

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.3.2017

CORAM

THE HONOURABLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.5575 of 2017
and
W.M.P.No.5932 of 2017

1 Pushpa
2 Ramprasath
3 Komathy Petitioners

Versus

1 The Revenue Divisional Officer
Egmore Division Chennai-600 031.
2 The Tahsildar
Guindy Taluk Chennai- 600 015. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the record of proceedings of 2nd respondent dated 25.1.2017 bearing Procs.A1/4313/2016 and quash the same.

For petitioners : Mr.T.Seenivasan
For respondents : Mr.R.Vijayakumar, AGP

सत्यमेव जयते
ORDER

(Order of the court was made by HULUVADI G.RAMESH, ACJ.)

Heard the learned counsel appearing for the petitioners.

2. The writ petition has been filed seeking issuance of a writ of certiorari calling for the record of proceedings of 2nd respondent dated 25.1.2017 bearing Procs.A1/4313/2016 and quash the same.

3. Relying upon certain documents filed alongwith the writ petition, the petitioners would contend that the property in question is their ancestral property and therefore, the summary remedy for eviction provided under the Land Encroachment Act

cannot be resorted to in their case as complicated questions of title arise for decision.

4. The learned counsel appearing for the petitioners would seek support from the decision in GOVERNMENT OF ANDHRA PRADESH v. BANDI VENKATARAMA AND OTHERS (AIR 1982 SC 1081) wherein eviction proceedings was initiated under the Andhra Pradesh Land Encroachment Act.

5. In the above decision, it has been held as under:

"The summary remedy for eviction which is provided for by S.6 of the Act can be resorted to by the Government only against persons who are in unauthorized occupation of any land which is "the property of Government". If there is a bona fide dispute regarding the title of the government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by S.6 for evicting the person who is in possession of the property under a bona fide claim or title. The summary remedy prescribed by S.6 is not the kind of legal process which is suited to an adjudication of complicated questions of title."

6. The learned counsel for the petitioners submitted that as per the revenue records, it is Natham land as the Government there is no dispute with regard to title in question accordingly sought to contend that the proceedings initiated under the Land Encroachment Act is not tenable and it has to be decided in the writ proceedings.

7. Mr.R.Vijayakumar, learned Additional Government Pleader has submitted that as per the records available, the land in question is is a water course and hence, eviction proceedings was initiated.

8. The submission of the learned counsel for the petitioners is that way back in 1940s, the land was an agricultural land and though patta was not issued, Form I was issued in respect of the land in question and it is a genuine case for being considered otherwise and not through the procedures contemplated under the Land Encroachment Act.

9. However, in the case on hand, the procedure contemplated under section 7 & 6 of the Land Encroachment Act has been followed. As per section 7, show cause notice appears to have been issued and order has been passed under section 6 of the Act. If the parties are aggrieved by such order, appeal remedy before the District Collector is provided under Section 10 of the Act. Therefore, while deciding the appeal before the

District Collector, such issues can be raised by the petitioners with regard to dispute in title, etc., and ultimately, it is for the District Collector to form an opinion as to whether such proceedings would be initiated at all under the Land Encroachment Act and thereafter to proceed further to pass necessary orders or otherwise to clarify the position with regard to jurisdiction viz., invoking the provisions of sections 7, 6 and 10 of the Act and for such purpose, necessarily, this matter has to be dealt with by the District Collector.

10. Therefore, it is for the petitioners to file an appeal under section 10 of the Land Encroachment Act before the appellant authority, within 15 days from the date of receipt of copy of this order and thereafter within another 60 days, the District Collector has to decide this appeal as indicated above and also look into the grievance of the petitioners with regard to maintainability of eviction proceedings under the Land Encroachment Act. Till then, the respondent authorities shall not take coercive steps for eviction of the petitioners.

11. The writ petition is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ssk.

To:

- 1 The Revenue Divisional Officer
Egmore Division Chennai-600 031.
- 2 The Tahsildar
Guindy Taluk Chennai- 600 015.
- 3 The District Collector,
Chennai.

+1cc to Mr.T.Seenivasan, Advocate, S.R.No.19351
+1cc to the Government Pleader, S.R.No.18827

W.P.No.5575 of 2017

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