



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2016

CORAM:

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

W.P. (MD) No.17025 of 2016

and

W.M.P. (MD) No.12348 of 2016

S.Thangasamy

... Petitioner

-vs-

1.The Revenue Divisional Officer
Tirunelveli Division, Tirunelveli

2.The Tahsildar
Thiruvenkadam Taluk
Thiruvenkadam, Tirunelveli District

3.The Revenue Inspector
Thiruvenkadam Pirka
Thiruvenkadam, Tirunelveli District

4.M.T.Sankar

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling the records of the third respondent relating to the notice affixed under Section 7 of the Tamilnadu Land Encroachment Act, 1905 on 29.08.2016 and quash the same.

For Petitioner : Mr.M.Vallinayagam, Senior Counsel
assisted by Mr.D.Nallathambi

For Respondents : Mr.V.R.Shanmuganathan
Special Government Pleader for R1 to R3

O R D E R

[Order of the Court was made by M.SATHYANARAYANAN, J.]

Mr.V.R.Shanmuganathan, learned Special Government Pleader, takes notice on behalf of respondents 1 to 3 and with the consent of both sides, this writ petition is taken up for final hearing at the admission stage itself.

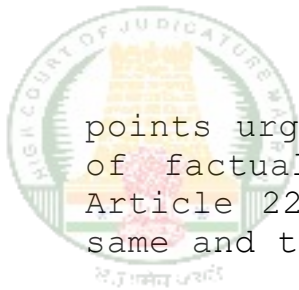


2. The petitioner in the affidavit filed in support of the writ petition, among other things, would submit that the land in Old Survey No.1387/1 of Thiruvenkadam Village, Thiruvenkadam Taluk, Tirunelveli District, is a "Natham Land" and it has been subsequently sub-divided as Survey Nos.1387, 1430 to 1440 under "Natham Nilavari Scheme". According to him, his grandmother Thangathammal constructed a house thereon and gifted the said property to his mother Subbulakshmi Ammal, under a Gift Deed, dated 26.08.1963 and there is a vacant site on the southern side of the said house. Further, he would submit that his mother and her predecessor-in-title were in possession and enjoyment of the said vacant site all along as their own property without any interference from any third party. Earlier, no Patta was issued by the Government in respect of Natham Lands and only after the introduction of "Natham Nilavari Scheme", the Government, after carrying out a Survey, issued Natham Pattas in favour of the persons, who are in possession and enjoyment of Natham Lands. Accordingly, the petitioner along with the fourth respondent applied for Patta before the second respondent for the lands in Survey Nos.1439/21 and 1440/18, which are in their possession and after verification, a Patta bearing No.1556 was issued in their joint name for the said land by the second respondent. Further, in the subsequent proceedings, the first respondent has cancelled the Patta issued in their favour and aggrieved by the same they preferred a revision before the District Revenue Officer, Tirunelveli and the same is pending.

3. The grievance expressed by the petitioner is that though the Tamil Nadu Land Encroachment Act, 1905 (hereinafter it may be referred to as 'the Act') has no application to the Natham Lands, the third respondent, on wrong assumption of jurisdiction, has issued the impugned notice, dated 29.08.2016, under Section 7 of the Act.

4. Mr.M.Vallinayagam, learned Senior Counsel, assisted by Mr.D.Nallathambi, learned counsel on record for the petitioner, would submit that some of the lands are classified as "Natham Lands" and the third respondent is not vested with the jurisdiction to invoke the provisions of the Act and though an alternative remedy is available under Section 10 of the Act, in the light of lack of jurisdiction, the petitioner is constrained to file this writ petition.

5. Per contra, Mr.V.R.Shanmuganathan, learned Special Government Pleader, appearing for the respondents 1 to 3 has drawn the attention of this Court to Section 10-A of the Act and submitted that since the petitioner has got an effective alternative remedy, this writ petition is not maintainable and the



points urged by the learned Senior Counsel revolve on adjudication of factual aspects of the matter and hence this Court, under Article 226 of the Constitution of India, may not adjudicate the same and therefore he prayed for dismissal of the writ petition.

6. This Court has carefully considered the rival submissions and perused the materials produced.

7. Though the petitioner and the fourth respondent were issued with Patta, subsequently it was cancelled and it was put to challenge by them before the first respondent, the fact remains that as on today the petitioner is not having Patta in respect of the alleged Natham Land. Be that as it may, the petitioner is having an alternative remedy under Section 10 of the Act and Section 10-B of the Act also speaks about stay pending decision in appeal or revision.

8. In the light of the said alternative remedy available to the petitioner, this Court is of the considered view that the writ petition is not maintainable and it deserves for dismissal. However, the petitioner is at liberty to file appeal before the District Collector, Tirunelveli, within a period of one week from the date of receipt of a copy of this order and on filing such appeal, if the papers otherwise in order, the District Collector, Tirunelveli, shall entertain the same and take up the petition for stay initially and give a disposal for the same within a period of one week thereafter and dispose of the main appeal in accordance with law as expeditiously as possible. The petitioner is at liberty to urge all the points open to them, in the appeal and till the filing of appeal by the petitioner as directed above, the third respondent shall defer the further proceedings of the impugned notice, dated 29.08.2016.

9. The writ petition is dismissed subject to the above observations. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-I)

/TRUE COPY/

Sub Assistant Registrar



To:

1.The Revenue Divisional Officer,
Tirunelveli Division, Tirunelveli.

2.The Tahsildar,
Thiruvankadam Taluk,
Thiruvankadam,
Tirunelveli District.

3.The Revenue Inspector,
Thiruvankadam Pirka,
Thiruvankadam,
Tirunelveli District.

+1cc to M/S.D.NALLATHAMBI, ADVOCATE SR NO: 51009

+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO: 51526

Krk

JA-AAL-MPA-SAR.3/12.9.2016/4P:6C

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