

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.11854/2011 & MP.No.1/2011

A.Kumaresan

... Petitioner

vs

The Tahsildar,
Mylapore-Triplicane Taluk,
Chennai-600 028.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified mandamus by calling for the records pertaining to the impugned notice dated 05.04.2011 and consequent notice dated 21.04.2011 issued by the respondent and quash the same and direct the respondent not to evict the petitioner from the property situated at old No.36, New No.40/E, Alayamman Koil Street, Teynampet, Chennai - 600 018 unless otherwise by due process of law.

For Petitioner : Mr.N.Anand Venkatesh

For Respondent : Mrs.M.E.Rani Selvam, AGP

ORDER

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

By consent, the writ petition is taken up for final disposal.

2 The petitioner claims to be the owner of the property at Old Door No.36, New No.40/E, Alayamman Koil Street, Teynampet, Chenna-600 018, through an unregistered document during the year 2008. The petitioner claims that he is living in the above said property along with his family for very many years and he and his family had also been issued with Voters ID Card, Family Card / Ration Card. The grievance expressed by the petitioner is that, all of a sudden, on 25.04.2011 at about

11.30 a.m., the official attached to the office of the respondent has served him notices under sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, dated 05.04.2011 and 21.04.2011 respectively, alleging encroachment and calling upon the petitioner to vacate from the premises on or before 27.04.2011 and challenging the legality of the same, the petitioner came forward to file the present writ petition.

3 The writ petition was admitted on 04.05.2011 and interim injunction was also granted on that date and so far, no counter affidavit has been filed.

4 The learned counsel for the petitioner would submit that there should be time gap between the issuance of the notices under sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, and however, both the notices were issued to the petitioner simultaneously, threatening dispossession and since the mandatory procedure contemplated under the said Act have not been followed, the petitioner is constrained to approach this Court by filing this writ petition.

5 Per contra, Mrs.M.E.Rani Selvam, learned Additional Government Pleader appearing for the respondent would submit that the petitioner is a rank encroacher and has also put up the construction without any approved plan or permission and the remedy open to the petitioner, if any, is to avail the appeal remedy available under section 10 of the Act and prays for the dismissal of this writ petition.

6 The Court has considered the rival submissions and also perused the materials placed before it.

7 No doubt, the petitioner is having an effective alternate remedy under section 10 of the Tamil Nadu Land Encroachment Act, 1905. But, the fact remains that this writ petition was entertained on 04.05.2011 and nearly for the past six years, the interim order is in operation and therefore, at this distant point of time, it is not justifiable to drive the petitioner to avail the appeal remedy. A perusal of the typed set of documents would disclose that the notices under sections 7 and 6 of the Act came to be issued simultaneously and hence, on this sole ground, the impugned notices warrant interference, by granting liberty to the respondent to initiate proceedings afresh, in accordance with law.

8 In the result, the writ petition is partly allowed and the impugned notices dated 05.04.2011 and 21.04.2011 respectively, issued by the respondent herein, are hereby

quashed and the respondent is at liberty to initiate appropriate proceedings for eviction of the petitioner in accordance with law and the said process is to be commenced and completed as expeditiously as possible. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

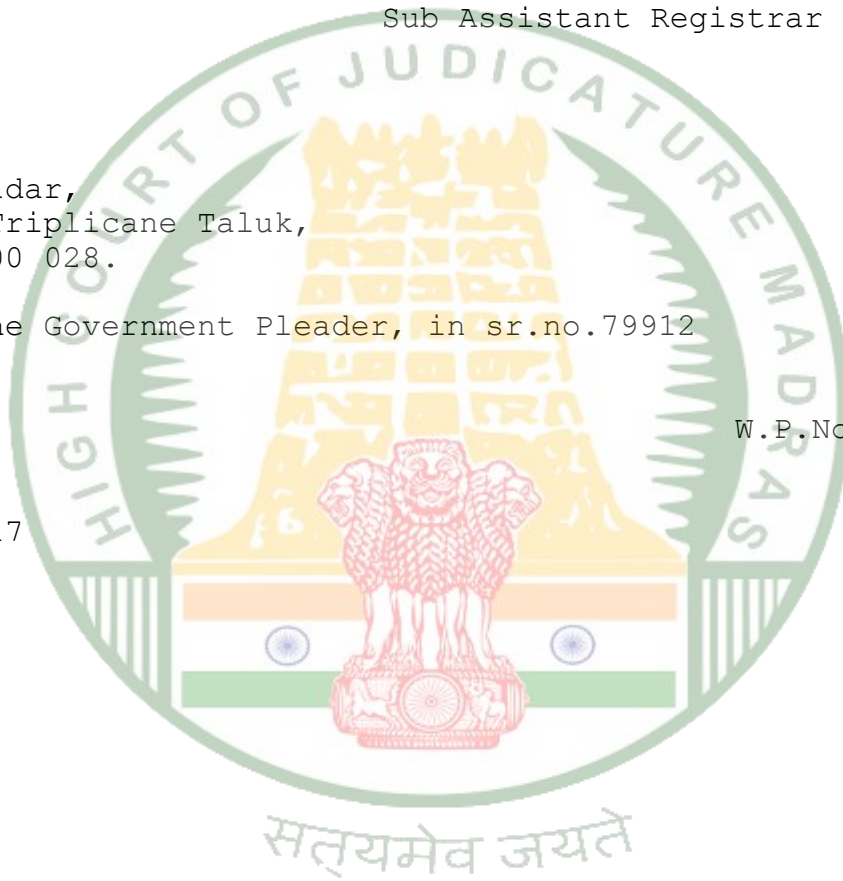
To

The Tahsildar,
Mylapore-Triplicane Taluk,
Chennai-600 028.

+1cc to The Government Pleader, in sr.no.79912

W.P.No.11854/2011

SS (CO)
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