

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P.No.37146 of 2015

and

M.P.Nos.1 and 2 of 2015

T.P.Jacob

.. Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary,
Public Works Department,
Fort St. George, Chennai.

2.The District Collector,
Kancheepuram District,
Kancheepuram.

3.The Tahsildar,
Shozhinganallur,
Kancheepuram Taluk,
Chennai-600 119.

4.Kazura Garden Welfare Association,
A Society registered under the Societies
Registration Act, 1896,
rep by its Secretary
No.2/739, 6th Cross Street,
Kazura Garden, Neelankarai,
Chennai-600 041.

..Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records pertaining to the impugned order of the second respondent in proceedings Na.Ka.No.24557/2015/N.1 dated 27.10.2015 and quash the same and direct the respondents 1 to 3 not to proceed for evicting the

petitioner's property situated at Old Door No.3/442, New No.2/810, East Coast Road, Neelankarai, Chennai-600 041.

For Petitioner : Mr.R.Sahadevan
for M/s.G.Vijayanand Asso.

For Respondents: Mrs.A.Srijayanthi,
Spl.G.P. for RR1 to 3
Ms.S.Jyothsana
for Mr.Sathishparasaran for R-4

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ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

Questioning the legality and validity of the proceedings Na.Ka.No.24557/2015/N.1, dated 27th October, 2015 of the second respondent, the instant petition is filed.

2. The sole contention of the learned counsel for the petitioner is that under the provisions of the Land Encroachment Act, 1905 (for short "The Act") the Survey Officer alone is competent to survey the land in question and identify or demarcate the Kuttai land. In the case on hand, no proper survey was conducted before coming to the conclusion that the petitioner is an encroacher in the Kuttai poramboke.

3. The dispute in respect of the alleged encroachment came up for consideration in W.P.No.21375 of 2010 filed by the fourth respondent. A Division Bench of this Court directed the District Collector, second respondent, to examine the representation made by the fourth respondent and take action in accordance with law, if any alleged encroachment is found after notice to all concerned. Pursuant thereto, a notice under Section 7 of the Land Encroachment Act by way of show cause notice was issued by the Tahsildar to the petitioner. On consideration of the reply made by the petitioner, a notice under Section 6 of the Act was issued on 13th October, 2015, whereunder the petitioner was called upon to remove the encroachment.

4. Feeling aggrieved, the petitioner preferred an appeal under Section 10 of the Act. The appellate authority, second respondent, conducted a proper enquiry through Tahsildar and Assistant Director of Survey and Land Records, Madras. The Assistant Director of Survey and Land Records submitted a F.M.B. sketch, whereunder it was found that the land in question is Kuttai poramboke. The petitioner was given full opportunity to put forward his case before the impugned order is passed. The Collector has detailed the encroachment made by the petitioner and other encroachers. The encroachment made by the petitioner is to an extent of 0.02.0 hectare by constructing two floors of multistoried building (ground floor and shop). The petitioner

has not produced any material except selfsame averment that the petitioner is in possession of the land in question for a long period. On examination, it is found that the petitioner had made encroachment by constructing unauthorised building. Thus, the appeal was rejected.

5. No material is produced before us to take contrary view. Before rejecting the appeal, the petitioner was afforded full opportunity of hearing at the stage of Section 7 notice and thereafter, in the appeal. Thus, the order has been passed after proper examination and affording an opportunity of hearing. In our opinion, there is no illegality or irregularity in the order sought to be impugned in the writ petition. Accordingly, the writ petition stands dismissed. No costs. Consequently connected miscellaneous petitions are closed.

vvk

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Secretary,
State of Tamil Nadu,
Public Works Department,
Fort St. George, Chennai.

2.The District Collector,
Kancheepuram District,
Kancheepuram.

3.The Tahsildar,
Shozhinganallur,
Kancheepuram Taluk,
Chennai-600 119.

+ 1 cc to Mr.Sathishparasaran, Advocate Sr 8405

+ 1 cc to M/s.G.Vijayanand Associates, Sr 8367

+ 1 cc to The Govt.Pleader, Sr 8231

KR/24/2/16

W.P.No.37146 of 2015