

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:23.02.2015

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.P.No.201 of 2015

P.Mohanasundaram

... Petitioner

V.

1.The District Collector,
Kancheepuram District,
Kancheepuram, Tamil Nadu.

2.The Revenue District Officer,
Tambaram Taluk,
Tambaram, Chennai.

3.The Tahsildar,
Tambaram Taluk,
Tambaram, Chennai.

4.R.Ammu

5.M.Rathinasababathi

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the 1st Respondent to implement his order No.30200/12/N.2 dated 03.02.2013 passed in accordance with the direction of this Court in W.P.No.31320 of 2012 order dated 26.11.2012 in respect of the shed erected by 4th and 5th Respondents 30' x 27' measuring 810 sq. ft. blocking the entry road to the petitioner's land in T.S.No.14/1, R.S.No.10/1 belonging to Government of Tamil Nadu at Kannadapalayam Village, Tambaram Taluk, Kancheepuram District, which is being maintained by High Way Department, to remove the shed and clear the encroachment at expeditiously as possible.

For Petitioner

: Mr.K.Alagiriswamy
Senior Counsel
For Mr.R.Sankarasubbu

For Respondents 1 to 3

: Mr.P.S.Sivashanmugasundaram
Special Government Pleader

For 4th Respondent

: Mr.G.Maneeekshaw

ORDER

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

The Petitioner has filed the instant Writ Petition praying for passing of an order by this Court in directing the 1st Respondent to implement his order No.30200/12/N.2 dated 03.02.2013 passed in accordance with the direction of this Court in W.P.No.31320 of 2012 in respect of the shed erected by the 4th and 5th Respondents 30 x 27 measuring 810 sq.ft. blocking the entry road to the Petitioner's land in T.S.No.14/1, R.S.No.10/1 belonging to Government of Tamil Nadu at Kannadapalayam Village, Tambaram Taluk, Kancheepuram District [which is being maintained by Highways Department] to remove the shed and clear the encroachment as expeditiously as possible.

2.According to the Petitioner, he purchased the agricultural land in the year 1980 and was engaged in the cultivation of the land, till recently at Kannadapalayam, Tambaram Taluk, Kancheepuram District measuring an extent of about 2.85 acres. Further, he had prepared a layout plan for the approval of housing sites of his land and submitted to the Municipality of Tambaram on 20.08.2010. As a matter of fact, the Municipality of Tambaram forwarded the same with their report to Chennai Metropolitan Development Authority in Ref.No.L1/1493/2011 dated 30.12.2010.

3.It is the stand of the Petitioner that he received a copy of the letter from the Chennai Metropolitan Development Authority, in L1/1493/2011 dated 30.12.2011, requiring him to obtain a certificate about the status of abutting road from the proposed layout from the Commissioner, Tambaram Municipality and forwarded the same from the office of C.M.D.A. In fact, the authorities of the Tambaram Municipality inspected the site and found that a shed was being erected on the Government land in their presence by S.Ravi, husband of 4th Respondent, completely blocking the layout entry connecting inner roads of the layout plan submitted to Chennai Metropolitan Development Authority.

4.The Learned Senior Counsel for the Petitioner brings it to the notice of this Court that the Petitioner projected W.P.No.31320 of 2012 before this Court praying for passing of an order by this Court to initiate proceedings for demolition of unauthorized shed erected blocking the entry road of Petitioner's layout plan belonging to the Government of Tamil Nadu comprised in T.S.No.14/1, R.S.No.10/1 situated in the approach road laid by

the Municipality of Tambaram and as such, this Court passed an order dated 26.11.2012 in the said Writ Petition directing the 2nd Respondent therein to consider and pass orders on the representation dated 24.07.2012, in accordance with law, after affording an opportunity of hearing to Respondents 3 and 4 therein.

5.It comes to be known that the 1st Respondent conducted an enquiry by sending notices to the Petitioner and the Respondents 4 and 5. Also, the Village Administrative Officer, Kannadapalayam Village and Surveyor of Tambaram Taluk were called to appear at the 1st Respondent's Office at Kancheepuram at 11.00 a.m. on 10.01.2012 with relevant records and documents.

6.The Learned Senior Counsel for the Petitioner proceeds to submit that the 5th Respondent, who had fraudulently registered the sale deed, refused to receive the notice of the 1st Respondent/District Collector, Kancheepuram and had not appeared for enquiry. However, others were present in the enquiry and the 1st Respondent/District Collector passed an order in Ref.No.30200/12/N2 dated 03.02.2013 and a copy of the same was sent to him by post which was received on 18.02.2013. In fact, the 1st Respondent on 03.02.2013 passed orders directing the Sub Registrar, Tambaram to cancel the sale deed registered in No.5242 of 2011 dated 28.10.2011 as the 5th Respondent had no right to execute the sale deed and directing the 2nd Respondent to file criminal complaint in the Central Crime Branch, Egmore, Chennai for selling the Government land by fraudulently manipulating and registering the sale deed with Sub Registrar, Tambaram. That apart, the 1st Respondent had directed the 3rd Respondent to remove the obstructions as per Revenue Records of Village Administrative Office and Tambaram Town revenue records. Indeed, nearly two years have passed by and till date the order of the 1st Respondent dated 03.12.2013 is pending. In such a background, the Petitioner has filed the present Writ Petition.

7.In response, the Learned Special Government Pleader for Respondents 1 to 3 contends that the 1st Respondent had conducted an enquiry and passed order on 03.02.2013 directing the 3rd Respondent to remove the encroachment, if any, after ascertaining the status on ground with reference to village accounts and further that, on verification of the Village Accounts, it was found that prior to Town Survey, the Survey No.10/1, 0.20.0 hectare stands in the name of Tamil Nadu Slum Clearance Board under Patta No.144 and during the Town Survey, the aforesaid land was denoted as Town Survey No.14/1, 0.20.0 hectare, Ward C, Block 19, Royathwari, Wet, Tamil Nadu Government.

8. Moreover, it is also represented on behalf of the Respondents 1 to 3 that the status of the land verified with record of the Assistant Commissioner, Urban Land Tax, Tambaram @ Adambakkam, Chennai 600 088 and it was found that an extent of 2000 square metres of land in Old Survey No.10/1 were acquired under Section 9(5) of the Tamil Nadu Urban Land Ceiling Act, 1978 and later in terms of G.O.No.391 Revenue (ULT 1-2) Department dated 17.09.2003, the aforesaid land among other lands were ordered to be allotted to the Tamil Nadu Slum Clearance Board. Since the land in question is vested with the Tamil Nadu Slum Clearance Board, it came to light that the 4th Respondent had purchased an extent of 810 square feet in Survey No.10/1, Plot No.35A as per Document No.5242/2011 dated 28.10.2011.

9. It is also brought to the notice of this Court that the 4th Respondent had filed O.S.No.65 of 2013 on the file of the Learned District Munsif, Tambaram seeking the relief of permanent injunction against one Mohanasundaram and since the land in question is vested with the Tamil Nadu Slum Clearance Board, the encroachment, if any, is to be removed by the Board itself.

10. Apart from the above, the Learned Special Government Pleader for Respondents 1 to 3 submits that in view of the encroachment made by the 4th Respondent in Government land, notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 was issued to the 4th Respondent on 13.02.2015 by granting 15 days time to file her reply and after following the statutory time and procedure, the final notice would be issued and eviction in the said land would be complied with.

11. By means of reply, the Learned Senior Counsel for the Petitioner contends that the land in question, concerned in the Writ Petition, is a road which serves the habitation and in fact, the land in question is being used as a road on which the 4th Respondent had made an encroachment with a width of 30 feet and breadth of 27 feet by fraudulent and false sale deed dated 28.10.2011. Moreover, the Police had also filed F.I.R.No.25 of 2014 dated 11.02.2014 under Sections 465, 468 and 471 of Indian Penal Code for forgery, cheating, using forged document and the matter is under investigation by the CCB - II, Egmore, Chennai.

12. It is to be borne in mind that the Writ Petitioner herein earlier filed W.P.No.31320 of 2012 before this Court against the Respondents (viz., 1. Government of Tamil Nadu, 2. District Collector, Kancheepuram District, 3. R.Ammu, 4. M.Rathinasababathi), in which, this Court, on 26.11.2012, passed an order directing the 2nd Respondent/District Collector, Kancheepuram District to consider and pass orders on the representation of the Petitioner dated 24.07.2012 in accordance

with law, after affording an opportunity of hearing to Respondents 3 and 4.

13.As far as the present case is concerned, in view of the fact that the 4th Respondent was issued with the notice dated 13.02.2015 under Section 7 of the Land Encroachment Act, 1905 (read with Rule (3) of the Land Encroachment Rules) requiring her to appear in person or to file a reply in writing and therefore, this Court, based on Equity, Fair Play, Good Conscience, on balance and as a matter of prudence, directs the authorities concerned to consider the reply to be filed by the 4th Respondent (pursuant to the notice dated 13.02.2015 wherein the 4th Respondent was granted time till 28.02.2015) and to pass reasoned speaking orders on merits thereafter under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, by taking into account of all the attendant facts and circumstances of the present case in an integral manner and in accordance with law (of course after providing adequate opportunity of hearing to the 5th Respondent), within a period of four weeks from the date of receipt of copy of this order.

14.With the above direction and observation, the Writ Petition stands disposed of. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

Sgl

To

1.The District Collector,
Kancheepuram District,
Kancheepuram, Tamil Nadu.

2.The Revenue District Officer,
Tambaram Taluk, Tambaram, Chennai.

3.The Tahsildar, Tambaram Taluk,
Tambaram, Chennai.

1 cc to Mr.R. Sankarasubbu, Advocate, Sr. 9658

1 cc to the Government Pleader, Sr. 9843

W.P.No.201 of 2015

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