

In the High Court of Judicature at Madras

Dated: 17.06.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and

The Hon'ble Mr.Justice M.VENUGOPAL

W.P.No.5072 of 2015
and M.P.No.1 of 2015

K.M.Subbaiyan

.. Petitioner

Vs.

1.The District Collector,
Erode District, Erode.

2.The Tahsildar,
Sathyamangalam Taluk,
Erode District.

3.The Revenue Inspector,
Bhavani Sagar,
Erode District.

4.G.V.Subbaiyan ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus, calling for the records relating to the impugned order of eviction passed by the Second Respondent dated 30.01.2015 and to quash the same, consequently, direct the Respondents not to evict the Petitioner from Natham Poramboke Land in the Petitioner's occupation in Survey No.343/9, Thoppampalayam Village, Sathyamangalam Taluk, Erode District.

For Petitioner : Ms.P.T.Rama Devi
for Mr.V.Bharathidasan

For Respondent : Mr.P.S.Shivashanmugasundaram
Nos.1 to 3 Special Government Pleader

For Respondent-4 : Mr.D.Gopal

O R D E R

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

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records relating to the impugned order of eviction passed by the Second Respondent dated 30.01.2015 and to quash the same. Further, he has sought for issuance of direction to the Respondents not to evict him from Natham Poramboke Land in his occupation in Survey No.343/9, Thoppampalayam Village, Sathyamangalam Taluk, Erode District.

The Summation of Facts:-

2. According to the Petitioner, he is the owner of the house site in Survey No.343/3, Thoppampalayam Village, Sathyamangalam Taluk, Erode District. Further, the aforesaid land is classified as Natham and a patta was also granted in his favour in Natham Settlement Scheme Patta No.178 by the Special Tahsildar, Natham Settlement Scheme. Adjacent to his property, a small extent of land in S.F.No.343/9 is in possession and occupation of his family from time immemorial, which is also classified as 'Natham Poramboke'. Although the aforesaid land is in their possession, in the revenue records, it was wrongly mentioned as pathway whereas a part of the residential house is situated in the said survey number and it was never used as pathway.

3. Earlier, the Fourth Respondent filed the Writ Petition before this Court in W.P.No.27161 of 2014, seeking direction to the revenue authorities to remove the construction made by the Petitioner in the aforesaid survey number and impleaded him as Fifth Respondent. At the time of disposal of the Writ Petition, it was represented that already Revenue Divisional Officer, Gobichettipalayam initiated action and based on the same, this Court was pleased to pass a final order in the said Writ Petition on 06.11.2014 which runs as under:-

"3. Based on the representation of the petitioner, the Revenue Divisional Officer, Gobichettipalayam, issued a memo to the Tahsildar on 26.08.2012, seeking a report. A reminder was also sent on 28.08.2013 and no report having been sent, the matter is pending.

4. Since the Revenue Divisional Officer, Gobichettipalayam, the 3rd respondent herein has already initiated action, without expressing anything on merits, he is directed to consider the representation submitted

by the petitioner dated 20.08.2013 and pass appropriate orders on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order, after hearing the petitioner as well as the 5th respondent."

4. When that be the fact situation, the Third Respondent/Revenue Inspector, Bhavani Sagar, Erode District had issued notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 to the Petitioner on the basis that he has been in possession and enjoyment of the Government land and further, directed him to show cause why he should not be evicted and also, directed him to give his objection if any on or before 28.01.2015. Since after receipt of the notice, he had given a reply to the Respondents 2 and 3 on 28.01.2015 stating that the aforesaid land is in their possession and occupation for more than 100 years and it is classified as Natham and the land was never used as pathway. Moreover, he had requested them to conduct a full fledged enquiry by affording personal hearing enabling him to satisfy the authorities. However, without considering none of his objections and without conducting any enquiry whatsoever, the Second Respondent had passed an impugned notice dated 30.01.2015, directing the Petitioner to evict the premises within 15 days and further, he was informed that failing which, he would be evicted by the Third Respondent. In fact, the said notice was issued in printed format without considering any of his objections and also, without following the direction issued by this Court in W.P.No.27161 of 2014.

5. In effect, the plea taken on behalf of the Petitioner is that the impugned order of eviction passed by the Second Respondent dated 30.01.2015 is per se illegal, arbitrary and without any jurisdiction and also, in utter disobedience of the orders passed by this Court in the earlier Writ Petition and also in negation of Principles of Natural Justice. Hence, he has projected the present Writ Petition.

6. The Learned counsel for the Petitioner contends that the impugned order dated 30.01.2015 passed by the Second Respondent is illegal, arbitrary, besides the same being without jurisdiction and also in violation of Principles of Natural Justice.

Petitioner's Contentions:

7. The Learned counsel for the Petitioner urges before this Court that the Second Respondent/Tahsildar, Sathyamangalam Taluk, Erode District had passed the impugned order in total violation of the order passed by this Court in W.P.No.27161 of 2014 dated 06.11.2014, wherein, this Court had directed the Revenue Divisional

Officer, Gobichettipalayam to consider the representation submitted by the Fourth Respondent herein and to pass orders after hearing Petitioner as well as the Fourth Respondent. In reality, the aforesaid order was passed on the basis that already Revenue Divisional Order, Gobichettipalayam had initiated action by seeking a report from the Second Respondent/Tahsildar, Sathyamangalam Taluk, Erode District, wherein, the said Tahsildar was also a party in the earlier Writ Petition.

8.The real grievance of the Petitioner is that in utter disobedience of this Court, the Second Respondent/Tahsildar passed the impugned order dated 30.01.2015 without jurisdiction and also means to contempt of the orders passed by this Court. Further, it is represented on behalf of the Petitioner that the Petitioner reserves his rights to initiate proper proceedings against the Second Respondent.

9.The core stand taken on behalf of the Petitioner is that land in dispute is a 'Natham Poramboke' and that Tamil Nadu Land Encroachment Act, 1905 is not applicable to the said Poramboke land because of the prime reason that the said land never vested with the Government. The said land was specifically excluded from purview of the Tamil Nadu Land Encroachment Act, 1905. Therefore, it is projected on the side of the Petitioner that the Second Respondent/Tahsildar has no power or jurisdiction to invoke the Tamil Nadu Land Encroachment Act to evict the Petitioner.

10.Lastly, it is contended on behalf of the Petitioner that the impugned order of eviction dated 30.01.2015 passed by the Second Respondent is without conducting any enquiry and without providing any opportunity to the Petitioner and therefore, the said order is liable to be set aside in furtherance cause of justice.

11.The Learned Special Government Pleader appearing for the Respondents 1 to 3 submits that the land in question is not a 'Gramma Natham' and the illegal construction of the building in the land in issue is an objectionable one because of the reason that it cause hindrance to the adjacent dwellers and others being used as pathway. As a matter of fact, the pathway is running to Natham causes more hurdles to the passers by. Added further, the Respondents 1 to 3 had initiated action to evict the unlawful encroachment by issuing notice then and thereby in accordance with law under Sections 6 & 7 of Tamil Nadu Land Encroachment Act, 1905.

12.The Learned Special Government Pleader for the Respondents 1 to 3 proceeds to contend that the eviction of encroachment was initiated on the basis of the order dated 06.11.2014 in W.P.No.27161 of 2014 passed by this Court and that the Second

Respondent/Tahsildar was instructed to take steps to evict the encroachment by issuing notices in accordance with Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act 3 of 1905). Also that the eviction of encroachment is carried out in a proper manner and in fact, the Hon'ble Apex Court in its judgment in SLP [c] No.3109 of 2011 dated 28.01.2011 had directed that no encroachment in water bodies or pathways should be allowed and therefore, the Government is closely watching the unlawful encroachment in the Government lands and issuing instructions then and there to the Respondents 1 to 3 to evict encroachers with a view to the benefit of public at large.

13.It comes to be known that the Third Respondent/Revenue Inspector, Bhavani Sagar, Erode District had issued Section 7 notice under Tamil Nadu Land Encroachment Act, 1905 to the Petitioner requiring him to vacate from the land which is owned by the Government and 15 days time was granted to vacate from the said land. In fact, the Petitioner had submitted his explanation to the said notice on 28.01.2015, inter-alia stating that for more than 100 years he is in enjoyment of one of the house at Survey No.343/9 and he could not be evicted from the land in question and also that the survey No.343/9 was not used as pathway at any point of time. Moreover, the house site at Thoppampalayam Village situated in Survey No.343/3 (Patta No.178) is classified as 'Natham' etc.

14.It transpires that on 20.01.2015, the Third Respondent/Revenue Inspector had issued a show cause notice to the Petitioner requiring him to vacate from the land in question within 15 days etc. In fact, the Petitioner had submitted his explanation/representation dated 28.01.2015 for the issuance of Notice under Section 7 to him. In fact, the W.P.No.27161 of 2014 filed by one V.R.Subbian against the First Respondent/District Collector, Erode District and four others (in which the present Petitioner is figured as Fifth Respondent) wherein, a direction was issued to the Revenue District Officer, Gobichettipalayam (Third Respondent therein) directed to consider the representation dated 28.01.2015 submitted by the Petitioner therein and pass proper orders on merits and in accordance with law from the date of receipt of this order.

15.There is no dispute to the fact that the present Writ Petition in W.P.5072 of 2015 who was arrayed as Fifth Respondent in W.P.No.27161 of 2014 filed by one G.V.Subbian only because of the reason that the Revenue Divisional Officer, Gobichettipalayam had already initiated action in W.P.No.27161 of 2014 on 06.11.2014, this Court had directed to consider the representation of the Petitioner dated 20.08.2013 (G.V.Subbian) to be considered on merits and to pass order in accordance with law within six weeks from the date or receipt of a copy of this order after hearing the

Petitioner therein as well as the present Petitioner (G.V.Subbian in W.P.No.5072/2015). It appears that the impugned notice dated 30.01.2015 passed by the Second Respondent/Tahsildar by not adhering the tenor of the earlier order passed by this Court in W.P.No.27161 of 2014 dated 06.11.2014 i.e., the present Writ Petitioner (in W.P.No.5072 of 2015) even though was directed to be heard along with G.V.Subbian, the same was not followed and there appears to be violation of this Court orders passed in W.P.27161 of 2014 dated 06.11.2014. On this simple ground alone to prevent aberration of justice and to promote substantial cause of justice, this Court sets aside the impugned order dated 30.01.2015 passed by the Second Respondent. Consequently, the Writ Petition succeeds.

In the result, the Writ Petition is allowed and the impugned order dated 30.01.2015 issued by the Second respondent/Tahsildar is hereby set aside by this Court for the reasons assigned in the Writ Petition. It is made clear that allowing the present Writ Petition by this Court will not preclude the proper Competent / Appropriate Authority to initiate action against the Petitioner afresh, of-course, in the manner known to Law and in accordance with Law after taking into consideration of the written objections/explanations dated 28.01.2015 submitted by him for the notice issued in question and to pass a reasoned speaking order on its own merits by outlining the process of reasoning and adhering to the principles of Natural Justice in true letter and spirit. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

सत्यमेव जयते

DP

To

1.The District Collector,
Erode District, Erode.

2.The Tahsildar,
Sathyamangalam Taluk,
Erode District.

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3.The Revenue Inspector,
Bhavani Sagar,
Erode District.

2 cc to Government Pleader.Sr.No.29771, 29777

W.P.No.5072 of 2015
and M.P.No.1 of 2015

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pmk.2.7.2015



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