

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.No.9804/2017 and WMP.No.10796 of 2017

1. P.Radhakrishnan
2. Chinnarasu ... Petitioners

Vs

1.The District Collector
Salem, Salem District
2.The Tahsildar,
Kadayampatti,
Kadayampatti Taluk, Salem District.
3. The Village Administrative Officer,
Danishpettai Village and Post,
Kadayampatti Taluk, Salem District.
4. The Revenue Inspector,
Kadayampatti Taluk Office,
Kadayampatti Taluk,
Salem District. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents not to dispossess the petitioners from the land until the proceedings commenced under Land Encroachment Act, 1905 are attained finality before the Government in respect of land in S.No.183/2 an extent of 50 cents situated at Danishpettai Village, Kadayampatti Taluk, subject to filing the appeal and revision by the petitioners within limitation period as prescribed under the Act.

For Petitioners : Mr.M.Elango

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents.

2 The 1st petitioner in the affidavit filed in support of this writ petition would aver among other things that he is the owner of land in S.No.183/2, admeasuring to an extent of 50 cents situated at Danishpettai Village, Omalur Taluk and the said lands are used for agricultural purpose and his father had purchased 48 cents in Survey No.184/2 in the said village through a registered Deed of Sale bearing Doc No.580/1981 dated 18.03.1981 and after purchase, a well was dug and electricity connection was also obtained in Service No.685, thereafter various crops viz., Paddy, Tapioca and Sugarcane are being cultivated and the said land subject to payment of statutory levies. It is further stated by the 1st petitioner, that the 3rd respondent along with Panchayat President came to the said field on 13.08.2015 and called upon the petitioner to vacate and deliver the vacant possession of the property. The grievance expressed by the petitioner is that without following due process of law, he is sought to be dispossessed and therefore, filed an WP No.26972 of 2015 and this Court vide order dated 09.10.2015 has directed the respondent to follow the due process of law while evicting the petitioner as well as his brother Viz., Chinnarasu, the 2nd petitioner herein.

3 Accordingly, the 1st petitioner was issued with notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and once again, the petitioner along with his brother Chinnarasu [2nd petitioner herein] had filed WP Nos.31790 and 31792 of 2016 respectively to quash the above said show cause notice on the ground that a Division Bench of this Court has taken up these two writ petitions along with WP Nos.31791 and 31793 of 2016 and passed a common order dated 19.09.2016 and it is relevant to extract the same :-

"On a perusal of the provisions of the Tamil Nadu Land Encroachment Act, 1905, it is seen that the Revenue Inspector, who is also an officer, is competent to issue the impugned notices. Such being the position, the contention of the petitioners that the notices issued under Section 7 of the Act are not maintainable cannot be countenanced. Further, the petitioners have not submitted reply to the notices. Therefore, it is for the petitioners to submit reply to the show cause notices within a period of one week

from the date of receipt of a copy of this order and, thereafter, if they are aggrieved by the orders passed by the Revenue Inspector, it is open for them to approach the Tahsildhar, Deputy Collector and finally the District Collector under Section 10 A of the Act, as the case may be. There shall be an order of status quo for a period of two weeks.

Writ petitions are disposed of accordingly. No costs. Consequently, the connected WMP Nos.27572, 27574, 27576 and 27578 of 2016 are closed."

4 The learned counsel appearing for the petitioners has also submitted his response to the Revenue Inspector pointing out that by using the lands in question, he has not blocked the water flow and also not put up any superstructure and the water body is being used for his cultivation activities and apprehending dispossession, despite the pending of the proceedings initiated against the Land Encroachment Act, 1905, had filed this writ petition and therefore, prays for appropriate orders.

5 The learned counsel for the petitioners, on instructions, seeks permission of this Court to withdraw this writ petition insofar as the 2nd petitioner is concerned and also made an endorsement to that effect.

6 It is a submission of the learned counsel appearing for the petitioners, despite the submission of the response to the impugned notice issued under section 6 of the Land Encroachment Act, 1905, the possession of the petitioner in respect of land in question is sought to be disturbed and therefore prays for appropriate order.

7 This Court carefully considered the rival submission and also perused the entire materials placed before it.

8 The petitioner on an earlier occasion filed a WP.No.26972 of 2015 against the respondents 1 to 3 as well as against the Revenue Inspector, Kadayampatti praying for issuance of a writ of Mandamus directing the respondents not to dispossess the petitioner from his land in Survey No.183/2 to an extent of 60 cents, S.No.183/1 to an extent of 20 cents and S.No.184/2 to an extent of 48 cents situated at Danishpettai Village, Omalur Taluk, Salem District and this Court vide order dated 09.10.2015 disposed of the writ petition. It is relevant to extract the following paragraphs :

"The learned Government Advocate, on instructions, submitted that the petitioner is not at all in possession of the property in

Survey Nos.183/2 and 183/1 and the petitioner's brother one Chinnaraju, who is working as a teacher is in possession. The said person would be evicted by due process of law since the encroached portion is odai poramboke and except the said person, all encroachers have been evicted. So far as Survey No.184/2 is concerned, it is submitted that it is a patta land. Therefore, there is no question of evicting either the petitioner or the said Chinnaraju. The submission made by the learned Government Advocate with respect to Survey No.184/2 is recorded.

In view of the said submission, the writ petition stands disposed of, by directing the respondent concerned to follow due process of law while evicting the said Chinnaraju, who is said to be the brother of the petitioner, from Survey Nos.183/2 and 183/1. No costs. Consequently, connected miscellaneous petition is closed."

9 As per Section 10 of the Tamil Nadu Land Encroachment Act, 1905, an appeal shall lie (a) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar under this Act, and to such officer as may be specified by the State Government in this behalf

10 Since the 1st petitioner is under the apprehension that pending disposal of his representation submitted to notice issued under section 6 of the Tamil Nadu Land Encroachment Act, 1905, he may be dispossessed, he is always at liberty to invoke the appeal remedy.

11 In the light of the availability of the effective alternate remedy, this Court is of the view that the above writ petition is not maintainable. If the petitioner is so advised, he is at liberty to file an appeal before the 1st respondent within a period of two weeks from the date of receipt of copy of this order and till such time, the respondents 2 to 4 shall defer further decision in terms of the impugned notice. The 1st respondent, upon receipt of the appeal, shall entertain the same, if the papers or otherwise in order and give a disposal in accordance with law and pass appropriate orders within a further period of six weeks thereafter and communicate the decision taken to the writ petitioner.

12 In the result,
a) The writ petition in respect of the 2nd petitioner is dismissed as withdrawn. However, no liberty is granted to file

a fresh writ petition On the same cause of action.

b) The writ petition filed by the 1st petitioner/
Mr.P.Radhakrishnan is dismissed subject to above observations.

No costs. Consequently, the connected miscellaneous
petition is closed.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

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To

1. The District Collector
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4. The Revenue Inspector,
Kadyampatti Taluk Office,
Kadayampatti Taluk,
Salem District.

+1cc to Mr.M.Elango, Advocate in sr.no.50072

WP.No.9804/2017

SSI (CO)
NR 11/08/2017

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