

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Writ Petition No.27154 of 2016
and
W.M.P.Nos.23323 and 23324 of 2016

S.Muthukumaran

... Petitioner

Vs.

Section Officer
Public Works Department (PWD)
Water Resources Organisation,
Redhills Irrigation Division,
Redhills,
Chennai.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to the impugned notice in No. Ko-11/B.A/2016/07/2016 dated 15.07.2016 on the file of the respondent in respect of the petitioner's premises and quash the same.

For Petitioner : Mr.P.Kumaresan

For Respondent : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

ORDER

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

Heard Mr.P.Kumaresan, learned counsel for the petitioner and Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader for the respondent.

2. Challenging the notice dated 15.07.2016 issued by the respondent, the petitioner has come forward with the present writ petition.

3. The case of the petitioner is that he is the absolute owner of the property comprised in Survey No.501/4 as per patta No.6435, New Survey No.504/4B1D situated at Plot No.A3, Thamarai Nagar Sub Division, Thirumullaivoyal Village, Tiruvallur District by virtue of a sale certificate dated 11.09.2013 executed by Andhra Bank in his favour. From the date of purchase, he has been in possession and enjoyment of the property. According to the petitioner, patta has been issued in respect of the property in favour of his predecessors-in-title and chitta has also been issued for the Fasli year 1426. Thus, the Revenue records clearly show that the subject property is a private patta land. Be that as it may, the petitioner was served with a notice dated 15.07.2016 in Form III under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act and Rules, 2007 by way of affixture, calling upon the occupant to remove the encroachment within 21 days alleging that he has encroached upon 'Eri Poramboke' situated in Survey No.567 called as 'Arabath Eri', which is a water catchment area belonging to the Public Works Department of Water Resources organization, failing which, the department would remove the same and collect the expenditure from the occupant. Aggrieved over the same, the petitioner is before this Court with the present writ petition.

4. Learned counsel for the petitioner submitted that the petitioner has not at all encroached upon any poramboke land and the vacant land of the subject property was a part of approved lay out and the building was constructed in the property, after obtaining necessary permission from the competent authority. Therefore, the impugned notice issued by the respondent is liable to be set aside.

5. Learned Special Government Pleader reiterated the averments raised in the counter affidavit filed by the respondent, wherein, it is stated that during the course of survey conducted by the Revenue authorities, it was found that the petitioner has encroached an extent of 40 sq.m in S.F.No.567 of Tirumullaivoyal Village and has put up construction. Since the petitioner has encroached the land in S.No.567, which has been forming part of 'Eri', the respondent has issued a notice for eviction in accordance with law. It is further stated therein that the approvals accorded by the authorities might have been confined to the plans, documents etc. submitted by the petitioner, while making applications for such approvals and the petitioner would have concealed the fact of encroaching the Eri, which is adjacent to the patta lands.

6. We have considered the submissions made on either side and perused the materials placed before us.

7. In this writ petition, the petitioner has challenged the impugned notice dated 15.07.2016 issued by the respondent. However, considering the submissions made on either side, this Court, without advertent to the merits of the case, permits the petitioner to reply to the impugned notice along with supporting documents, if not already replied, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the respondent is directed to consider the same and take a decision, with regard to removal of encroachment made in S.No.567, in accordance with law, of- course, after affording an opportunity of personal hearing to the petitioner as well as to all the parties, who are likely to be affected. The said exercise shall be completed within a period of two months from the date of receipt of a reply from the petitioner.

8. Accordingly, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Section Officer
Public Works Department (PWD)
Water Resources Organisation,
Redhills Irrigation Division,
Redhills, Chennai.

+1cc to the Government Pleader, S.R.No.53470

ALA(CO)
CA(01/11/2016)

W.P.No.27154 of 2016

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