

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
And
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.10846 of 2017
WMP.No.11776 of 2017

Subramani .. Petitioner
vs.

The Tahsildar,
Salem. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the entire records relating to the impugned notice dated 28.03.2017 issued by the respondent under Section 6 of the Tamil Nadu Land Encroachment Act, III of 1905, seeking to evict the petitioner from the land situated in Survey No.50/3 in D.Permapalayam Village, Salem District and quash the same.

For Petitioner : Mr.L.Mouli
For Respondent : Mr.A.N.Thambidurai,
Special Government Pleader

O R D E R

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

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner would state that land and property admeasuring to an extent of 1.27 acres in S.No.50/3 in D.Perumapalayam Village is classified as "Mandaveli" (Gracing land) and the said land was originally under the possession and enjoyment of one Muthu Gounder and in the year 1958, he transferred the possession and enjoyment of the land in favour of one Kulla Gounder through unregistered document and he in-turn transferred the possession and enjoyment in favour of one Boothappan in the year 1964 through unregistered document dated 04.03.1964 and from the said Boothappan, the petitioner got possession through unregistered deed dated 29.11.1989.

3. The learned counsel appearing for the petitioner would submit that the petitioner and his predecessors in title were in possession and enjoyment of the land in question for very many decades and without strictly adhering to the provisions of the Tamil Nadu Land Encroachment Act, 1905, notice under Section 6 of the said Act came to be issued. It is the further submission of the learned counsel appearing for the petitioner that admittedly show cause notice under Section 7 of the said Act has not been issued and therefore, prays for interference.

4. Per contra, Mr.A.N.Thamibidurai, learned Special Government Pleader would submit that the petitioner is having effective alternative remedy under Section 10B of the said Act by way of appeal and therefore, prays that the writ petition is not maintainable.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. In the considered opinion of the Court, the petitioner is having an effective alternative remedy under Section 10-B of the Tamil Nadu Land Encroachment Act, 1907 by way of appeal before the Collector of Salem District along with a petition for Stay within a period of four weeks from the date of receipt of a copy of this order and till such time, shall defer further decision in terms of Section 6 of the Act. The Collector of Salem District shall entertain the appeal and stay petition, if the papers are otherwise in order and dispose of either the appeal or the stay petition within a period of eight weeks thereafter and communicate the decision taken, to the petitioner.

7. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

jvm

To

1. The Collector,
Salem District.

2. The Tahsildar,
Salem.

+1cc to M/s.L.Mouli, Advocate in sr.no.52471
+1cc to Government Pleader in sr.no.53334

W.P.No.10846 of 2017

RK (CO)
NR 09/08/2017



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