



WP(MD). No.30679 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 18.12.2024

CORAM

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

**WP(MD). No.30679 of 2024
and WMP(MD) Nos.25761 and 25762 of 2024**

S.Balan

... Petitioner

Vs

**1. The District Collector,
Collectorate,
Theni District..**

**2. The Tahsildar,
Andipatti Taluk,
Theni District..**

**3. The Block Development Officer,
K.Mayiladumparai,
Theni District..**

**4. The Revenue Inspector,
Mayiladumparai,
Theni District..**

5. S.Seenivasan

... Respondents



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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 pertaining to the Impugned Order dated 11.12.2024 issued under Section 6 of the Land Encroachment Act, 1905 on the file of the respondent No.2 and quash the same as illegal and consequently directing the respondents not to disturb the peaceful possession of the petitioners dwelling house situated in Natham Poromboke Land in Survey No. 1847/13 and 1848/28 (Old Survey No. 298/2 and 300), Mayiladumparai Village, Andipatti Taluk, Theni District.

For Petitioner : Mr.T.Joshua
For Respondents : Mr.S.Shaji Binu for R1 & R2
Special Government Pleader
Mr.J.Ashok for R3
Additional 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. 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.



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3. When the Tahsildar was of the view that the petitioner had encroached upon 0.39 sq. mtrs and 0.05.88 out of 0.11.29 and 0.05.88 Ares respectively, in S.Nos.1847/13 and 1848/28 in Mayiladumbarai Village, Andipatti Taluk, Theni District 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 23.10.2024 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 11.12.2024 under Section 6 of the Act directing him to evict from the subject property.

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 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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5. A perusal of the order passed under Section 6 of the Act, dated 11.12.2024 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 failed 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.

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 respondents could be granted liberty to consider the petitioner's explanation dated 23.10.2024 and then take further course of action.

7. In the light of the above, the writ petition is partly allowed and the impugned order dated 11.12.2024 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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23.10.2024 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 Petitions are closed.

[M.S.R.,J]

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

18.12.2024

NCC : Yes/No

Index : Yes/No

RR

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