

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2016

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE M. V.MURALIDARAN

W.P.No.14518 of 2015
and
M.P.Nos.2 and 3 of 2015

1. Suresh
2. Govindasamy
3. Periasamy

.... Petitioners

Vs

1. The District Collector
Tiruppur District
Tiruppur.
2. The Revenue Divisional Officer
Tiruppur District
Tiruppur.
3. The Tahsildar
Avinashi Taluk
Avinashi
Tiruppur District.
4. Appusamy

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the second respondent herein dated 24.04.2015 in Na.Ka.No.4950/2014/A4 and to quash the same.

For Petitioners : Ms.P.T.Asha
M/s.Sarvabhauman Associates

For Respondents : Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader
for RR1 to 3
Mr.K.Govi Ganesan for R4

ORDER

(Order of the Court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the parties concerned.

2. The prayer in the writ petition is to quash the order passed by the second respondent dated 24.04.2015 in Na.Ka.No.4950/2014/A4 in directing the petitioners to remove the encroachment other than the house site, in which the petitioners are residing.

3. It appears that an allegation is made against the petitioners that they have encroached upon the Government lands in Survey No.116/17 in Kalipalayam Pudur, Kalipalayam Village, Avinashi Taluk, Tiruppur to an extent of 26.37 cents, which is meant to serve the villagers for the purpose of conducting village customary functions and temple festivals.

4. The case of the petitioners is that they are in possession and enjoyment of the said lands for the past so many years along with the house sites. The further case of the petitioners is that earlier the third respondent, Tahsildar had directed the petitioners to hand over vacant possession of the excess land, which they are holding by stating that patta can be granted only to an extent of 2 cents of Natham land. The petitioners, challenged the said order before this Court, on the ground that no notice or whatsoever has been issued to them before passing such an order. Hence, this Court directed the third respondent to treat the said order as a show cause notice to the petitioners and after giving an opportunity of hearing the parties, directed the third respondent to pass appropriate orders on the same. It is further seen that the second respondent, Revenue Divisional Officer had also passed an order to the effect that since the petitioner had encroached upon 20 cents of land by putting up fencing, they were directed to remove the same. Aggrieved by the same, the petitioners approached this Court and this Court dismissed the said writ petition granting liberty to the petitioners to file an appeal. Pending disposal of the appeal, the third respondent herein had directed the Land Inspector, Perumanallur to remove the encroachment and the second respondent also without referring to the objections filed by the petitioners has passed the impugned order.

5. The very argument of the learned counsel for the petitioners is that the lands occupied by the petitioners are Natham lands and hence, the provisions of the Land Encroachment Act cannot be invoked for such Natham lands as the Government has got no right over the same. Accordingly, she contended that the action initiated by the respondent-authority is without any basis.

6. On a perusal of the impugned order, it is seen that the lands, which are in possession and enjoyment of the petitioners are admittedly, Grama Natham lands. What is in dispute is that the petitioners are said to be in illegal occupation of 20 cents of land over and above the lands allotted to them, which is meant for the purpose of serving the villagers during festival times. The contention of the learned Special Government Pleader appearing on behalf of the respondents is that the petitioners have got no right or title over the property and that they have encroached the said extent of land and therefore, the impugned order came to be passed directing them to remove the said encroachment.

7. In such circumstances, it is for the petitioners to approach the Civil Court to make out the prima facie case and the balance of convenience in their favour, to establish their right or title over the property in question by way of seeking adverse possession, as admittedly, the property does not belong to a private individual and it is a Government Natham land. In view of the above, the present writ petition filed seeking to pass orders against the respondents to quash the impugned order, would not be of any consequence. However, in the interest of justice, we are of the view that the petitioners should be given some time to approach the civil forum to seek their remedy.

8. Accordingly, the petitioners are permitted to approach the appropriate Civil Court, in the manner known to law, within a period of two months from the date of receipt of a copy of this order to seek their remedy. Till such time, the petitioners approach the Civil Court, the respondent authority shall not take any coercive action as against the petitioners. It is also made clear that it is kept open to the petitioners to raise all the points, which they had raised before this Court, to be agitated before the appropriate forum. Civil Court to take independent decision without being influenced by any of the observation made herein.

9. With the above direction, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vj2

To

1. The District Collector
Tiruppur District
Tiruppur.
2. The Revenue Divisional Officer
Tiruppur District
Tiruppur.
3. The Tahsildar
Avinashi Taluk
Avinashi
Tiruppur District.

+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.38206
+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.38124
+1cc to the Government Pleader, S.R.No.38214

W.P.No.14518 of 2015

PVS(CO)
CA(27/07/2016)

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