

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.20806 of 2017
and W.M.P.No.21651 of 2017

Mr.P.Mageshwaran

... Petitioner

.Vs.

1.The Assistant Commissioner of Police (L&O)
Villivakkam Range,
Villivakkam, Chennai – 600 049.

2. The Assistant Commissioner,
VIII Region,
Corporation of Chennai,
Shenoy Nagar, Chennai – 600 020

3. The Tahsildhar,
Aynavaram Taluk,
Chennai – 600 102.

4. N.Jaganathan,
S/o.Narayanamoorthy,
Old No.7, New No.75,
Rajamangalam, 7th Street,
Villivakkam, Chennai – 600 049

...Respondents

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Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ a Mandamus directing the respondents 1 to 3 to conduct an enquiry with regard to the assignment and possession of the land and not to evict or disposes the petitioner society from No.7/A, Rajamangalam, 7th Street, Villivakkam, Chennai 600 049.

For Petitioner : Mr.R.C.Paul Kanakaraj

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader
for R1 and R2

Mr.V.C.Selvasekaran for R3

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 respondents 1 and 2 and Mr.V.C.Selvasekaran, learned Standing Counsel accepts notice on behalf of 2nd respondent.

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2. The counter affidavit of the respondents 2 and 3 have also been filed. Though the learned counsel appearing for the petitioners prays for the leave of this Court to withdraw this writ petition, in the light of the fact that pleadings are completed, this Court has declined the said request

and inclined to dispose of the writ petition on merits.

3. The petitioner in the affidavit filed in support of this writ petition would aver among other things that he is the president of Dr.B.R.Ambedkar Podhu Nala Sangam (Dr.B.R.Ambedkar Public Welfare Association) and it is a Society registered under the provisions of Tamil Nadu Societies Registration Act bearing Registration Number No.413/2013 and it has been functioning from 1989 at No.7/A, Rajamangalam, 7th Street, Villivakkam, Chennai – 600 049 in Old Survey No.224/2A1, New Survey No.T.S.No.110. According to the petitioner, the land has been classified as “Grama Natham” (Village site) and it has been assigned to the said Society, vide proceedings of the Assistant Collector by in R.C.No.317/1881 dated 14.03.1981 and it has been assigned by the Special Tahsildhar (Assignment) dated 05.10.1989. According to the petitioner, the petitioner association is formed for the purpose of welfare of the people and for their development and to clean the village streets, temples, public places, to provide educational scholarship etc., The said society has also been functioning for the growth and development of the youth in the local area by teaching them all discipline, unity and responsibility as a dutiful citizen from the year 1989.

4. It is the specific case of the petitioner that the 4th respondent claims to be the owner of the property, where the Society is functioning and started making allegations, the said land has been encroached by the petitioner association and whereas it is not so. It is also the case of the petitioner that the 4th respondent, with oblique and malafide motive, started making baseless and reckless allegation against the petitioner Association and submitted very many representations. The grievance expressed by the petitioner is that the 2nd respondent without verifying the allegation and ascertaining the factual aspects, has issued a notice under Section 5 of the Tamil Nadu Land Encroachment Act, 1905, stating that the land in Survey No.224/24 in Konnur, is classified as "Grama Natham" and the said land admeasuring to an extent of 00.2 cents is occupied by the petitioner Association.

5. It is also pointed out by the petitioner Association that on 20.04.2017 during midnight, grand son of Mr.Chinnappasami namely Mr.N.Jagan and N.Anandan along with rowdy elements has trespassed upon the petitioner and damaged the articles and caused loss and therefore, to protest against the same, they wanted to go on fast between 9 a.m. To 6 p.m. near Dr.Ambedkar Statue and also sought permission

through representation on 20.04.2017 from the Station House Officer, V4 Police Station, Rajamangalam, Kolathur, Chennai – 99 and however, no response is forthcoming.

6. Mr.R.C.Paul Kanagaraj, learned counsel appearing for the petitioner, arguing on the merits of the matter, has invited the attention of this Court to the typed set of documents and would submit that the 3rd respondent / Tahsildhar has also sent a communication dated 11.07.2017 to the 2nd respondent, pointing out that this Court has already passed an order to remove the encroachment and in the event of the encroachment found in 7th Street of Rajamangalam, appropriate proceedings shall take place and would urge that even in the said notice, number and date of disposal of the writ petition has not been communicated and there was no positive direction directing the 2nd respondent to remove the encroachment and as such the issuance of the notice under Section 5 of the Tamil Nadu Land Encroachment Act is *per se* unsustainable and on point of law would urge that in respect of land classified as Grama Natham, the provisions of Tamil Land Encroachment Act cannot be invoked and hence, prays for appropriate orders.

7. *Per contra*, Mr.V.C.Selvasekaran, learned standing counsel appearing for the Corporation of Chennai, has invited the attention of this Court to the Counter affidavit of the 2nd respondent and would submit that in compliance of the interim order dated 11.09.2017, passed by this Court in this writ petition, the premises is kept under lock and seal and also took a stand that the petition Association had encroached upon Government land on a road portion.

8. Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the 3rd respondent has invited the attention of this Court to the Counter Affidavit and would submit that the writ petitioner had originally encroached the road portion comprised in T.S.No.115 of Block No.26 of Konnur Village admeasuring to an extent of 87 Sq.ft. and becoming aware of the same, the Greater Corporation of Chennai authorities has initiated action to remove the encroachment by issuing notice under Section 220 of the Chennai City Municipal Corporation Act, 1V of 1919 and in the interregnum, the writ petitioner had further extended the encroachment to its western side in the land comprised in T.S.No.110 of Block No.26 of Konnur Village to an extent of about 175 Sq.ft. and also further drawn the attention of this Court to the details that as per the TSLR

Extract of T.S.Nos.110 and 115 of Block No.26 of Konnur Village. It is also the submission of the learned Special Government Pleader that with regard to the alleged trespass, attack and damage to the property, in pursuant to the order passed by this Court in Crl.O.P.No.16112 of 2014, following C.S.R.No.376 of 2017, a case in Crime No.563 of 2017 was registered under Section 3(1) of the TNPPD Act, read with Section 34 of I.P.C. against the concerned persons and apprehending breach of peace and tranquillity, the Jurisdictional Station House Officer has also registered a case in Crime No.565 of 2017 dated 20.04.2017 under Section 145 CrPC and the said proceedings are still pending.

9. The learned Special Government Pleader would further urge that the assignment completed in respect of the land in question cannot be accepted for the reason that a group of anti social elements are indulging in nefarious activity in creating bogus assignment orders purported to have been issued by the Special Tahsildhar (Assignment), Saidapet and no regularisation of encroachment of lands classified as "Gramanatham" was ordered till 2013 and only in the year 2013, powers were delegated to the Taluk Tahsildhars to issue "Thoraya Pattas" to the persons residing in "Grama Natham" land and even in the Fair Register maintained by the

concerned office, there is no mention about the order reported to have been made in favour of petitioner Association. The claim made by the petitioner Association on the alleged order of assignment is a bogus one and appropriate action has also contemplated in that regard.

10. The learned counsel appearing for the 4th respondent would submit that the counter affidavit filed by the 3rd respondent would clearly disclose that the petitioner Association, has started indulging in illegal and nefarious activities and created bogus documents, based on which they made their claim. Since they failed to approach this Court with clean hands, they are not entitled to claim any indulgence from this Court and prays for dismissal of this writ petition with exemplary cost.

11. This writ petition was moved for admission on 07.08.2017 and taking note of the plea made by the petitioner, this Court has ordered notice to the 4th respondent and also made it clear that in the meanwhile, the petitioner shall not put up any further construction and shall maintain *status quo* as per the photograph annexed to the typed set of documents in Page No.28, till 11.09.2017 and this Writ petition was again listed on 11.09.2017 and it has been brought to the knowledge of this Court that

the petitioner Association has violated the Status Quo granted by this Court on 07.08.2017 and proceeding further with the construction and completed the same and taking note of the same, this Court has modified the interim order granted on 07.08.2017, with a direction directing the concerned authorities to put lock and seal of the premises and on the offending construction and the counter affidavit filed on behalf of Greater Chennai Corporation would also reveal that the said interim order has been complied with.

12. Now coming to the merits of the matter, the 3rd respondent in the counter affidavit dated 31.10.2017 has taken a specific stand that no order of assignment which is available at Page No.23 to 26 of the typed set of document filed in support of this writ petition has been issued and it is a bogus one. In page No.4 of the counter affidavit, the 3rd respondent took a stand that no regularisation of land classified as Grama Natham was ordered till 2013 and only in the year 2013, powers were delegated to the Taluk Tahsildars in an one time Government Order issued "Thoraya Patta" to the persons residing in Grama natham land in Chennai District and pointed out that survey was taken up in the said Konnur Village and completed on 28.10.1997 and the notification under Section 13 of the

Survey and Boundaries Act was finalised on 28.10.1997 and in the Fair Registers handed over to the office, there is no mention about the order of assignment reported to have been made in favour of petitioner association and the contents of the alleged order of assignment would also disclose that even the important word "Collector" and "Special Tahsildar" have been mis-spelt with major mistake and it is also an ample proof to show that the said order of assignment is also a bogus one.

13. In the light of the stand taken by the 3rd respondent in the counter affidavit, this Court has also perused the order of assignment which is available in Page Nos.23 to 26 of typed set of documents and on the top of the page No.23, the following is an hand written words :

"Assistent Collecater order is RC.317/1881 dated 14.03.81

Spl Thacenter Saidapet is RC 2186/dt 14.03.1981".

and in the last page of the order, it was signed by one Mr.Gunasekaran, the Special Tahsildhar (Assignment), Saidapaet. On 05.10.1989, the written document of the said order reveals that the Assistant Collector order is in proceedings No.RC.317 of 1881 dated 14.03.1981 and if the said proceedings emanated in the year 1881, the date should also been 14.03.1881, whereas it has been mentioned as 14.03.1981 instead of

14.03.1881 and the word Special Thacentar, Saidapet in proceedings RC No.2186 dated 14.03.1981 is written. The counter affidavit has also pointed out the silly mistake and the 3rd respondent also pointed out the mistakes available in the said assignment order and took a stand that the said order is an bogus one.

14. In the light of the stand taken by the respondents 2 and 3, this Court is of the considered view that the claim made by the petitioner in respect of the land in question, is *per se* unsustainable . Admittedly, the superstructure has been put up without any planning permission whatsoever and is an unauthorised one. This Court in the earlier paragraph has pointed out that despite the order of Status quo on 07.08.2017 directing the petitioner not to put up any further construction, the petitioner association has completed the construction also and therefore, in the order dated 11.09.2017, this Court has directed the 2nd respondent to put up lock and seal and accordingly, it has been put up.

15. The petitioner Association has failed to approach this Court with clean hands and it a settled position of law that the parties approaching this Court with tainted hands, is not entitled to claim any

indulgence from this Court. Therefore, this writ petition is dismissed. No cost. Consequently, the connected Miscellaneous petition is also closed.

16. The respondents 2 and 3 are directed to file a status report as to the follow up action taken by them as to their stand taken in the counter filed by them and the status report should also indicate as to how many encroachments on the public land/unauthorised construction/deviated constructions are in place in the said area.

(M.S.N.,J) (N.S.S.,J)

01.11.2017

Note : Issue order copy on 06.11.2017

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Index: No

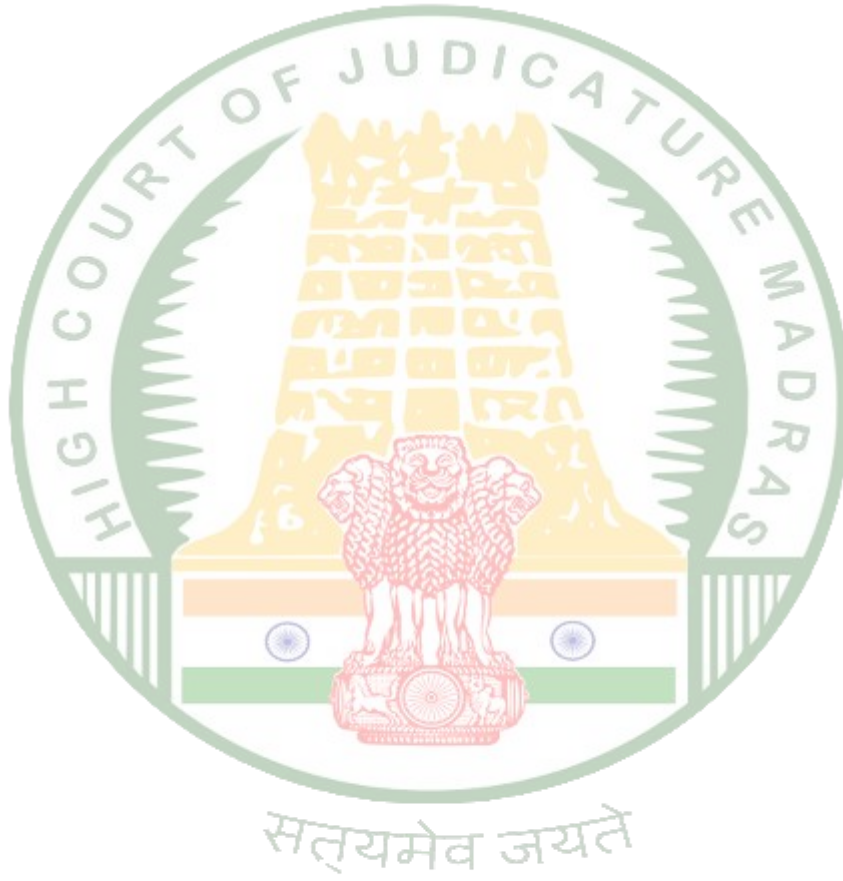
Internet: Yes

To

1.The Assistant Commissioner of Police (L&O)
Villivakkam Range,
Villivakkam, Chennai – 600 049.

2. The Assistant Commissioner,
VIII Region,
Corporation of Chennai,
Shenoy Nagar, Chennai – 600 020

3. The Tahsildhar,
Aynavaram Taluk,
Chennai – 600 102.



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M.SATHYANARAYANAN, J.,

AND

N.SESHASAYEE, J.,

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