

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P. No. 42110 of 2016

and

WMP. No. 36031 of 2016

S.Sundara Rajan

.. Petitioner

Versus

1.The District Collector
Salem District, Salem.

2.The Tahsildar
Salem North, Salem North
Taluk Office, salem 636 005.

3.The Inspector General of Registration
Registration Department, Santhome,
Chennai.

4.The Sub Registrar of Assurance
Suramangalam, Salem.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to consider the representation of the petitioner dated 30.10.2016 by initiating all types of legal steps to prevent unauthorised transfer of Government land comprised in Survey No.178, Jakir Amma Palayam Village, Salem Taluk, Salem District, measuring about 193.64 acres which is under the possession of the petitioner.

For Petitioner : Mr.R.Devaprasad

For Respondents : Mr.A.Kumar
Special Government Pleader

ORDER

Heard the learned counsel for the petitioner and Mr.A.Kumar, learned Special Government Pleader who accepts notice on behalf of the respondents. With the consent of the counsel on either side, the writ petition is taken up for final disposal.

2. The case of the petitioner is that lands measuring an extent of 193.64 acres comprised in Survey No.178, situate at Jakir Amma Palayam Village, Salem Taluk and District, originally belonged to one Mr.Hendry Greffel Turner and the said land was taken on lease by the ancestors of the petitioner during the year 1960. The Government, vide G.O.Ms.No.3140, Industries, Labour and Cooperation Department dated 12.06.1963, had leased the above property to the petitioner's father for mining Magnesite, initially for a period of two years and later on, it was extended upto 20 years. Meanwhile, the said property was notified as Government land under the Madras Act 26 of 1963. The further case of the petitioner is that till date, he is in absolute possession and enjoyment of the said property. In the interregnum, when the petitioner went to the office of the fourth respondent, he came to know that a portion of the property was attempted to be sold by one A.Vanitha and three others in favour of one Chandrasekar, by virtue of a specific performance decree granted in his favour in OS.No.135/2014, by the learned I Additional Sub Court, Salem. On enquiry, it was found that all the above persons have colluded together and created a forged Sale Agreement dated 13.08.2012, based on which, the above suit came to be filed and a decree was also obtained on 17.06.2014 fraudulently. When the said Sale deed was submitted before the fourth respondent for registration, on verification, it was found that the said property belongs to the Government and the said Chandrasekar was not able to produce the copies of the patta, chitta and adangal issued in favour of his vendor, therefore, the said sale deed could not be registered. Citing all the above, the petitioner has submitted a detailed representation to the respondents on 30.10.2016 but the same has not been considered and since he is yet to be favoured with any kind of response, he is before this Court by filing the present writ petition.

3. The learned Special Government Pleader appearing for the respondents would only contend that the respondents will take all necessary steps to ensure that the lands of the government are protected from being encroached upon.

4. I heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the material records.

5. It is seen from the records that the land in question was leased out to the father of the petitioner for mining Magnasite and as on date the petitioner is in possession and enjoyment of the said lands. According to the petitioner, he came to know that forged and fabricated documents have been created and the property in question was attempted to be sold by one A. Vanitha and three others in favour of one Chandrasekar on the strength of a collusive decree passed in O.S. No. 135 of 2014 on the file of the learned I Additional Subordinate Judge, Salem. Therefore, the petitioner has brought to the notice of the official respondents regarding the fraud played by the above said persons to grab the government lands. Further, the petitioner, apprehending that the land in question will be alienated, had sent a representation dated 30.10.2016.

6. It is the specific contention of the petitioner that the respondents owe a statutory duty to protect the lands belonged to the Government from the encroachers and unauthorised occupants by illegally transferring the lands. It is also the contention of the petitioner that fraud has been played on the Court by the above said persons by filing a collusive suit and obtaining an ex parte decree and it has to be investigated. It is also the contention of the petitioner that the ex parte decree passed in the above suit, without impleading the petitioner as a party, who is in possession of the lands, is a nullity and it will not bind the petitioner in any manner.

7. As the petitioner alleges that fraud has been played on the court by filing a collusive decree and based on the same, the government lands are sought to be encroached upon, this Court is of the view that the when lands sought to be encroached upon is a government poramboke land, the respondents must take all out efforts to ensure that such lands are protected from being encroached upon. The first respondent shall consider the representation dated 30.10.2016 of the petitioner notwithstanding the ex parte decree passed in the civil suit as it will not always be a bar for the respondents to take appropriate action to protect the government lands especially when fraud has been alleged. The first respondent shall also verify the alleged fraudulent documents said to have been created in respect of the land in question by the above said persons. While doing so, the first respondent shall issue notice to all the parties concerned, including the petitioner herein, afford an opportunity of hearing to them and thereafter pass orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.

8. The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

AP/rsh

To

1. The District Collector
Salem District, Salem.

<https://hcservices.ecourts.gov.in/hcservices/>

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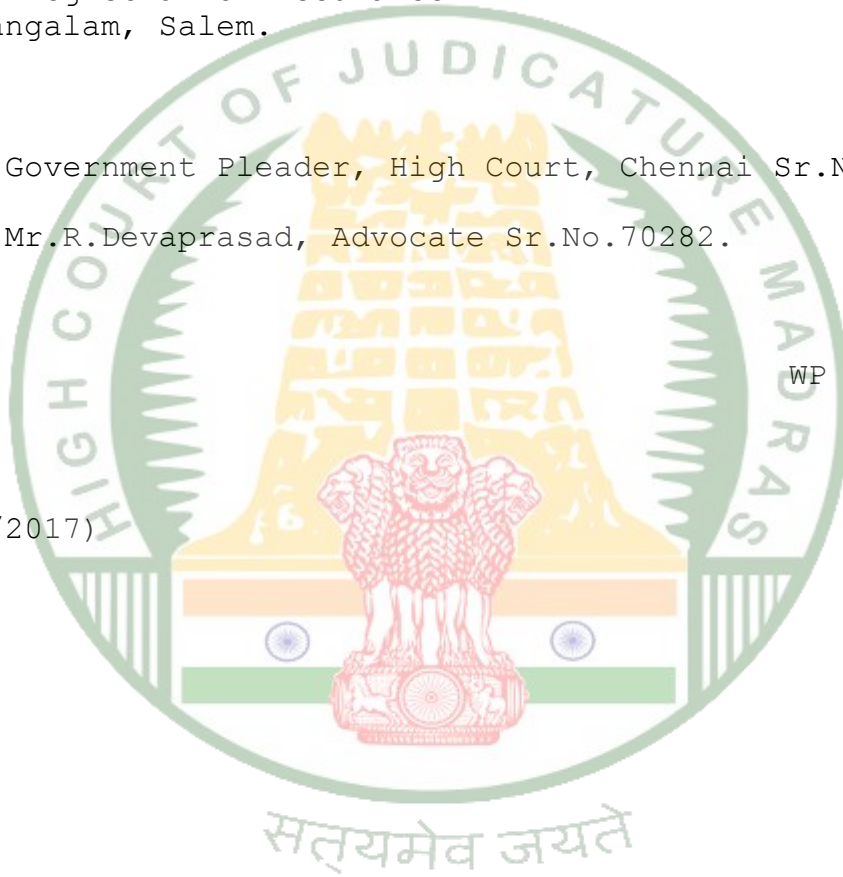
+1 CC to Government Pleader, High Court, Chennai Sr.No.71034.

+1 CC to Mr.R.Devaprasad, Advocate Sr.No.70282.

WP No. 42110 of 2016

RJ (CO)

KP (19/04/2017)



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