

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.07.2017

CORAM:

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

W.P.No11937/2017 and WMP.No.12830&12831/2017

A.Palanisamy

... Petitioner

Vs

1.The Land Commissioner,
Ezhilagam,
Chennai.

2.The Collector,
Namakkal District,
Namakkal.

3.The Tahsildar,
Tiruchengode Taluk,
Namakkal District.

4.The Revenue Divisional Officer,
Tiruchengode Taluk,
Namakkal District.

5.The Revenue Inspector,
Pallipalayam, Tiruchengode Taluk,
Namakkal District.

..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of Certiorarified Mandamus or any other appropriate writ order or direction, to call for the records of the 1st respondent made in her proceedings in T2/28587/2015 dated 30.09.2016 and quash the same and consequently, direct the Respondents to assign the lands in S.No.232/5, Alampalayam Village, Tiruchengode Taluk, Namakkal District measuring to an extent of 0.35 cents by granting necessary patta to the petitioner within a time frame as may be fixed by this Court.

For Petitioner : Mr.S.Silambanan, Senior Advocate
For M/s.Kaavya Silambanan
Associates

For Respondents : Mr.R.Vijayakumar,
Additional Government Pleader

ORDER

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

By consent, the writ petition is taken up for final disposal.

2 The petitioner, in the affidavit filed in support of this writ petition would further aver among other things that he is the owner of lands admeasuring to an extent of 3 acres in Pallipalayam Village, comprised in S.No.247/1 C-2 situated in Alampalayam Panchayat Limits and he is an agriculturalist, doing agricultural activities in the above said land which is classified as "Dry land". The petitioner would further aver among other things that on the northern side of the land situated in S.No.232/5, his house is located and the said land has also classified as "Waste land" which is admeasuring to an extent of 40 cents and his grandfather was in possession and enjoyment by way of succession and he has succeeded to the said estate and as on today, he is in possession and enjoyment of the same by doing agricultural activities.

3 The petitioner would further aver that in respect of the land in occupation in S.No.232/5, he is paying penalty charges also and approached the concerned officials for obtaining Patta in respect of the said land. It is further stated by the petitioner that he has also filed W.P.No.21076/2006 praying for issuance of a Writ of Mandamus forbearing the respondents from dispossessing him, except under due process of law and it was disposed of on 05.07.2006 by directing the respondents to follow due procedure. The petitioner has filed one more writ petition in W.P.No.27415/2007, praying for a direction to the concerned authorities to take action on the representation made by the petitioner for Assignment of Lands and it was disposed on 17.08.2015 directing the respondents to consider the said representation and pass an appropriate orders, accordingly and in the interregnum, the Revenue Inspector, Pallipalayam has issued a notice under the provisions of Tamil Nadu Land Encroachment Act, 1905 and challenging the same, filed W.P.No.28212/2007 and it was entertained and interim order was granted and later on, it was disposed on 16.12.2009 with a direction, directing the Collector, Namakkal District to determine the request made by the petitioner to grant patta and if that is rejected, only if the encroachment was objectionable and then in public interest, appropriate action under the provisions of Land Encroachment Act shall be taken and till such time, a notice dated 16.08.2007 shall stand suspended.

4 Enquiry was conducted by the 1st respondent and thereafter, he has passed an order dated 28.09.2015, ordering the officials to remove the encroachment on the part of the

petitioner in respect of the land in S.No.232/5, admeasuring to an extent of 0.17.5 Hectres. The petitioner made a challenge by filing a revision before the 1st respondent and vide order dated 30.09.2016, the 1st respondent has dismissed the said revision. Challenging the legality of the same, the present writ petition is filed.

5 Mr.S.Silambanan, learned Senior Counsel assisted by Ms.Kaavya Silambanan, appearing for the petitioner would submit that admittedly, certain extent of lands in question in S.No.232/5 are in possession of the petitioner and it is a non-objectionable encroachment. The petitioner is not using the said land for any commercial purpose, but only for raising Coconut trees and though, it is stated in that said order that the land in question may be used for expansion of the Government road, such a decision is yet to arise. Till the authorities take such a decision, his possession may be protected and would further pray that till the disposal of the application submitted by him for assignment of land, his possession may be dispossessed.

6 Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents 1 to 3 has invited the attention of this Court to the order of the 2nd respondent dated 28.09.2015 as well as the order passed in the revision by the 1st respondent dated 30.09.2016 and would submit that both authorities had perused the relevant records and rightly reached the conclusion that the encroachment committed by the petitioner in respect of the land in question is for removal after due process of law and since, the said findings are concurrent in nature based upon the appreciation of factual aspects, this Court under Article 226 of the Constitution of India, may not interfere in the said findings and prays for dismissal of the writ petition.

7 This Court has carefully considered the rival submission and also perused the typed set of documents.

8 A perusal of the order dated 28.09.2015 passed by the 1st respondent would clearly indicate that the petitioner is in possession of the Patta land in S.No.242/1B2 0.06 Punjai Land as well as land in Natham Suvey No.453/3 and he has also earning income of Rs.2,50,000 and the properties of the petitioner are worth Rs.20,00,000.

9 The 2nd respondent has also taken note of the fact that the petitioner has also leased out house in Natham S.No.453/6 and also leased out in favour of one Vijayalakshmi Dyeing and earning sufficient income and since, he is well off in the event of encroachment being removed, he may not be put to any loss of income and therefore, dismissed the representation, vide order dated 28.09.2015. In the revision petition filed by the petitioner, challenging the legality of

the said order, the Additional Chief Secretary / Commissioner of Land Administration, Chepauk, Chennai, has called for the records and also heard the submissions of the learned counsel appearing for the petitioner and on perusal of the records found that the writ petitioner had encroached the Government Land classified as "Waste Land" in S.No.232/5 admeasuring to an extent of 35 cents and also prays for Assignment of Patta. The 1st respondent would further found that the land in question lies abutting to the road and hence, the land may be used for road widening and construction of Government buildings in future and also taken note of the fact that the Collector of Namakkal District has directed the Tahsildar, Thiruchengode Taluk to take due steps to remove the encroachment, vide notification under the provisions of Tamil Nadu Encroachment Act, 1905 and accordingly, notice under Section 7 of the said Act, dated 20.10.2015 was issued by Revenue Inspector, Pallipalayam, Thiruchengode Taluk, which was followed by Notice under Section 6 of the said Act dated 13.11.2015 has issued by the Tahsildar, Thiruchengode Taluk. The 1st respondent has also taken note of the fact that the petitioner herein had approached this Court very many times by filing writ petitions to avoid the removal of the encroachment. The 1st respondent further found that the Collector of Namakkal District has exercised his function strictly in accordance with law by following the due process of law and therefore, citing the said reasons, has dismissed the same, vide impugned order dated 13.09.2016.

10 It is not in dispute that the petitioner is also the owner of vast extent of Patta lands and therefore, his claim cannot be considered as a landless poor and though, it is contended by the learned counsel appearing for the petitioner that the land in question is used for agricultural activities, the fact remains that the petitioner is a encroacher and to avoid the removal of encroachment, he has approached and this Court order dated 17.08.2015 in W.P.No.27415/2007 has directed the concerned 1st respondent to act on the representation submitted for Assignment of Patta and the same is still under consideration.

11 Learned senior counsel appearing for the petitioner also made an valiant attempt by submitting that unless his representation, as ordered by this Court in W.P.No.27415/2007 is disposed of, his possession cannot be dispossessed.

12 However, this Court is not inclined to pass any such order for the reason that the respondents shall take appropriate action in accordance with law, for the purpose of removal of encroachment.

13 The findings recorded by the 2nd respondent are based upon proper appreciation and consideration of the relevant records and the 1st respondent in exercise of its revisional

jurisdiction, has also independently applied her mind to reject the appeal. This Court, in exercise of its jurisdiction under Article 226 of the Constitution of India is not inclined to interfere with the same.

14 In the result, writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1.The Land Commissioner,
Ezhilagam,
Chennai.

2.The Collector,
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3.The Tahsildar,
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Tiruchengode Taluk,
Namakkal District.

5.The Revenue Inspector,
Pallipalayam, Tiruchengode Taluk,
Namakkal District.

+1cc to M/s.Kaavya Silambanan Associates, Advocate sr.47984

+1cc to Government Pleader sr.48102

W.P.No.11937/2017

br(co)
ss(8/8/2017)