

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:13.12.2017
CORAM:
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI
W.A.No.1548/2017 and CMP.No.20320/2017

G.Angamuthu

....Appellants/Petitioners

Vs

- 1.The District Collector,
Kanchipuram District,
Kanchipuram.
- 2.The Tahsildar,
Sholinganallur Taluk,
Sholinganallur,
Chennai-600 119.
- 3.The Special Tahsildar (LA),
MMRD, Scheme,
IRR Chromepet, Chennai-600 044.
- 4.The Assistant Executive Engineer,
Greater Chennai Corporation,
Ward No.190, Pallikaranai,
Chennai-600 100.
- 5.The Superintendent Engineer,
State Highways Department,
Velacherry, Tambaram Main Road,
Velacherry, Chennai-600 042.
- 6.The Assistant Divisional Engineer,
Tambaram Sub-Division,
Highways Department,
Velacherry Tambaram Main Road,
Velacherry, Chennai-600 042.

..Respondents/Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order of this Court in W.P.No.25830 of 2017, dated 27.09.2017 to set aside the same.

Prayer in WP.No.25830 of 2017:Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus forbearing the respondents from further demolishing the petitioner house at bearing Door No.109 Velachery Main Road Pallikaranai Chennai 600 100 in Pallikaranai Survey No.312 of an extent of 1200 Sq.f.t..

For Appellant : Mr.Gnanadesikan, Senior counsel for
M/S.Gnanadesikan Law Associates

For Respondents: Mrs.M.E.Raniselvam for R1 to R3,R5 & R6
Mr.K.Sounthararajan for R4.

ORDER

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

By consent, the writ appeal is taken up final disposal. Mrs.M.E.Raniselvam, learned Additional Government Pleader appearing for respondents 1, 3, 5 & 6 and Mr.K.Sounthararajan, learned counsel for 4th respondent.

2. It is the case of the writ petitioner / appellant herein that the land and property admeasuring to an extent of 4200 sq.ft comprised in Suvey No.312, Pallikaranai Village, Saidapet Taluk, Chengalpet District belong to his mother viz., Tmt.Veerammal and she was in occupation, possession and enjoyment of the same along with the superstructure for over 50 years. The appellant would further state that after the demise of his mother, he succeeded to the said property and renovated the house and started residing in the portion of the property along with parents and family members and also started Nursery School to educate poor people in the locality in the name of "Ramya Nursery and Primary School" in the year 1989 to 2015 and on account of road expansion, major portion of the land has been taken and the petitioner's land has also been acquired for the reason that it is required for the public purpose. The petitioner would further aver that the superstructure put up by him is also subjected to statutory levies and the petitioner is also issued with Aadhar Card and Ration Card. The petitioner also claimed that he was a counselor of Pallikaranai Town Panchayat and was doing many services to the people of the said locality. The grievance expressed by the petitioner is that all of sudden without notice whatsoever, the possession of the land and superstructure bearing Door No.109, Velachery Main Road, Pallikaranai, Chennai-600 100 admeasuring to an extent of 1200 sq.ft sought to be demolished and apprehending immediate dispossession and de-occupation, he was constrained to approach this Court by filing this writ petition.

3. Mr.Gnandesikan, learned Senior counsel appearing for the petitioner/appellant would submit that no counter affidavit has been filed by the official respondents refuting the allegation and however, the learned Judge, though found no notice have been issued for removal of encroachment under the provisions of Tamil Nadu Land Encroachment Act, 1905 made an

observation in Paragraph No.14 and 15 of the impugned judgment dated 27.09.2017 stating that when the petitioner has encroached the land and constructed the building, in all fairness, he should vacate the premises and further that when the property belongs to the Government and it is a Poramboke land and when the petitioner has encroached upon the same, he is not entitled to get any indulgence. It is a primordial submission of the learned counsel appearing for the appellant that once, the concerned official respondent finds that the petitioner is an encroacher, due process of law, is to be followed and without doing so, the petitioner cannot be dispossessed from the land in question and prays for interference.

4. Per contra, Mrs.M.E.Raniselvam, learned Additional Government Pleader, appearing for the official respondents would submit that the petitioner, who was admittedly a Local Body representative was very well aware of the consequences of the encroachment upon Government land and put up a superstructure without permission and authorization and taking note of the stand and status of the appellant / petitioner, the learned single Judge has rightly dismissed the writ petition and prays for dismissal of this writ appeal.

5. This Court heard the submissions of learned counsel appearing for 4th respondent also. It is relevant to extract Section 6 and 7 of the Tamil Nadu Land Encroachment Act.

"Section 6:- [1] Any person unauthorisedly occupying any land for which he is liable to pay assessment under section 3 [or section 3-A] may be summarily evicted by the Collector [or subject to his control, by the Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government in this behalf [hereinafter referred to as the 'authorised officer']] and any crop or othe rproduce raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not remvoed by him after such written notice as the Collector [or subject to hs control, the Tahsildar or Deputy Tahsildar or authorised officer] may deem reasoable, be lilable to forfeiture. Forfeitures under this section shall be adjudged by the Collector [or subject to hs control, the Tahsildar or Deputy Tahsildar or authorised officer] and any property so forfeited shall be disposed of as the Collector [or subject to hs control, the Tahsildar or Deputy Tahsildar or authorised officer] may direct.

[2] An eviction under this section shall be made in the following manner, namely -

By serving a notice in the manner provided in section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector [or the Tahsildar or Deputy Tahsildar or the Authorised officer] may deem reasonable after receipt of the said notice to vacate the land, and, if such notice is not obeyed, by removing or deputing a subord to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstructed by any person, the Collector [or the Tahsildar or Deputy Tahsildar or the Authorised officer] shall hold a summary enquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector [or of any Tahsildar or Deputy Tahsildar or authorised officer] for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for imprisonment in the civil jail of the District for the like period ;

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under sections 183, 186 of the Indian Penal Code in respect of the same facts.

[[3] Any authorised officer taking proceedings under this section shall make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction.]

Section 7:- Before taking proceedings [under section 6] the Collector [or Tahsildar or Deputy Tahsildar or Revenue Inspector or any authorised officer or any officer of the Highways Department not below the rank of a Section Officer and not being an authorised officer] as the case may be] shall cause to be served on the person reputed to be in unauthorised occupation of land being [the property of Government] a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against [under section 6].

Such notice shall be served in the manner prescribed in section 25 of the [Tamil Nadu] Revenue Recovery Act, 1864, or in such other manner as the [State Government] by rules or orders under section 8 may direct:

[Provided that no such notice shall be necessary in the case of any person unauthorisedly occupying any land, if he has been previously evicted from such land u/s.6 or if he has previously vacated such land voluntarily after the receipt of a notice u/s.5-B or under this section :

Provided further that where the notice under this section is caused to be served by any Revenue Inspector or any officer of the Highways Department not below the rank of a Section Officer and not being an authorised officer, he shall require the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Collector, Tahsildar, Deputy Tahsildar having jurisdiction and shall also make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction.

.....

6. Once the concerned official finds that the petitioner is an encroacher, the said official is under statutory obligation to follow the above said provision of the Tamil Nadu Encroachment Act and if the writ petitioner/appellant is aggrieved, he is entitled to invoke the appeal remedy under Section 10 of the said Act. If the Local Body finds that the petitioner has put up unauthorized construction, it is also open to them to proceed against the writ petitioner/appellant in accordance with law to demolish the unauthorized / deviated construction. In the case on hand, no notice has been issued by the 2nd respondent, under the provision of Tamil Nadu Land Encroachment Act, 1905 and if the respondents 5 and 6 are of the view that the petitioner had encroached upon portion of highways, it is open to them to invoke the provisions of Tamil Nadu Highways Act, 2001 and admittedly, the said procedure contemplated under the provisions of Tamil Nadu Land Encroachment Act, 1905 or TamilNadu Highways Act, 2001 have not been invoked.

7. In the result, the writ appeal is allowed and the impugned order dated 27.09.2017 passed in WP.No.25830 of 2017 is set aside and it is open to the respondents to follow the relevant statutory provision for removal of encroachment and proceed against the petitioner / appellant with regard to his act of encroachment on the public land and the said exercise,

has to be carried out within a period of twelve weeks from the date of receipt of a copy of this order. If the petitioner/appellant has put up any unauthorized / deviated construction, it is also open to the Local Body, Pallikaranai Panchayat, to proceed against the same in accordance with law as expeditiously as possible. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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Highways Department,
Velacherry Tambaram Main Road,
Velacherry, Chennai-600 042.

+1cc to Government Pleader Sr.No.89691

+1cc to Mr.K.Soundararajan, Advocate Sr.No.88931

+1cc to Mr.Gnanadesikan law Associates, SR.No.88626

LRS(CO)

sm:1.2.2018

W.A.No.1548/2017