

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.SUNDAR

W.P. No.8518 of 2017
and W.M.P.No.9298 of 2017

S.Vivekanandan .. Petitioner

-vs-

1.The Tahsildar,
Taluk Office, Chengam Taluk,
Tiruvannamalai District.

2.The District Collector,
Tiruvannamalai District,
Tiruvannamalai.

3.Sivaprakasam .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records in proceedings No.A5/831/2013 dated 25.03.2017 on the file of the 1st respondent herein and quash the same and direct the 1st respondent to issue patta in favour of the petitioner for the extent of 540 sq.feet of land under the occupation of the petitioner comprised in Survey no.62/3, Manmalai Village, Chengam Taluk, Thiruvannamalai District.

For Petitioner : Mr.S.Sadasharam

For Respondents : Mr.R.Vijayakumar
Addl.G.P. for RR 1 and 2

O R D E R

(Order of the Court was made by M.Sundar, J.)

The writ petitioner has filed this writ petition, calling in question an order dated 25.03.2017 bearing No.A5/831/2013 made by the first respondent (hereinafter referred to as 'impugned order' for the sake of brevity and clarity). The subject matter of the writ petition is land comprised in S.No.62/3 in Manmalai Village, Chengam Taluk, Tiruvannamalai District and the extent is 540 sq. feet.

2.It is not in dispute before us that the writ petitioner has put up a Samadhi (Tomb) therein. It is also noticed from the records placed before us that the third respondent before us filed a writ petition in this Court, being W.P.No.35123 of 2012, alleging that public land has been encroached. This writ petition was disposed of by a Division Bench of this Court by order dated 14.11.2016 with a direction to proceed in accordance with law. The relevant part of the order is paragraph 2 and the same may be usefully extracted infra:

'2.On hearing the learned counsel for parties, we are of the view that the allegation of the petitioner may be enquired into by the second respondent on visit to the site and if any unauthorized construction is found on Government land, action in accordance with law be taken, after notice to all concerned, within a maximum period of three (3) months from the date of receipt of this order.'

3.Thereafter, the writ petitioner has moved this Court by way of another writ petition being W.P.No.4175 of 2017. This writ petition was disposed of by an order dated 22.02.2017 by a Division Bench of this Court. In this order, this Court had directed the respondent authorities to proceed in accordance with the Tamil Nadu Land Encroachment Act, 1905 (hereinafter referred to as 'the said Act'). The operative and relevant portion of the order is paragraph 5 and the same reads as follows:

'5. On hearing the learned counsel for parties, we direct the first respondent to issue notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and after holding an enquiry, appropriate order would be passed under Section 6 of the said Act within a period of two months from the date of receipt of a copy of this order.'

4. In the above backdrop, first respondent, being the jurisdictional Tahsildar, has passed the impugned order dated 25.03.2017 holding that there is an encroachment in the above said land. The jurisdictional Tahsildar has also held that there is no provision for issue of patta for building a Samadhi (Tomb) and that the provision for issue of patta in such public land may be available only for landless farmers.

5. It is not in dispute that a show cause notice ('SCN' for brevity) under Section 7 of the said Act dated 10.03.2017 was issued, prior to the impugned order.

6. As would be evident from the typed set of papers filed by the writ petitioner, in response to the above said SCN, the writ petitioner has sent his response / objections and the same is dated 18.03.2017. In this response to the SCN, the writ petitioner has inter-alia contended that Samadhi (Tomb) has been constructed with the consent of the Village Administrative Officer and the Village Headman (Maniakarar). It has also been contended by the writ petitioner that if Patta is granted to him, he will be able to maintain the Samadhi (Tomb) well. However, the first respondent before us, namely, the jurisdictional Tahsildar has examined this response of the writ petitioner. After such examination, in the impugned order, the first respondent jurisdictional Tahsildar has held that the Village Administrative Officer and the Village Headman do not have any authority whatsoever to grant such consent and in any event, no document supporting / evidencing such consent has been placed before the Court. There is no dispute that the Samadhi (Tomb) has been constructed in Government land. Considering these aspects, the first respondent jurisdictional Tahsildar has passed the impugned order.

7. A perusal of the impugned order leaves no doubt in our mind that the provisions of the said Act have been followed. We say so, as the SCN and the response have been read as 1 and 2 respectively in the subject of the impugned order. The SCN and the response have also been discussed in the order. Further more, the impugned order clearly states that it has been passed in exercise of powers under the said Act. Learned Additional Government Pleader submits that all that remains is issue of order under Section 6 of the said Act in the prescribed format.

8. Owing to all that have been stated supra, the grievance of the writ petitioner that the provisions of the said Act have not been followed is indisputably incorrect, besides being untenable.

9. Even the above scenario does not leave the writ petitioner without remedy. The option now open to the writ petitioner is to assail the order under Section 6 of the said Act as and when it is communicated to the petitioner in the prescribed format by way of a statutory appeal under Section 10 of the said Act, if so advised. The appellate authority is the District Collector, who is respondent No.2 before us.

10. If the writ petitioner chooses to file a statutory appeal as aforesaid, the second respondent District Collector (appellate authority) shall entertain and dispose of the same, in accordance with law, within a period of three months from the date on which the appeal is preferred.

11. If the writ petitioner does not prefer statutory appeal within the time frame prescribed under the said Act, as set out supra, it will be open to the respondents to proceed further in accordance with law, particularly in accordance with the order of this Court dated 22.2.2017 in W.P.No.4175 of 2017. The most relevant and operative portion of the said order has been extracted supra.

12. The writ petition is disposed of on the above terms. No costs. Consequently, W.M.P.No.9298 of 2017 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

To

1. The Tahsildar,
Taluk Office, Chengam Taluk,
Tiruvannamalai District.

2. The District Collector,
Tiruvannamalai District,
Tiruvannamalai.

+1cc to Mr.Sadasharam, Advocate, S.R.No.21360
+1cc to the Government Pleader, S.R.No.21597

W.P.No.8518 of 2017

VGII(CO)
RS(04/05/2017)