

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.6.2016

CORAM

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

W.P.No.18533 of 2016
and
W.M.P.No.16216 of 2016

M.Ramakrishnan

Petitioner

Versus

- 1 The Collector
Chennai Collectorate Singaravelar Maligai
Rajaji Salai Chennai-600 001.
- 2 The Tahsildhar
Fort Tondiarpet Taluk Chennai-600 003.
- 3 The Tahsildhar
Perambur Taluk Chennai-600 011.
- 4 The Commissioner
Corporation of Chennai Rippon Buildings
Chennai-600 003.
- 5 The Regional Deputy Commissioner (North)
Chennai North Basin Bridge Chennai.
- 6 The Assistant Commissioner (North)
North Region Greater Chennai Corporation
61 Basin Bridge Road Chennai-600 021.
- 7 The Executive Engineer
Corporation of Chennai
(Formerly Zone I Presently Zone IV)
No.226 Thiruvottiyur High Road
Tondiarpet Chennai-600 021

8 The Assistant Executive Engineer (Zone-IV)
Corporation of Chennai
(Formerly Division-2 Presently Div.37)
No.45 Krishnamurthy Salai Chennai-600 118.

9 K.Ashok Kumar

Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking for issuance of a writ of certiorari calling for the records of the 5th respondent pertaining to the Proceedings No.ZOIV C.No.6980/2016 dated 07.05.2016 and quash the same.

For petitioner : Mr.C.Umashankar
For RR1 to 3 : Mrs.A.Srijayanthi,
Special Govt. Pleader
For R4 to R8 : Mr.A.Nagarajan
R9 : Mr.K.Mohanamurali

ORDER

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

Heard.

2. The petitioner is before this court seeking for issuance of a writ of certiorari calling for the records of the 5th respondent pertaining to the Proceedings No.ZOIV C.No.6980/2016 dated 07.05.2016 and quash the same.

3. In the affidavit filed in support of the writ petition, it has been contended that the writ petitioner has purchased the land in Survey No.181/2 in Kodungaiyur Village for a valuable consideration vide a registered sale deed dated 23.8.1982 to the extent of 13545 sqft and after having purchased, he put up a building to the extent of 4400 sqft with a temple on the eastern side and two sheds and house on the eastern side. The Corporation also levied tax. The Government and Corporation have also been arrayed as party respondents before this court. According to the petitioner, for the past 34 years, he has been paying property tax without any arrears. Whiles, the neighbour of the petitioner has raised a litigation with the petitioner and also filed O.S.No.6772 of 1982 and that suit came to be dismissed. However, on the pressure of the neighbour, the Corporation issued a notice under Sections 220 and 222 of Chennai City Municipal Corporation Act for which he had given reply dated 7.4.2016. However, the Corporation of Chennai, without applying the principles of natural justice, came to the

conclusion that the land in question is a public road and the petitioner is an encroacher. According to the petitioner, the land in question is a gramamatham and it is not a battai, but, the Regional Deputy Commissioner North, Corporation of Chennai ordered for survey of land and passed the impugned order dated 7.5.2016. The impugned order did not reveal any reason. Challenging the same, this writ petition is filed.

4. In this regard, already a Division Bench of this court had passed an order on 13.8.2015 in similar circumstances, in W.P.No.14761 of 2015, wherein it is observed that there is no dispute that this court had directed the Corporation on 5.3.2015 to remove the encroachment within a period of six weeks after giving notice to the alleged encroachers and that the order passed by the Chennai Corporation dated 29.4.2015 does not contain any indication as to whether notices were issued to the petitioners therein and whether they were given an opportunity of hearing and further observed that there is no material to show that there was a meeting held on 15th March 2015 and a decision was taken to remove the encroachment and that the Executive Engineer should have taken into the consideration the objections filed by the encroachers, etc. Therefore, by setting aside the impugned order passed by the Corporation, the Joint Commissioner, who was in charge of Zone IX was directed to consider the matter afresh after giving two weeks time to the petitioner therein to submit their objections treating the impugned order as show cause notice and the Joint Commissioner was directed to entertain the objections filed by the parties/encroachers and pass a detailed order within a period of two months from the date of receipt of objections. This order appears to be applicable to the case of the petitioner.

5. In this connection, proceedings have been passed on 15.10.2015 pursuant to the order of the Division Bench of this court and a detailed order was passed by Zonal Officer-IV. It is submitted that Perambur Taluk, Perambur Chennai 11 has furnished their reply by letter dated 8.10.2015 to the stand that an extent of 2.44 hectare is classified as Government poramboke and according to the Adangal, it is meant for battai, i.e., for usage of road, and shara is in the name of Corporation of Chennai. It is also noted therein that pursuant to the direction issued by the Division Bench, the encroachers, having encroached the land, are not entitled to have physical possession over the land belonging to the Corporation of Chennai. It is further noted therein that the encroachers have not been issued with any patta and as such the encroachers are liable to be evicted. In that proceedings, the Tahsildar, Perambur Taluk was directed to demark and identify the encroachment area by the encroachers in order to comply with the orders of this court. The Tahsildar, Perambur Taluk was to measure and demark the encroachment area on 9.10.2015. However, due to special scheme work, they were unable to do the same and

on 10.10.2015, the Surveyor of Perambur Taluk started demarking the boundary of the road and it was stopped due to the resistance from the encroachers and hence, it was decided to continue the same on 12.10.2015 with the help of police and after demarking the encroachment area, to issue notice under sections 220 read with 222 of Chennai City Municipal Corporation Act to remove the encroachments. It was also made clear that after the expiry of the statutory period for removal, the expenditure for removal of the encroachment would be recovered from the encroachers.

6. It appears that the Regional Deputy Commissioner (North) also issued a notice under section 220 read with 222 of the Chennai City Municipal Corporation Act, dated 23.2.2016 to the petitioner. Pursuant to the notice issued, the petitioner also gave reply to the Regional Deputy Commissioner (North) on 7.3.2016 contending that the authorities have not given a notice for earmarking or furnished report to him and also contending that Corporation also levied tax on the property and the no document incriminating him was produced to him to enable him to confront the same. In his reply, the petitioner has further contended that he is a lawful purchaser of the property and he has got documents to show that he has been in continuous possession and it is only to harass him, the present proceeding has been initiated.

7. The order of the Regional Deputy Commissioner also discloses that the Tahsildar, Perambur Taluk has furnished his reply vide letter No.A12229 of 2015 dated 12.2.2016 stating that old Survey Nos.181/1, 2, 189/1, 2, 73/1A1 and 208 in T.S.No.77 Block No.48 of Kodungaiyur Village is classified as Government poramboke to an extent of 2.44 hectare and according to adangal, it is meant for "battai" viz., for the usage of road and "shara" is in the name of Corporation of Chennai. By a detailed order, the Regional Deputy Commissioner (North) directed the petitioner to remove the encroachments otherwise, the Corporation of Chennai will clear the encroachment area at the cost of the petitioner. Aggrieved against the same, the petitioner is before this court.

8. In several other similar matters, this court already had taken a view that after having extended sufficient opportunity, the direction issued to the authorities to remove the encroachment was not complied with and hence, in the contempt petition initiated, imposed a penalty of Rs.25,000/- on the Corporation. But, here, pursuant to the resistance of the petitioner and on his representation, the Regional Deputy Commissioner was passed a detailed order after obtaining report from the Tahsildar concerned, finding the land in question is a Government poramboke and it belongs to Corporation of Chennai.

9. The stand of the petitioner is that the property belongs to him since he has been paying property tax. Payment of

property tax would not confer title on the petitioner if he is in possession of an unauthorized acquisition. Mere collection of tax by the authority and the fact that he has purchased the land way back in the year 1982 does not necessarily confer him any right on the property which does not belong to him. It is needless to say that buyer cannot have a better title than what the vendor had. In the circumstances, when notice had been issued to the petitioner and in the survey which is said to have been conducted, it is shown that it is a Government poramboke land, mere payment of Corporation Tax for putting up construction does not confer any right on the petitioner. Mere assessment to tax by the Corporation in respect of the house of the petitioner, does not create any right in favour of the petitioner when the survey discloses that it is a Government poramboke land. In this regard, the order passed by the Division Bench of this court earlier having reached finality, the court had given time to the revenue authorities as well as the Corporation authorities to conduct the survey after issuing a notice and remove the encroachments and take possession.

10. In the connected matters, we have directed the authorities to conduct the survey in the presence of parties on 13th July 2016 and remove the encroachments. In the instant case also, the authorities are directed to conduct the survey in the presence of parties. It is made clear that the authorities have proposed to conduct the survey on 20.6.2016. Hence, this order itself shall be treated as a notice and the parties shall be present at the time of conducting the survey and demarcating the boundaries and verify the boundaries with regard to encroachment area. In the facts and circumstances, the case of the petitioner would be taken into consideration whether his land is a part of the patta land as per the sale deed and if that is so, he can be permitted to retain the same.

11. With the above observation, this writ petition is disposed of. It is made clear that the respondents have proposed to conduct the survey on 20.6.2016 and since the petitioner is before this court, it shall be treated that he is informed of the same and he is directed to be present at the time of survey. Even in the connected cases, the authorities are directed to inform the encroachers either telephonically or by any other mode, about the proposed survey they would conduct and calling upon them to be present at the time of conducting the survey. No costs. The connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To:

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+1 cc to Mr.A.Nagarajan Advocate sr.32083

+1 cc to Government pleader sr.32416

सत्यमेव जयते

W.P.No.18533 of 2016

aa04/07/2016

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