

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.12.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI
WP.No.31849/2017 & WMP.Nos.34996 & 34997/2017

Ganesh Kumar

.. Petitioner

Versus

1.The District Collector
Kancheepuram District.

2.The Tahsildar
Sholinganallur,
Sholinganallur Taluk
Kancheepuram.

..Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for a writ of certiorarified mandamus calling for the records relating to section 6 Notice of the 2nd respondent daetd 02.02.2016 and quash the same and consequently, direct the respondents to provide the petitioner opportunity prior to any orders as per order dated 15.12.2015 in WP.No.39236/2015 of this Court and in compliance of section 7 of the Tamil Nadu Land Encroachment Act.

For Petitioner : Mr.K.Sakthivel

For R1&R2 : Mr.A.N.Thambidurai, Spl.GP

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 1 and 2.

2 The petitioner would state that his mother, viz., Tmt.P.Sagunthala, wife of Paramathma, had purchased the land admeasuring to an extent of 500 sq.ft., in S.No.70, Gandhi Nagar, I Street, Pallikaranai Village, Kanchipuram District,

through an unregistered Sale Deed dated 10.08.2009 and thereafter, a small superstructure to an extent of 400 sq.ft., has been put up and it is also subjected to statutory levies. On an earlier occasion, the 2nd respondent has issued a notice u/s.7 of the Tamil Nadu Land Encroachment Act, 1905, to the petitioner at the instance of one Mr.Boopalan who filed WP.No.39236/2015, to take appropriate action against the petitioner herein and one Rafiq, alleging encroachment on their part in respect of land in S.No.70, Narayanapuram, Gandhi Nagar, Pallikaranai, and it was disposed of on 15.12.2015 by directing the concerned respondent to provide an opportunity to the persons concerned and take appropriate action in accordance with law. However, without pursuing the said notice, the 2nd respondent has issued a fresh notice under section 6 of the said Act to the petitioner and challenging the legality of the said notice, he filed an appeal before the 1st respondent who vide impugned order dated 15.11.2017, has rejected it.

3 Mr.K.Sakthivel, learned counsel appearing for the petitioner would submit that the 1st respondent before disposing of the appeal, have not afforded a fair and reasonable opportunity either to the petitioner or to his mother to put forth their defence and by a non-speaking / cryptic order, has simply rejected the appeal and would further add that before issuing notice u/s.6 of the Tamil Nadu Land Encroachment Act, 1905, the notice u/s.7 of the said Act should be preceded and admittedly, the said mandatory procedure cast upon the 2nd respondent, has not been followed and hence, prays for interference.

4 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that as against the impugned order passed by the 1st respondent, the petitioner is having an effective alternate remedy u/s.10-A of the Tamil Nadu Land Encroachment Act, 1905, with a provision for stay u/s.10-B of the said Act and in the light of the same, the writ petition is not maintainable.

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

6 It is relevant to extract sections 10-A and 10-B of the Tamil Nadu Land Encroachment Act, 1905 :-

"Section 10:- An appeal shall lie [a] to the Collector from any decision or order passed by a Tahsildar or Deputy-Tahsildar [or an authorised officer] under this Act, and [b] to the District Collector from any decision or order passed otherwise than on appeal, and [c] to the Board of Revenue from any decision or order of a District Collector otherwise than on appeal.

Section 10-A:- [1] Any decision or order passed under Revision, this Act may be revised either suo motu or on application -

[a] by the District Collector, if such decision or order was passed by an authorised officer or a Deputy Tahsildar, Tahsildar or Collector ;

[b] by the Board of Revenue, if such decision or order was passed by any officer ;

[c] by the State Government, if such decision or order was passed by the Boar of Revenue.

[2] The power conferred by sub-section [1] shall not be exercised except on the ground that the officer or authority whose decision or order is sought to be revised appears to have exercised a jurisdiction not vested in him or it by law, or to have acted in the exercise of his or its jurisdiction illegally or with material irregularity.

[3] No decision or order shall be passed under sub-section [1] prejudicial to any person without giving such person a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before such decision or order is passed.

Section 10-B:- Pending disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, the Board of Revenue, or the State Government, as the case may be, may by order, and subject to such conditions as may be specified therein, stay the execution of the decision or order appealed against or sought to be revised."

7 Though the petitioner has prayed for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, grants liberty to the petitioner to file a revision before the Commissioner of Land Administration, Chepauk, Chennai-600005, challenging the legality of the order dated 15.11.2017 passed by the 1st respondent, within a period of three weeks from the date of receipt of a copy of this order by enclosing the relevant and authenticated documents as well as

the petition for stay and if the papers are otherwise in order, the Commissioner, Land Administration, is directed to take up the revision along with the petition for stay on file and thereafter, take up the petition for stay and give a disposal in accordance with law within a further period of three weeks thereafter. The Commissioner, Land Administration is also at liberty to take up the main revision itself and give a disposal on merits and in accordance with law as expeditiously as possible. It is made clear that the 2nd respondent, till the disposal of the petition for stay to be filed by the petitioner by the Commissioner, Land Administration, shall defer further proceedings under the provisions of the Tamil Nadu Land Encroachment Act, 1905. It is made clear that the petitioner, till the disposal of the revision by the Commissioner, Land Administration, shall not create any third party rights in respect of the land and superstructure in question and shall also not alter the physical features of the same.

8 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

AP

To

1. The District Collector
Kancheepuram District.
2. The Tahsildar
Sholinganallur,
Sholinganallur Taluk
Kancheepuram.

Copy to:-

The Commissioner,
Land Administration
Chepauk, Chennai-600 005.

- +1 CC to Mr.K.Sakthivel, Advocate sr 87544.
+1 CC to Govt. Pleader sr 88141.

WP.No.31849/2017

SP(18/12/2017)