thoothukudi District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned eviction notice in ந.க.ஆ3/6466/2024-24 dated 28.10.2024 passed by the respondent and quash the same as illegal and consequently direct the respondent not to interfere with the petitioner's peaceful possession in S.No.352/35 situated at Oothupatti Village, Kovilpatti Taluk, Thoothukudi District.

For Petitioner : Mr.M.Prabu

For Respondent : Mr.J.Ashok

Additional Government Pleader



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W.P.(MD).No.27064 of 2024

ORDER

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

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

2. Final order passed under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 (hereinafter referred to as 'the Act') is put under challenge in the present Writ Petition.

3. When the Tahsildar was of the view that the petitioner had encroached upon 0.0.77 hectares out of 0.38.5 hectares, in S.No.321, Oothupatti Village, Kovilpatti Taluk, Thoothukudi 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 03.09.2024 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 28.10.2024 under Section 6 of the Act directing him to evict from the subject property.



W.P.(MD).No.27064 of 2024

WEB COPY

4. 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 respondent 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.

5. A perusal of the order passed under Section 6 of the Act, dated 28.10.2024 reveals that, though the 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 respondent had come to the conclusion that the petitioner is an encroacher, more particularly, when he has raised objections to the proposed eviction proceedings.

6. 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 respondent could be granted liberty to consider the petitioner's explanation dated 03.09.2024 and then take further course of action.



W.P.(MD).No.27064 of 2024

7. In the light of the above, the Writ Petition is partly allowed and the impugned order dated 28.10.2024 is quashed and the matter is remitted back to the respondent herein for fresh consideration. The respondent shall consider the petitioner's explanation dated 03.09.2024 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 (4) weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(M.S.R.,J.) (A.D.M.C.,J.)
13.11.2024

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

To
The Tahsildar,
Kovilpatti Taluk,
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W.P.(MD).No.27064 of 2024

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W.P.(MD).No.27064 of 2024

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