



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
and
THE HONOURABLE MS. JUSTICE V.M. VELUMANI

W.P. (MD) No. 14942 of 2016

and

W.M.P. (MD) Nos. 11017 & 11018 of 2016

H. Abdul Kareem

... Petitioner

Vs.

1. The District Collector,
Ramanathapuram,
Ramanathapuram District.

2. The Commissioner,
Mandapam Panchayat Union,
Uchipuli,
Ramanathapuram District.

... Respondent

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the 2nd respondent in Na.Ka.No.A-2/4242/2015, dated 21.04.2016 and the consequential proceedings, dated 15.07.2016 and 22.07.2016 and quash the same as illegal and consequently forbear the respondents from in any way evicting the petitioner without following the due process of law.

For Petitioner : Mr. M. Mahaboob Athiff
For M/s. Ajmal Associates
For Respondent-1 : Mr. A. K. Baskarapandian
Special Govt. Pleader

ORDER

(Order of this Court was made by M. SATHYANARAYANAN, J.)

The petitioner would claim that he is a small vendor eking out his livelihood by running a petty shop in a temporary structure in Door No. 3/1467, Maya Bazaar, Pamban, Ramanathapuram District and he is selling tea and snacks and it is admeasuring 169 sq.ft. The petitioner would state that the said land is in the occupation of his forefather ever since 1938 and he had put up the said shop in the year 1976 and he has been regularly paying all taxes in respect of the said shop to the 2nd respondent, till date.

2. The petitioner on an earlier occasion challenging the notice calling upon him to remove the encroachment, has filed the Writ Petition in W.P. (MD) No. 17267 of 2015, and that a Division Bench of this Court, vide order dated



23.09.2015, has treated the said notice, as a show-cause notice and granted liberty to the petitioner herein to submit his response within the stipulated time and on receipt of the same, the concerned authority was directed to consider the same and pass appropriate orders and also made it clear that till such time, his occupation of the property shall not be disturbed. The petitioner in pursuant to the leave granted to him, has submitted his response on 28.10.2015 and the apprehension expressed by him is, despite the pendency of the Writ Petition, the second respondent / local body has issued a notice stating that the offending shop will be removed by 06.08.2016. Challenging the legality of the same, the petitioner came forward to file this Writ Petition.

3. The learned counsel appearing for the petitioner would submit that in respect of his contention that he is in occupation of the shop in question, he has drawn the attention of this Court to page Nos.1 and 2 of the typed set of document contains house tax receipts, for the year 2013-14 and 2014-15 and would further add that, since he is a street vendor, he is entitled to get protection under the relevant statute and till the disposal of his representation, his position / occupation will not be disturbed and prays for appropriate orders.

4. Per contra, Mr.A.K.Baskarapandian, the learned Special Government Pleader accepts notice on behalf of the first respondent, would contend that though the petitioner's claim that his forefather is in occupation of the land in question right from the year 1938 and that he had put up the semi permanent super-structure in the year 1976, has not even produced an iota of material to substantiate the same, except producing two house tax receipts, for the year 2013-14 and 2014-15 and therefore, his claim cannot be considered.

5. This Court carefully considered the rival submission and also perused the materials produced before this Court.

6. It is relevant to extract Section 131(2) of the Tamil Nadu Panchayat Act, 1994, which reads as follows:-

"131(2) It shall be the duty of the Village Administrative Officer of every revenue village to report on encroachments on properties vested in Village Panchayats or Panchayat Union Councils to the Executive Authority or the Commissioner concerned and to the officer of the Revenue Department, and [it shall be the duty of the Executive Authority or the Commissioner concerned either suo motto or on obtaining a report from the Village Administrative Officer in this regard to the proceedings under this Act] and secure the removal of the encroachments within such time as may be specified by the Government by general



or special order. If the removal of the encroachments has not been secured within the period specified in such order, the officers of the Revenue Department shall institute proceedings under the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905) and secure such removal."

7. A perusal of the typed set of document would disclose among other things that except producing the two house tax receipts, which in the opinion of this Court came to be issued may be on the one and the same day, no material whatsoever have been produced by the petitioner to substantiate that his forefather was in occupation of the land in question right from the year 1938 and even for putting up construction in the year 1976, he has not produced any other materials. Though the petitioner claimed that he is paying regularly all statutory levies, no document whatsoever has been produced.

8. However, in the light of the order, dated 23.09.2015, made in W.P.(MD)No.17267 of 2015, the 2nd respondent is directed to consider the representation / reply of the petitioner, dated 25.10.2015, in accordance with law and pass orders within a period of two weeks from the date of receipt of a copy of this order and till such time, the 2nd respondent shall defer further proceedings as to the removal / dis-possessing the petitioner from the land in question. It is also made clear that till the disposal of the representation / response submitted by the petitioner by the second respondent, the petitioner shall not create any third party rights in respect of the property in question. The Writ Petition is disposed of accordingly. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar.

To

1.The District Collector, Ramanathapuram,Ramanathapuram District.

2.The Commissioner, Mandapam Panchayat Union, Uchipuli,
Ramanathapuram District.

+1CC to M/S.Ajmal Associates, Advocate, SR.No. 50458

+1CC to the Special Government Pleader, SR.No. 50921

W.P.(MD)No.14942 of 2016

06.09.2016

mpk

AM/SS3/16.09.2016/3P/5C