

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2017

CORAM

The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.10727 of 2017

and

W.M.P.No.11673 of 2017

M.Natarajan ... Petitioner

vs.

1. The District Collector,
Thiruvallur,
Master Plan Complex,
C.V.Naidu Salai,
Thiruvallur Town - 602 001.
2. The Revenue Divisional Officer,
Thiruvallur,
RDO's Office Campus,
J.N.Road,
Thiruvallur Town - 602 001.
3. The Thasildhar,
Thiruvallur Taluk,
Taluk Office Campus,
J.N.Road,
Thiruvallur Town - 602 001.
4. The Inspector of Police,
Thiruvallur Town Police Station,
Thiruvallur District.

5. Thiruvallur District Congress Committee,
rep. by its Secretary C.P.Mohandoss,
No.63, Bajanai Koil Street,
Pungathur, Thiruvallur. .. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondents to strictly implement the orders passed in Ref.Na.Ka.3078/13/A1 dated 25.01.2016 and forbearing from dispossessing the petitioners peaceful possession and enjoyment of the property to an extent of measuring acre 0.01½ cents in S.No.532/8 at Pungathur Village, Thiruvallur Taluk, Thiruvallur District.

For Petitioner : Mr.K.Mohanamurali

For Respondents : Mr.R.Vijayakumar
Addl. Government Pleader
respondents 1 to 4

ORDER

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

This writ petition has been filed claiming that the petitioner is in possession of an extent of land admeasuring acre 0.01½ cents in S.No.532/8 at Pungathur Village, Thiruvallur Taluk, Thiruvallur District. Prayer is to forbear respondents from dispossessing writ petitioner.

2. It is not disputed before us that the land, which is said to be in occupation of the petitioner, is public land. It is also not disputed by the petitioner that it is a road poramboke.

3. The petition is predicated on the plea that proceedings under the Tamil Nadu Land Encroachment Act, 1905 have been given a go by. In other words, the plea of the petitioner is that he cannot be dispossessed de hors the due process of law as contained in the Tamil Nadu Land Encroachment Act, 1905.

4. The petitioner also referred to certain earlier revenue proceedings and his say is that he has made an application for grant of patta and the same is pending.

5. Admitted position is it is public land/road poramboke, and the petitioner is running commercial establishments there (four shops), but petitioner says that he has applied/sought for patta. This is to be noted and we have done that. However, we are not going into that aspect further.

6. It is brought to our notice by the learned Additional Government Pleader, who accepted notice on behalf of the official respondents 1 to 4, that an order under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 has in fact been passed and affixed in the premises before action was taken, as the occupant refused to receive the notice. The learned Additional Government Pleader also placed extracts from the official File, which show that the order under Section 6 was preceded by a show cause notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, which has also been duly served.

7. However, the learned counsel appearing on behalf of the petitioner submits that the petitioner did not refuse to receive the notice and that he had not received the preceding Section 7 notice.

8. Today, Section 6 order is given to the learned counsel appearing on behalf of the petitioner in Court and that is construed as due service of Section 6 order on the petitioner. It is open to the petitioner to prefer a statutory appeal as available to him under Section 10 of the Tamil Nadu Land Encroachment Act, 1905.

9. As the petitioner states that he was not served with Section 7 notice, we make it clear that it is open to the petitioner to raise all the grounds that are available to him, which would have been raised by him in response to Section 7 notice, in the statutory appeal and that the Appellate Authority shall consider and dispose of the same in accordance with law.

10. Be that as it is may, the learned counsel appearing on behalf of the petitioner has drawn our attention to certain photographs and has submitted that the encroachment has already been completely dismantled. Further, the learned counsel for the petitioner has also drawn our attention to a sketch at page No.34 of the typed set of papers and says that the petitioner owns patta land comprised in Survey No.18/6 and that the encroachment now removed (subject matter) was the ingress and egress road (access road) for the same. It is his say that action of the respondents has obstructed his ingress and egress to his said patta land.

11. We fail to understand how removal of encroachment can obstruct ingress and egress. In the normal course it can only remove obstruction if any and facilitate ingress and egress. However, it is submitted by the learned Additional Government Pleader that the access road to the petitioner's patta land comprised in Survey No.18/6 is not obstructed in any manner. We record the same.

12. With the above observations, the writ petition is disposed of. No costs. Consequently, W.M.P.No.11673 of 2017 is closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To:

1. The District Collector,
Thiruvallur,
Master Plan Complex,
C.V.Naidu Salai,
Thiruvallur Town - 602 001.
2. The Revenue Divisional Officer,
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RDO's Office Campus,
J.N.Road,
Thiruvallur Town - 602 001.

(5)

3. The Thasildhar,
Thiruvallur Taluk,
Taluk Office Campus,
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Thiruvallur Town - 602 001.

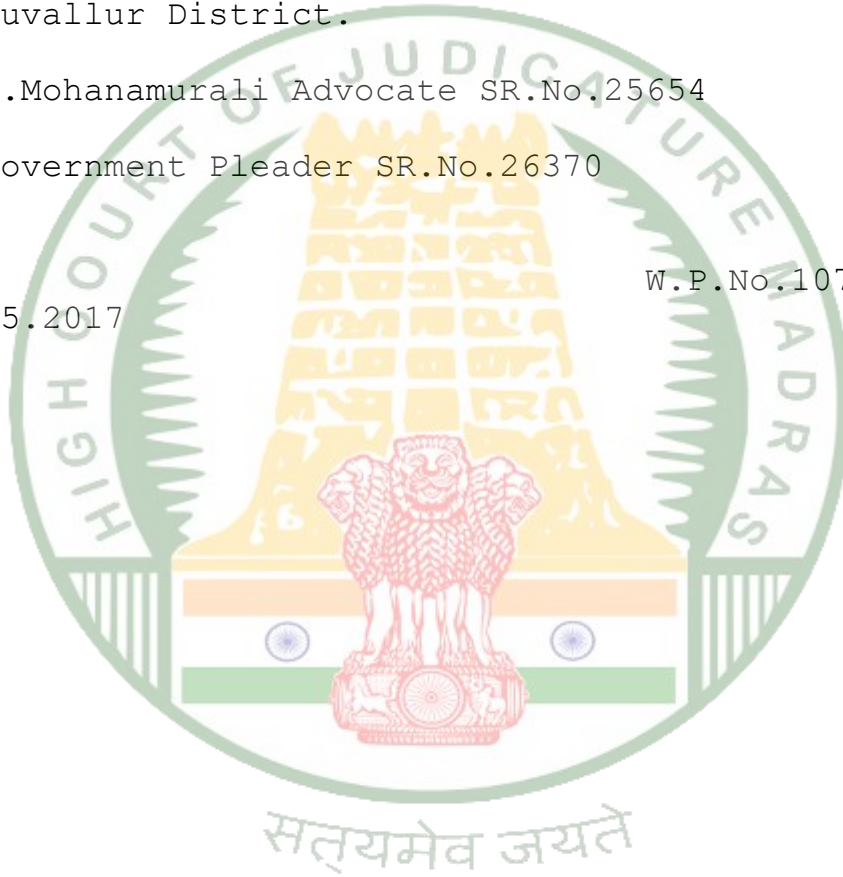
4. The Inspector of Police,
Thiruvallur Town Police Station,
Thiruvallur District.

+1cc to K.Mohanamurali Advocate SR.No.25654

+1cc to Government Pleader SR.No.26370

W.P.No.10727 of 2017

SDR 12.05.2017



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