

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.SUNDAR

W.P. No.8170 of 2017
and W.M.P.No.8953 of 2017

R.Baskaran

.. Petitioner

-vs-

1. The District Collector,
Nagapattinam.
2. The Tahsildar,
Nagapattinam Taluk,
Nagapattinam.
3. The Executive Officer,
Arulmighu Kayaroganaswamy
Udanuraisyul Neelayathatchiamman
Temple, Nagapattinam.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records pertaining to the Orders in '1905 year, Chennai III Act, Notice under Section 6' dated 10.3.2017 issued by the second respondent, with reference to the property in Nagapattinam Village, Ward No.4, Block No.62, Town Survey No.1318/2, Found Land, Total extent : 81 sq. meters, extent in possession : 12 sq. meters, Nature : RCC Building, quash the same.

For Petitioner : Mr.R.Selvakumar

For Respondents : Mr.Vasudha Thiagarajan
Addl.G.P. for RR 1 and 2
: Mr.M.Maharaja
Spl. G.P. (HR & CE) / R-3

* * * * *

O R D E R
(Order of the Court was made by M.Sundar, J.)

This writ petition has been filed assailing an order dated 10.03.2017 issued by the second respondent under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 (in short 'the said Act'), qua the property in T.S.No.1318/2, Ward No.4, Block No.62, Nagapattinam Village.

2.It is not in dispute that prior to the impugned order being passed, the writ petitioner was put on notice under Section 7 of the said Act. It is also not disputed that the writ petitioner sent his response to the show cause notice under Section 7 of the said Act and the impugned order has been passed under Section 6 of the said Act, after considering the representation.

3.Most importantly, the writ petitioner would contend that he is in occupation of Survey No.1316 alone.

4.Mr.M.Maharaja, learned Special Government Pleader (HR & CE), who accepts notice on behalf of the third respondent-temple, asserts that S.No.1316 belongs to the temple. While the writ petitioner would submit that he is a lessee under the temple in S.No.1316, learned Special Government Pleader (HR & CE) would submit that the writ petitioner is an encroacher and they would be proceeding against him. That is a matter between the third respondent-temple and the writ petitioner, which would be outside the purview of this writ petition.

5.As far as the impugned order in this writ petition is concerned, that is confined to S.No.1318/2, as asserted by Mrs.Vasudha Thiagarajan, learned Additional Government Pleader, who has accepted notice on behalf of official respondents 1 and 2.

6.Most importantly, our attention is drawn to sub-paragraph (c) of paragraph 10 in page 4 of the affidavit filed in support of the writ petition. The same may be usefully extracted and it reads as follows:

''The second respondent's act of issuing a notice and the impugned order against a wrong survey No. and taking steps to evict me in S.No.1316 is grossly illegal. If at all I have encroached S.No.1318/2 also, unknowingly as the entire area around my two shops are vacant land only, I am ready to abide by any penal action taken against me, either by levying damages or by levying find, by the 3rd respondent/Temple.

7.A perusal of the above paragraph 10 (c) reveals that the writ petitioner has said that if he is found to be in encroachment of S.No.1318/2, he is ready to abide by any action including penal action that may be taken against him. This is his sworn affidavit and we take notice of that averment / assertion.

8.In the light of the fact that the learned Additional Government Pleader, who has accepted notice on behalf of respondents 1 and 2 and asserts that they would proceed with regard to the encroachment in S.No.1318/2 alone, nothing survives in the writ petition.

9.The writ petition, accordingly, stands dismissed. Consequently, W.M.P.No.8953 of 2017 is also dismissed. There shall be no order as to costs. Though obvious, we make it clear that this order will not stand in the way of any legal action that may be initiated by the third respondent-temple against the writ petitioner qua S.No.1316.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The District Collector,
Nagapattinam.
2. The Tahsildar,
Nagapattinam Taluk,
Nagapattinam.
3. The Executive Officer,
Arulmighu Kayaroganaswamy
Udanuraiyul Neelayathatchiamman
Temple, Nagapattinam.

+2 Ccs to Govt. Pleader sr 20850,20902

+1 CC to Mr.R. Selvakumar, Advocate sr 20921

W.P.No.8170 of 2017

CA (CO)
sp/18/4