



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

and

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.P. (MD) Nos. 23591 to 23593 of 2016
and W.M.P. (MD) Nos. 16957 to 16959 of 2016

Ravisekaran

... Petitioner
in all the writ petitions

Vs.

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Tahsildar,
Vembakottai Taluk,
Virudhunagar District.

... Respondents
in all the writ petitions

COMMON PRAYER: These Writ Petitions are filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned notice dated 18.11.2016 issued by the 2nd respondent and to quash the same and consequently directing the 2nd respondent to consider the order dated 17.09.2010 made in Review Application No.59 of 2010 in W.P. (MD) No.9598 of 2010 on the file of this Hon'ble Court.

For Petitioner : Mr. Ethirajulu
Mr. P. Arun Jayatram

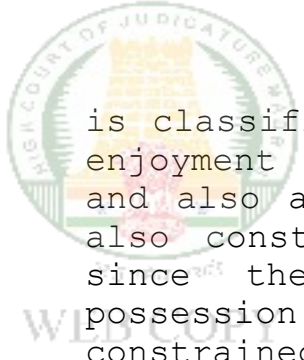
For Respondents : Mr. R. Velmurugan
Government Advocate

COMMON ORDER

(Judgment of this Court was delivered by M. SATHYANARAYANAN, J.)

By consent these writ petitions are taken up for final disposal. Mr. R. Velmurugan, learned Government Advocate accepts notice on behalf of the respondents 1 and 2.

2. The petitioner in the affidavits filed in support of these writ petitions would aver among things that the property in Survey No. 1566/33, Keelanmarainadu Village, Virudhunagar District was classified as natham land and it is an ancestral property of his family and during the UDR Survey, the portion of the property



is classified as Odai and Pathway. The petitioner claims to be in enjoyment of an extent of 0.0024.8 square meters in S.No.1566/32 and also an extent of 0.0001.8 square meters in S.No.1566/33 and also constructed an asbestos house and Compound Wall Gate and since the Tahsildar, Sivakasi has disturbed his peaceful possession and enjoyment of the property, the petitioner was constrained to file O.S.No.213 of 2008 on the file of District Munsif, Sivakasi against the Tahsildar, Sivakasi and President of Keelanmarainadu Panchayat, praying for permanent injunction restraining the defendants therein from interfering with his possession and enjoyment of the property and the defendants therein has also filed their writ statement. The petitioner would further state that pending suit, one Vellaiah and S.A.Krishnasamy filed W.P.(MD) No.9598 of 2010, praying for issuance of Mandamus, directing the respondents to remove the encroachment in Survey No.1566/32, 1566/33 and 1568 at Keelamarainadu Village, Virudhunagar District and it was disposed of at the admission stage itself on 23.08.2010, directing the District Collector, Virudhunagar to consider the representation and pass orders in accordance with law. On coming to know about the order, the petitioner filed review application No.59 of 2010 and it was allowed on 17.09.2010 with an observation that the representation made by respondents 1 and 2 therein can be considered only depending upon the judgment and decree of the civil Court in the pending suit.

3.The grievance expressed by the petitioner is that despite such observation made in the order passed in the review application by this Court, the first respondent has issued notice under Section 7 of the Land Encroachment Act, 1905, for which the petitioner has also submitted his detailed response on 22.07.2016 and without adjudicating the said issue, notice under Section 6 of the Land Encroachment Act, 1905 has been issued and therefore, the petitioner is constrained to approach this Court.

4.Mr.Ethirajulu, the learned counsel for the petitioner would vehemently contend that admittedly the suit in O.S.No.213 of 2008 is pending disposal and in the light of the order passed in the review application dated 17.09.2010, in which the District Collector of Virudhunagar District is also a party, unless the suit is finally disposed of, second respondent cannot issue notice under Section 6 of the Tamil Nadu Encroachment Act, 1905. Alternatively, it is contended by the learned counsel for the petitioner that the notice issued under Section 7 of the Land Encroachment Act, 1905 may be adjudicated first and till such time further proceedings issued under Section 6 of the Land Encroachment Act, 1905 may be deferred.

<https://hcservices.ecourtsgov.in> 5. Per contra, Mr.R.Velmurugan, learned Government Advocate would contend that admittedly no interim order is in operation in the pending suit and as per the revenue records the land in



question has been classified as Oadai and Pathway and as such there cannot be any impediment on the part of the second respondent to proceed in accordance with law and prayed for dismissal of the Writ Petition.

6. This Court paid it's best attention to the rival submissions and also perused the materials placed before it.

7. The suit is pending for nearly 8 years and according to the learned counsel for the petitioner on account of very many petitions for impleadment, the suit is kept pending. However, this Court is not satisfied with the explanation offered by the learned counsel for the petitioner. Admittedly, no interim order is in operation in O.S.No.213 of 2008 and as such there cannot be any impediment on the part of the respondents to proceed further, of course, strictly in accordance with law.

8. The learned counsel for the petitioner has placed heavy reliance on the order dated 17.09.2010, made in Review Application No.59 of 2010 in W.P.(MD) No.9598 of 2010 and would submit that until further adjudication is made in the said suit, further action cannot be taken. However, this Court is of the considered view that in the absence of any interim order in the suit, it is open to the official respondents herein to proceed further and also pointed out the suit is kept pending for nearly 8 years.

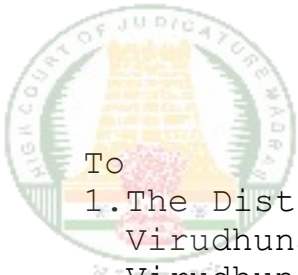
9. Insofar as the classification of land in question is concerned, admittedly, no challenge has been made to the said classification and according to the learned counsel for the petitioner, it has been reclassified behind his back at the time of UDR Survey. However, this Court is not commenting anything on the said classification. Since the petitioner has submitted his response to the notice issued under Section 7 of the Land Encroachment Act, 1905, the second respondent is directed to consider the same and dispose of it in accordance with law within a period of three weeks from the date of receipt of a copy of this order and still such time, the respondents shall defer from any further decision in respect to the impugned proceedings dated 18.11.2016.

10. Accordingly, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True copy/



To

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Tahsildar,
Vembakottai Taluk,
Virudhunagar District.

+1 CC to Mr.P.ARUN JAYATRAM, Advocate, SR No.79284

+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No.79452

W.P.(MD) Nos.23591 to 23593 of 2016
and W.M.P.(MD) Nos.16957 to 16959 of 2016
02.12.2016

sj

SH/GSV-PM/SAR-1:23.12.2016:4P/5C