



W.P.(MD)No.27873 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

AND

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.P.(MD)No.27873 of 2024

and

W.M.P(MD)Nos.23629 & 23631 of 2024

Selvam

... Petitioner

Vs.

1.The District Collector,
Theni District.

2.The Tahsildar,
Andipatti Taluk,
Theni District.

3.The Revenue Inspector,
Andipatti Taluk,
Theni District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order of the 2nd respondent, dated



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11.11.2024 in respect of issuance of an order under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 for the property situated in S.No.911/1 situated in Kovilpatti Village, Andipatti Taluk and Theni District and quash the same.

Prayer in W.M.P(MD)No.23629 of 2024: Writ Miscellaneous Petition filed under Article 226 of the Constitution of India, praying this Court to dispense with the production of the impugned order of the 2nd respondent, dated 11.11.2024 in respect of issuance of order under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 for the property situated in S.No.911/1 situated in Kovilpatti Village, Andipatti Taluk and Theni District.

Prayer in W.M.P(MD)No.23631 of 2024: Writ Miscellaneous Petition filed under Article 226 of the Constitution of India, praying this Court to stay all further proceedings in under the impugned order of the 2nd respondent, dated 11.11.2024 in respect of issuance of order under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 for the property situated in S.No.911/1 situated in Kovilpatti Village, Andipatti Taluk and Theni District.

For Petitioner : Mr.C.Susikumar

For Respondents : Mr.S.R.A.Ramachandran
Additional Government Pleader



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ORDER

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(Order of the Court was delivered by A.D. Maria Clete, J.)

Heard both sides.

2. The present writ petition challenges the eviction order dated 11.11.2024, issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, by the second respondent, the Tahsildar, Andipatti Taluk.

3. The property in Survey No.911/20, Kovilpatti Village, Andipatti Taluk, Theni District, belonged to the petitioner's grandfather namely Vellaiyathevar. After the demise of his grandfather, the said property was inherited by his father, namely Peya Devar. The property in S.Nos. 911/20 and 911/1 are classified as Natham in the revenue records. Patta has been issued to his father in respect of the property in S.No.911/20. The petitioner inherited this property after the demise of his father. The petitioner has been in continuous possession of the property for over 30 years. A house was constructed by the petitioner and his father about 30 years ago, with an additional 60-year-old structure on the land.



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4. The petitioner would submit that one Anbalagan encroached upon a public pathway situated on the west side of his property. One Saravanan and Sakthivel, on behalf of the village people, had filed a suit in O.S.No.130 of 2022 against the said Anbalagan. To divert the said issue, the said Anbalagan had approached the respondents and given a complaint as if the petitioner had encroached the property in S.No 911/1. Pursuance to the said complaint, the 3rd respondent had issued a notice, dated 01.10.2024 to the petitioner under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 for removal of encroachment in respect of S.No 911/1 and directed him to submit an explanation within 15 days. The petitioner had challenged the same in W.P(MD)No.24593 of 2024. This Court had passed the order on granting liberty to the petitioner to file an appropriate objection to the Tahsildar. The petitioner submitted his explanation on 10.10.2024 stating that he resides in his property in S.No.911/20, whereas the Section 7 Notice is issued regarding S.No. 911/1. Thereafter, the petitioner also filed a suit for declaration in O.S.No.90 of 2024, which is pending. Without considering the petitioner's representation and conducting a survey, the 2nd respondent



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had passed an eviction order regarding the property in S.No 911/1 under Section 6 of the Tamil Nadu Encroachment Act, 1905. Immediately, the petitioner filed an appeal under Section 10 of the said Act. However, the 2nd respondent insisted that they would remove the alleged encroachment immediately. Aggrieved by the impugned order of eviction under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, the petitioner is before this Court.

5. The petitioner raised the following grounds: The impugned eviction order is a non-speaking order, as it fails to provide reasons or address the petitioner's submissions. The land is classified as "Natham" and does not vest with the government, making the Tamil Nadu Land Encroachment Act, 1905, inapplicable. No proper survey or verification was conducted before passing the eviction order, rendering the process flawed.

6. When the case was heard on 21.11.2024, this Court issued the following order:

“Though the petitioner herein had submitted his explanation to the show cause notice under Section of the



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Tamil Nadu Land Encroachment Act, (hereinafter referred to as 'the Act'), final orders of eviction passed under Section 6 of the Act does not reflect consideration of his explanation. Such an order therefore is deemed to be a non-speaking order, which cannot be sustained in the eye of law. On the prima facie view, there shall be an order of interim stay.

2.This is not an isolated case, where we come across orders passed under Section 6, which do not take into consideration the objection given by the alleged encroachers to the notice issued under Section 7. The learned Government Pleader, who takes notice for the respondents, would submit that they have already intimated to all the District Collectors about these non-speaking orders being passed in a cyclostyled manner and the court's views on it.

3.The learned Government Pleader is called upon to produce the circular before us. Call on 25.11.2024.”

7. Subsequently, on 25.11.2024, the learned Additional Government Pleader submitted to this Court a communication dated 09.09.2024, bearing Roc. No. 78/GPPTK/2024, issued by Government Pleader Thiru P. Thilakkumar to 14 District Collectors in the region. The communication highlighted the order and directions issued by this Court in W.P.(MD) No. 19553 of 2024, dated 14.08.2024. The order expressly criticized and cautioned against the removal of encroachments by the Block Development Officer or Panchayat President in contravention of



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Section 131 of the Tamil Nadu Panchayats Act, 1994. It stressed the importance of serving a notice of encroachment and, in cases of non-compliance, directed that revenue authorities take action for removal in accordance with the provisions of the Land Encroachment Act, 1905.

8. The Learned Government Pleader requested the issuance of a circular incorporating the core propositions related to the removal of encroachment summarized by him as under:

(i)The Village Panchayat President/ Executive Authority/Commissioner is the competent authority who may either suo motu or on obtaining a report from the Village Administrative Officer with regard to Encroachment, institute proceedings under the Tamil Nadu Panchayats Act, 1994 and secure the removal of the encroachments in a voluntary manner from the alleged encroacher.

(ii)If the local body is unable to secure the removal of encroachment by exercising the power vested with them by orders, the officers of the revenue department (i.e the Tahsildar) alone can initiate proceedings under the Tamil Nadu Land Encroachment Act, 1905, and secure such removal of encroachment.

(iii)The Revenue Authority i.e the Tahsildar shall issue summons as per the Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and then give due opportunity to the concerned parties and then consider the objections, if any that are received.



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(iv)Only thereafter the Tahsildar shall pass orders under Section 6, for the removal of the encroachments as per the Tamil Nadu Land Encroachment Act, 1905.

9. Despite the legal guidance provided by the learned Government Pleader to various District Collectors in the region, the 2nd respondent has issued the impugned non-speaking order without adhering to the procedure established under law. The co-ordinate Bench of this Court in **W.P. (MD) No. 22251 of 2017 Arumugam Vs The District Collector dated 05.12.2017** held as follows:

It is to be remembered that even in respect of a notice issued under Section 6 of the Act, there is a right of Appeal being provided under the Act as an alternative remedy before the competent/appropriate Authority under the Act, 1905. However, in the present case, the Petitioner has not resorted to the filing of an Appeal before the concerned Authority. In regard to the facts and circumstances of the instant case, it is not in dispute that Section 7 notice was issued to the Petitioner earlier and a reply dated 20.11.2017 was sent by the Petitioner addressed to the second Respondent. However, the same was not looked into by the second Respondent. Per contra, the second Respondent, for reasons best known to him, had issued the impugned notice dated 28.11.2017 through the third Respondent. As on date, no final orders were passed by the concerned Authorities in regard to the reply of the Petitioner dated 20.11.2017 for the Section 7 notice issued to him on 01.11.2017. When no



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final orders, as on date, have been passed by the Authorities concerned, this Court is of the considered view, without passing such final orders on the said representation/reply of the Petitioner dated 20.11.2017, issuance of the impugned notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, dated 28.11.2017 (issued on 29.11.2017) is per se not correct in the eye of law. When the subject matter in issue is very much still wide-open and at large and no final orders have been passed in respect of the representation/reply of the Petitioner dated 20.11.2017 for the issuance of notice under Section 7 of the Act, 1905 dated 01.11.2017, this Court is of the considered view that the issuance of notice under Section 6 of the Act, 1905, dated 28.11.2017 addressed to the Petitioner is an illegal one and the same is liable to be set aside by this Court, in furtherance of substantial cause of justice. Viewed in that perspective, this Court interferes with the impugned notice dated 28.11.2017 of the third Respondent and sets aside the same, to prevent an aberration of justice. Consequently, the Writ Petition succeeds.

10. It is regrettable that, despite the cited precedent and the guidance issued by the Government Pleader, the concerned revenue officials continue to issue eviction orders in an arbitrary manner. Furthermore, in the cited judgement it is clearly held that issuing an eviction notice under Section 6 of The Tamil Nadu Land Encroachment Act, 1905, without passing a final order pursuant to the show cause



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notice issued under Section 7 of the Act, is illegal. Despite a plethora of judgments on this matter, the authorities persist in repeating these illegal acts.

11. In this case, the 3rd respondent served a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, dated 01.07.2024, granting the petitioner time until 15.10.2024 to file a reply. The petitioner submitted his reply on 10.10.2024. However, no final or speaking order was passed pursuant to the Section 7 Notice. Instead, an eviction order dated 11.11.2024 was directly issued, rendering the issuance of the Section Notice a mere formality.

12. In his reply, the petitioner stated that he was in possession of property comprised in S.No.911/20, not in S.No.911/1. The petitioner also requested a survey inspection to ascertain the facts. Despite this, the 2nd respondent failed to verify whether the property in the petitioner's possession was indeed S.No.911/1. Instead, the 2nd respondent proceeded to pass an order under Section 6 of the Act without ascertaining the facts, reflecting a negligent and indifferent attitude.



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13. It has also been brought to our attention that the petitioner has already filed an appeal before the 1st respondent under section 10 of the Act. However, as mentioned earlier, the 2nd respondent has not yet passed any order pursuant to the Section 7 notice. Consequently, the 1st respondent cannot effectively decide the appeal on its merits, rendering the process a mere waste of time. Therefore, we have resolved to proceed with this appeal and issue an order.

14. Accordingly, the impugned notice dated 11.11.2024 is hereby set aside. Consequently, this writ petition is allowed with costs of Rs.25,000/- (Rupees Twenty-Five Thousand only), which shall be deposited to the credit of Account No.10767823177 (State Bank of India) towards District Siddha Medical Officer, CCRI, Periyakulam, within a period of two weeks. The imposition of costs is intended to prevent the recurrence of similar issues, conserve valuable judicial time, and alleviate the hardships faced by individuals like the petitioner, who are compelled to seek relief unnecessarily. The second respondent is directed to pass a reasoned and speaking order, considering the



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petitioner's reply dated 10.10.2024 to the Section 7 notice dated 01.10.2024 by providing necessary opportunity to the petitioner after following the principles of natural justice and complete the exercise, expeditiously, not later than six weeks from the date of receipt of this order. If the petitioner is aggrieved by any order passed by the second respondent, they may seek appropriate remedy before the appropriate authority. Registry is directed to forward a copy of this order to the Principal Secretary to the Government of Tamil Nadu, Revenue and Disaster Management Department, enabling him to give suitable instructions to the Officers in this region. Connected Miscellaneous Petitions are closed.

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

25.11.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes/ No

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To
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1.The Principal Secretary to the Government of Tamil Nadu, Revenue and Disaster Management Department.

2.The District Collector, Theni District.

3.The Tahsildar,
Andipatti Taluk,
Theni District.

4.The Revenue Inspector,
Andipatti Taluk,
Theni District.



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M.S.RAMESH,J.

DR.A.D.MARIA CLETE,J.

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