

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2017

CORAM

THE HON'BLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No.4858 of 2017
and
W.M.P.No.5068 of 2017

1.Kalyani
2.Kailasam
3.K.Mahavishnu ... Petitioners

-vs-

1.The District Collector,
Erode, Erode District.
2.The Tahsildar,
Tahsildar Office,
Anthiyur Taluk,
Erode District.
3.The Executive Officer,
Chinnathambipalayam Panchayat,
Anthiyur Taluk,
Erode District. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent in Na.Ka.No.7969/2016/A1 dated 16.02.2017 and quash the same and consequentially forbear the respondents from removing the petitioners respectively from Natham land in their possession R.S.No.1887/6A, 18, 20, Anthiyur A Village, Anthiyur Taluk, Erode District.

For Petitioners : Mr.A.Sundaravadhanan

For Respondents : Mr.T.N.Rajagopalan,
Spl.Govt.Pleader for R1 & R2

Mr.M.K.Subramanian,
Government Pleader for R3

ORDER

(Order of the Court was made by
THE HON'BLE ACTING CHIEF JUSTICE)

This writ petition has been filed by the petitioners to quash the notice issued by the second respondent in Na.Ka.No.7969/2016/A1 dated 16.02.2017 and consequently to forbear the respondents from removing the petitioners respectively from the Natham land in R.S.No.1887/6A, 18, 20, Anthiyur A Village, Anthiyur Taluk, Erode District, which is in their possession.

2.It is stated in the affidavit filed in support of this writ petition that the first and second petitioners are the parents of the third petitioner. The first petitioner is residing in a small tiled house, put up in the natham land in R.S.No.1887/6A, Anthiyur Village, Erode District. The third petitioner purchased a landed property situated in Old S.No.1390, R.S.No.1888/20 on 18.11.2010 from his paternal uncle's legal representatives. At the time of purchase of the said property by the third respondent, there were two thatched houses in the land, for which the vendor of the third respondent was paying the property tax till the date of purchase. Thereafter, after obtaining Plan Approval from the concerned Panchayat, the third petitioner remitted the necessary charges and constructed the house. When he applied to the second respondent for the name change in patta, except receiving the application, the second respondent has kept the matter pending. It is further stated that the third respondent has laid a concrete structure on the lane which is classified as vandi pathai, situated on the eastern side of the first petitioner's house in R.S.No.1887/1. It is also stated that the respondents have granted patta to those who are in enjoyment of the natham lands in R.S.No.1887, but the third petitioner was not granted patta. While so, all of a sudden the impugned notice has been issued to the petitioners directing them to appear for enquiry on 17.02.2017, alleging encroachment of the land. Hence this writ petition.

3.The learned counsel for the petitioners has submitted that while issuing the impugned notice, the second respondent has not followed the principles of natural justice. He also submitted that since patta has been granted to the persons who are living in R.S.No.1887 adjacent to the land of the petitioners, the impugned notice has to be set aside as it cannot be termed as Government land.

4.Mr.T.N.Rajagopalan, learned Special Government Pleader, takes notice for the respondents 1 and 2. Mr.M.K.Subramanian, learned Government Pleader, takes notice for the third respondent.

5.Heard the learned counsel on either side and perused the materials available on record.

6.It is alleged by the petitioners that violating the principles of natural justice, the notice came to be issued. The impugned notice has been issued to appear for an enquiry on 17.02.2017. Under the provisions of Section 10 of the Tamil Nadu Land Encroachment Act, 1905, the petitioners have the remedy of filing appeal. Therefore, if the petitioners are aggrieved by the impugned notice, they may file an appeal before the appellate authority, as envisaged under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, within a period of fifteen days from the date of receipt of a copy of this order. Along with the appeal, the petitioners may also file an application pressing for an interim order. On such appeal being filed, the appellate authority shall pass appropriate orders in accordance with law within a period of one month therefrom. Till such order is passed by the appellate authority, status quo as on today shall be maintained by the parties.

7.The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

KM
To

1.The District Collector,
Erode, Erode District.

2.The Tahsildar,
Tahsildar Office,
Anthiyur Taluk,
Erode District.

3.The Executive Officer,
Chinnathambipalayam Panchayat,
Anthiyur Taluk, Erode District.

+1cc to Mr.A. Sundaravadhanan, Advocate, S.R.No.12921
+1cc to the Government Pleader, S.R.No.12983

KS (CO)
EU 10.03.17

W.P.No.4858 of 2017
and
W.M.P.No.5068 of 2017