



W.P.(MD)No.27351 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.P.(MD)No.27351 of 2024

and

W.M.P.(MD)No.23153 of 2024

Balasubramaniyan

: Petitioner

Vs.

The Tahsildar,
Sivakasi Taluk,
Virudhunagar District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent in Na.Ka.No.31/3/259/2024 dated 04.11.2024, quash the same and consequently directing the respondent not to interfere with peaceful possession and enjoyment of the Grama Natham property in S.Nos.220/38 and 221/29 situated at Krishnaperi Village, Sivakasi Taluk, Virudhunagar District.



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For Petitioner : Mr.C.Jeganathan
For Respondent : Mr.S.Shaji Bino
Special Government Pleader

ORDER

[Order of the Court was made by M.S.RAMESH, J.]

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.

2.When the Tahsildar was of the view that the petitioner had encroached upon 0.00.16.0 sq.mts. out of 0.00.16.0 hectares in S.No.220/38 and 0.00.26.0 sq.mts. out of 0.00.16.0 hectares in S.No.221/29, Krishnapuri Village, Sivakasi Taluk, Virudhunagar 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 04.11.2024 under Section 6 of the Act, directing him to evict from the subject property.



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3.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.

4.A perusal of the order passed under Section 6 of the Act, dated 04.11.2024 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 respondents have come to the conclusion that the petitioner is an encroacher, more particularly, when he has raised objections to the proposed eviction proceedings.

5.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 14.10.2024 and then take further course of action.



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6.In the light of the above, this Writ Petition is partly allowed and the impugned order dated 04.11.2024 is quashed and the matter is remitted back to the respondent herein for fresh consideration. The respondent shall consider the petitioner's explanation dated 14.10.2024, after giving opportunity to the petitioner as well as to any other person interested 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, the connected Miscellaneous Petition is closed.

[M.S.R.,J.] & [A.D.M.C.,J.]

15.11.2024

Neutral Citation : Yes/No

Index : Yes/No

Internet : Yes/No

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To
The Tahsildar,
Sivakasi Taluk,
Virudhunagar District.



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M.S.RAMESH, J.
and
A.D.MARIA CLETE, J.

MR

ORDER MADE IN
W.P.(MD)No.27351 of 2024

15.11.2024