

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

W.P. No.30479 of 2016
and W.M.P.No.26423 of 2016

R.Sankar @ Sankaran

.. Petitioner

-vs-

1.The District Collector,
Collectorate, Perambalur,
Perambalur District.

2.The Tahsildar,
Office of Tahsildar,
Perambalur 621 212.

3.The Revenue Inspector,
Kurumbalur,
Perambalur Taluk and District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of pertaining to a Notice dated 01.08.2016 issued under Section 7 of the Land Encroachment Act by the third respondent herein and quash the same and direct the first respondent to dispose of the petitioner's representation dated 08.08.2016 as per law particularly under the Revenue standing orders.

For Petitioner : Mr.P.Thiagarajan

For Respondents : Mr.R.Vijayakumar,
Addl.G.P.

* * * * *

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner has filed the present writ petition seeking to assail the notice dated 01.08.2016 issued under Section 7 of the Land Encroachment Act, 1905 (hereinafter referred to as 'the said Act') and to further dispose of the representation of the petitioner dated 08.08.2016.

2.The petitioner claims to be in occupation of property in S.F.No.299 to an extent of 1.86.5 hectares stated to be classified as assessed dry waste land in the revenue records. The petitioner claims to have made it capable for cultivation including digging of a well. The petitioner states that there is a Malaikanda river on the southern side of the property with the reserved forest on the northern side and western side, while on the eastern side is the patta land of one Arumugam. In the year 2006, the Forest Department claimed rights over the property and asked the petitioner to vacate the same. The petitioner filed a suit O.S.No.342 of 2006 before the District Munsif, Perambalur, for permanent injunction. In the proceedings, it is claimed, the Forest Department took the stand that they had no right over the property and on such an endorsement, the suit was decreed. The patta has been issued for the adjacent land but not to the petitioner and the endeavour of the petitioner to petition the District Collector seeking assignment has been unsuccessful since the Tahsildar had observed that the property of the petitioner was within the distance of 40 meters from the reserved forest and as such patta cannot be granted.

3.The petitioner claims that the Tahsildar never verified the records nor sent any report to the District Collector to consider the petitioner's petition.

4.We have heard the learned counsel for parties.

5.It is an admitted position that the petitioner has not specifically responded to the notice under Section 7 of the said Act. In fact, the claim of the petitioner is that his representation dated 08.08.2016 itself be treated as the response to the notice under Section 7 of the said Act. The petitioner has, in fact, no defence to the notice under Section 7 of the said Act except a claim that he is entitled to patta. Thus, if the petitioner is eligible for a patta, naturally the same is required to be issued and the proceedings under Section 7 of the said Act would come to naught. But, if patta is not issued, then the corollary is that an order under Section 6 of the said Act would automatically follow with no defence to the

petitioner.

6. In so far as considering the request of the petitioner for patta is concerned, we are of the view, that the Tahsildar / second respondent may carry out an inspection and submit the report to the Collector within a maximum period of one (1) month of the receipt of the order. On receipt of the said report, the Collector will pass necessary order in accordance with law within a maximum period of two (2) months thereafter.

7. The proceedings in pursuance to Section 7 of the said Act would, thus, culminate depending on what is the fate of the petitioner in so far as his grant of patta is concerned.

8. Writ petition, accordingly, stands disposed of. No costs. Consequently, W.M.P.No.26423 of 2016 stands closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sra

To

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