

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.25339/2014 and MP.Nos.1/2014 & 1&2/2015

K.V.S.Kuberan

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Petitioner

Versus

- 1.The District Collector
Thiruvallur District,
Thiruvallur.
- 2.The Tahsildar
Thiruttani, Thiruvallur District.
- 3.The Inspector of Police
Thiruttani, Thiruvallur District.
- 4.The Superintendent of Police
Thiruttani, Thiruvallur District.
- 5.The Home Secretary
Government of Tamil Nadu
Fort St George, Chennai 600 009.
- 6.The Revenue Secretary
Government of Tamil Nadu
Fort St George, Chennai 600 009.

7.Loganathan

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Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus forbearing the respondents their men, agents, servants or any other persons claiming through/under them, from interfering with the peaceful possession of the property bearing Plot Nos.4,5,6,9,10,11,13,14,15,16 and 17 altogether measuring 26,400 sq.ft. comprised in Old S.No.29/2, New S.No.29/2A4, Akkaiah Naidu Street, Thiruttani Village and Town, Thiruvallur District.

For Petitioner :	Mr.S.V.Jayaraman, Senior Counsel for Mr.P.Srinivasan
For RR 1 to 6 :	Mr.R.Vijayakumar, AGP
For R7 :	No appearance

ORDER

Heard Mr.S.V.Jayaraman, learned Senior Counsel assisted by Mr.P.Srinivasan, learned counsel appearing for the petitioner and Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents 1 to 6 and perused the materials available on record.

2.The petitioner seeks for issuance of a writ of mandamus to forbear the respondents from interfering with the peaceful possession and enjoyment of the property bearing Plot Nos.4,5,6,9,10,11,13,14,15,16 and 17 altogether measuring 26,400 sq.ft. comprised in Old S.No.29/2, New S.No.29/2A4, Akkaiah Naidu Street, Thiruttani Village and Town, Thiruvallur District.

3.The case of the petitioner is that during the year 1980, one Nagamani Ammal and others developed the property comprised in S.No.29/2, Tiruttani village, into a layout and obtained DDTCP approval bearing Approval No.59/1971. It is the further case of the petitioner that the said Nagamani Ammal sold Plot Nos.9,10,13,14 and 15 to the petitioner's mother vide Sale Deeds dated 11.10.1980 and 13.10.1980 registered as Document Nos.2241/1980 and 2242/1980 on the file of the Sub Registrar, Tiruttani. The petitioner's mother is said to have settled the property in favour of the petitioner's elder brother KVS Nagarajan and subsequently, the petitioner's brother settled the property in favour of the petitioner's mother vide Document No.1504/2006 and again, a Settlement Deed has been executed by the petitioner's mother in favour of the petitioner and his brother in Document No.2899/2006. The petitioner claims to be in absolute possession and enjoyment of the property based on the Settlement Deed and it is submitted that he has perfect title by virtue of these documents. When there was an attempt to dispossess the petitioner, the petitioner filed this present writ petition before this Court for the aforementioned prayer.

4.The documents referred to in the preceding paragraph have been placed in the typed set of papers, viz., the 2 Sale Deeds, dated 11.10.1980, 13.10.1980 and the 3 Settlement Deeds, dated 28.03.2003, 21.06.2006 and 28.07.2006. The petitioner, admittedly does not have any patta ; but has been granted an Enjoyment Certificate dated 05.08.2013 by the Tahsildar, Tiruttani, stating that the petitioner is in enjoyment of the said property.

5.The respondents have filed a counter affidavit contending that the land in question has been classified as "Malai Poramboke" and the land has been identified for being given to the Police Housing Corporation for construction of the Police Quarters and the petitioner has absolutely no right or title in the said property. With regard to the DDTCP Approval No.59/1971, the Tahsildar, Tiruttani, has given a written instruction to the learned Special

Government Pleader vide his Letter No.Rc.10813/2012/A1 dated 23.03.2015, wherein the Tahsildar has stated as follows:-

"2154-71-படி திருத்தணி பேரூராட்சிக்கு வழங்கப்பட்ட மனைப்பிரிவு , வரைபடம் புல எண் 29/2ஏ4-ல் பொருத்த இயலாத நிலை உள்ளது".

6.In terms of the above report of the Tahsildar, it is stated that the said DDTCP approved layout which has been purchased by the petitioner, does not have any relevance to the particular property, viz., the property in S.No.29/2A4. Learned Additional Government Pleader has produced the copies of the Adangal from Fasli 1377 till Fasli 1413 and the copy of the 'A' Register and the Field Measurement Book [FMB]. By referring to the Adangal for the year 1967, it is stated that the land has been classified as "Malai Poramboke".

7.On a careful scrutiny of the Adangal produced before this Court, it is seen that though it has been stated as "Malai Poramboke", the name of the petitioner's mother's vendor Nagamani Ammal finds place in Serial No.57 in the Adangal, for the Fasli year 1378. Apart from that, there are names of around 88 persons who are said to be in possession of the meager extent of lands. It is admitted by the respondents that there are several encroachers and they would state that the petitioner is also one such encroacher and the land in question is a vacant land, identified to be suitable for construction of Police Quarters and in respect of encroachers, they have put up permanent structure and they are residing there. The FMB sketch has been produced to show that the property in S.No.29/2A4 of the said layout does not fit with the land in question as mentioned in the approved layout.

8.From the above facts, it is evidently clear that though the property has been classified as "Malai Poramboke" or a Government property, there are encroachers. This fact has not been denied by the Revenue. However, the respondents seek to proceed only as against the writ petitioner as it appears that the land is still lying vacant and it is a contiguous extent of about 26,400 sq.ft. Though the petitioner claims to have acquired the title by virtue of Settlement Deed executed by his mother and his brother, having purchased the property in the year 1980 from Nagamani Ammal, it has to be seen as to whether the petitioner's mother's vendor had a saleable interest in the property. This is very doubtful since the land in question has been classified as "Malai Poramboke". Therefore, at best, Nagamani Ammal could have been construed as an encroacher as that of other encroachers. The next question to be considered is as to whether an encroacher could have sold the property. The only answer to this question can be in the negative since an encroacher has no right to deal with the Government property.

9.In any event, a Sale Deed was executed in the year 1980 in favour of the petitioner's mother, who had, in turn, settled the property in favour of the petitioner and his brother. In such circumstances, if the petitioner has to be dispossessed, then the respondents have to resort to the procedure established by law and thereafter only, take action.

10.With the above observation, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The District Collector
Thiruvallur District,
Thiruvallur.

2.The Tahsildar
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+1 cc to Government Pleader, SR.16684

+1 cc to M/s.P.Srinivasan, Advocate, SR.16592.

ppa (co)
krd 7/4

WP.No.8210 of 2015