

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2017

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THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P.No.32302 of 2017

and WMP.No.35566 of 2017

Gunasekaran

.... Petitioner

Vs.

1.The Secretary to Government,
Revenue Department,
Fort St.George, Chennai-600 009.

2.The Commissioner of Revenue Administration,
Chepauk, Chennai-600 005.

3.The District Collector,
Salem, Salem District.

4.The Sub-Collector cum Revenue Divisional Officer,
Mettur, Mettur Taluk,
Salem District.

5.The Tahsildar,
Taluk Office, Omalur Taluk,
Salem District.

6.The Inspector of Police,
Omalur Police Station,
Omalur Taluk, Salem District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents not to dispossess the petitioner from the land until the proceedings commenced under the Act are attained finality before the Government in respect of land in S.No.143/1, an extent of 2 cents situated at Kottai Mariamman Street, Omalur Village and Omalur Taluk subject to filing the appeal and revision by the petitioners within the limitation period as prescribed under the Act.

For Petitioner : Mr.M.Elango

For Respondents : Mr.M.Dig Vijaya Pandian,
Additional Government Pleader
Mr.G.Surya Narayanan for Intervenor

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

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

2. The petitioner claims that he is in possession of lands in S.No.143/1, admeasuring 2 cents in Kottai Mariamman Koil Street, 11th Ward, Omalur Taluk, Salem District and according to him, the lands in the said survey number has been classified as "Government Poromboke" in the Revenue Records and he is in possession and enjoyment of the lands in question from the year 1960 onwards and he has also put up thatched shed as well as permanent structure on the said land and the said premises has also been given electricity service connection and he has also been issued with Aadhar Card, Voter Identity Card and Ration Card. The petitioner would aver that on an earlier occasion, proceedings were initiated under the provisions of Tamil Nadu Land Encroachment Act, 1905 and challenging the same, the petitioner and nine others had filed W.P.No.11190 of 2017, which was disposed of by this Court on 04.07.2017 by granting liberty to the petitioner and others to file an appeal under Section 10 of the said Act along with petition for stay under Section 10-B before the Appellate Authority/third respondent and the said appeal is still pending. Accordingly, the petitioner filed an appeal dated 08.08.2017 to the Sub-Collector, Mettur and he was also issued with notice of hearing dated 28.09.2017 in the appeal, calling upon him to appear for hearing on 06.10.2017 and in the interregnum, apprehending dispossession at the hands of officials of the respondents, the petitioner came forward with this writ petition.

3. When the matter was listed on 11.12.2017, this Court, taking into consideration the apprehension expressed by the petitioner, directed the learned Additional Government Pleader to get instruction as to the latest position with regard to the appeal filed by the petitioner and directed listing of the matter on 15.12.2017 under the caption "For Orders" and till such time, the fifth respondent shall defer further decision to dispossess the petitioner from the premises in question. When the matter is listed today, the learned counsel appearing for the petitioner would submit that despite subsistence of interim order passed by this Court, the superstructure put up by the petitioner has been demolished and the land has also been taken possession and therefore, prays for appropriate orders directing the officials of the respondents to restore possession and also to pay damages for effecting such unlawful dispossession.

4. Per contra, Mr.M.Dig Vijaya Pandian, learned Additional Government Pleader appearing for the respondents would submit that after following due process of law, possession has been taken and admittedly, the petitioner is a rank encroacher and he has put up unauthorised construction and therefore, it cannot be said that the respondents have violated the law and on instructions, would submit that the petitioner has already been given alternative accommodation in S.No.25/6, Melkannanpatty, Omalur Taluk, but he is not inclined to move to the said place and insisting to remain in possession on the land in question and the same is wholly unsustainable.

5. Mr.G.Surya Narayanan, learned counsel appearing for the intervenor/Arulmighu Kottaimaraianman Temple would submit that the land in question is classified as "Temple Poromboke" and as such, the petitioner has no legal right to encroach upon the said land and despite fair opportunity given by the official respondents by way of alternative accommodation, he refused to do so and he has to face the cost and consequences of his own wrong.

6. In response to the same, the learned counsel appearing for the petitioner would submit that the petitioner and 13 others had filed W.P.No.29999 of 2017, praying for disposal of their representation dated 24.10.2017, in and by which they pray for grant of free house site patta and assignment in their favour and this Court disposed of the said writ petition, vide order dated 22.11.2017, directing the respondents to pass orders on the petitioners representation dated 24.10.2017 within a stipulated time and as such, the present stand of the respondents is wholly untenable.

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

8. This Court, while entertaining and ordering notice in the writ petition on 11.12.2017, directed the fifth respondent to defer further decision to dispossess the petitioner from the premises in question and however, before communication of the said order, the superstructure put up by the petitioner was demolished and the land on which the petitioner was in occupation as encroacher, was also taken possession. It is the specific case of the petitioner that challenging the provisions of the Tamil Nadu Land Encroachment Act, 1905, the petitioner has filed an appeal and the same is pending on the file of the Sub-Collector, Mettur.

9. It is also brought to the knowledge of this Court by the learned counsel appearing for the intervenor/temple that the application for patta submitted by the petitioner came to be rejected and the appeal filed by him had also ended in dismissal.

10. This Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, directs the Sub-Collector Mettur to consider and dispose of the petitioner's appeal dated 08.08.2017, if not already disposed of, in accordance with law and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner.

11. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/--
Assistant Registrar(CS VI)

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Sub Assistant Registrar

jvm

To

1.The Secretary to Government,
Revenue Department,
Fort St.George, Chennai-600 009.

2.The Commissioner of Revenue Administration,
Chepauk, Chennai-600 005.

3.The District Collector,
Salem, Salem District.

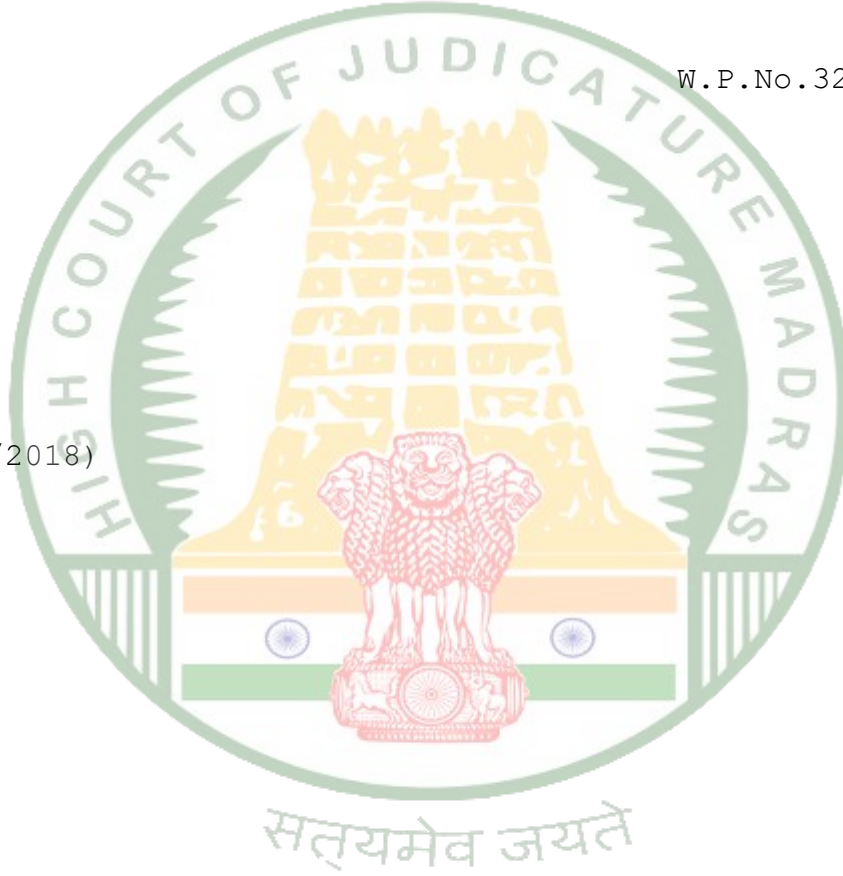
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6.The Inspector of Police,
Omalur Police Station, Omalur Taluk, Salem District.

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