

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.08.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.21866/2017 & WMP.Nos.22878 & 22879/2017

Marappa Gounder

.. Petitioner

Versus

1. The District Collector
Namakkal, Namakkal District.
2. The Revenue Divisional Officer
Rasipuram, Rasipuram Taluk
Namakkal District.
3. The Tahsildar
Rasipuram, Rasipuram Taluk Office
Namakkal District.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to proceedings of the 3rd respondent in Na.Ka.No.9183/2016/B5 dated 23.06.2017 and 19.07.2017 and quash the same and consequently to direct the 3rd respondent to issue patta to the petitioner in respect of the property situated at R.Pudupatti village, Rasipuram Taluk, Namakkal District, comprised in Natham Survey No.492/1, Sub Survey No.28, measuring in extent of 400 sqft [0.00200 sq.m.].

For Petitioner : Mr.Venkatasamy Babu
For R1 to 3 : Mr.P.Sanjay Gandhi, AGP

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.P.Sanjay Gandhi, learned Additional Government Pleader accepts notice on behalf of the respondents 1 to 3.

2 The petitioner, in the affidavit filed in support of this writ petition would aver among other things that he is having a residential premises in R.Pudupatti Village and his father had put up a "Pandhal" [thatched roof] in the adjacent Natham lands nearer to his residential house about 60 years back and after the demise of this father, the petitioner had succeeded to the said estate and removed the thatched roof and put up asbestos roofing sheets for convenience and the said Natham land is admeasuring to an extent of 400 sq.ft. It is also the claim of the petitioner that he is in continuous possession and enjoyment of the said property by way of succession, admeasuring to an extent of 400 sq.ft., for very many years and the occupation of the same did not affect anybody. It is further averred by the petitioner that to his shock and surprise, the 3rd respondent, had issued the impugned notices under sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, and immediately, he met the 3rd respondent and explained in detail about his continuous possession and enjoyment of the said land and also submitted a representation dated 28.06.2017 for issuance of patta in respect of the said land.

3 The learned counsel for the petitioner would submit that in respect of the Natham land, the 3rd respondent is not vested with any jurisdiction to invoke the provisions of the Tamil Nadu Land Encroachment Act, 1905, and therefore, the petitioner is constrained to make a challenge to the impugned notices issued under sections 7 and 6 of the said Act. The learned counsel, in support of his contentions, has placed reliance on the following decisions of this Court:-

[1] 2012 [1] CTC 280 [Dharmapura Adhinam Mutt rep. by its Adhinakartha, Sri-la-sir Shanmugha Desika Gnanasampanda Paramachariya Swamigal, Dharmapuram, Mayiladuthurai Taluk, Nagapattinam District Vs, Raghvan and another] ; and

[2] Order dated 02.09.2014 made in WP [MD] No.14471/2014 [Subburaj Vs, The District Collector, Madurai District, Madurai and others].

4 Per contra, Mr.P.Sanjay Gandhi, learned Additional Government Pleader appearing for the respondents would submit that the land in question has been classified as Natham Land and the 3rd respondent is having jurisdiction to invoke the provisions of the Tamil Nadu Land Encroachment Act, 1905 and further that the petitioner is also having an effective alternate remedy under section 10 of the said Act and as such, the writ petition is not maintainable.

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

6 Section 1 of the Revenue Standing Order 21 states that "portions of Grama Natham or Village site at the disposal of the Government not being land required for the common use of the villagers may be granted for building purposes to bona fide applicants.....". It is also relevant to extract Revenue Standing Order 21 [3] which reads thus:-

"3.Treatment of Unauthorised Occupation:-

[i] Village site not to be appropriated without previous permission:- Collectors will assert the prerogative of Government by making it known in all Government villages that village site cannot be appropriated without permission previously obtained.

[ii] Consequence of such appropriation:- If any portion of the village site is appropriated without permission and if the occupation is considered to be objectionable, the provisions of the Act III, 1905 should be applied in accordance with the instructions contained in Standing Order No.26. If the occupant is found to be entitled to an allotment and the occupation is unobjectionable the site may be formally granted in accordance with the rule, contained in paragraph 2 above and no penalty or at most a mere nominal penalty, should be imposed unless special circumstances render the imposition of penalty desirable.

[iii] Responsibility of Village Administrative Officers:- Village Administrative Officers will be held responsible for preventing and reporting encroachments."

7 The decisions relied on by the learned counsel for the petitioner lay down the proposition that "classification of the land, being Grama Natham, never vest with the Government nor the Government could take action under the provisions of the Tamil Nadu Land Encroachment Act, 1905. Admittedly, the land in occupation of the petitioner is classified only as "Natham" land. The primordial submission made by the learned counsel for the petitioner is that since the land has been classified as Grama Natham, the 3rd respondent cannot invoke the provisions of the Tamil Nadu Land Encroachment Act, 1905, and as such, the petitioner need not invoke the alternate remedy available under section 10 of the said Act. In the considered opinion of the Court, the said submission lacks merit and substance for the reason that this Court cannot presume that as and when the said point is urged or ground is raised, the authority constituted under section 10 of the Act, could take cognizance of the same and that apart, the impugned notices describe the land in occupation of the petitioner as "Natham" ; whereas the above

cited judgment lay down the proposition that the Grama Natham lands can never vest with the Government.

8 Since the petitioner is having an effective alternate remedy, the writ petition is not maintainable for the present. If the petitioner is so advised, he is at liberty to file an appeal under section 10 of the Tamil Nadu Land Encroachment Act, 1905, within a period of two weeks from the date of receipt of a copy of this order and till such time, the 3rd respondent shall defer further proceedings in terms of the impugned notices and if the papers are otherwise in order, the Appellate Authority shall entertain the appeal and give a disposal on merits and in accordance with law within a further period of eight weeks thereafter and communicate the decision taken, to the petitioner.

9 The writ petition stands dismissed as not maintainable with the above observations. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

AP
To

1. The District Collector
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2. The Revenue Divisional Officer
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Namakkal District.

+1 Cc to Mr. Venkatasamy Babu, Advocate sr 58914
+1 Cc to Govt. Pleader sr 59326.

WP.No.21866/2017

KS (CO)
sp(06/09/2017)