

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

WP.Nos.32394 to 32396 of 2017and
WMP.Nos.35679 to 35681 of 2017

P.Elumalai ..Petitioner in WP.No.32394/2017
Lalitha ..Petitioner in WP.No.32395/2017
E.Kumar ..Petitioner in WP.No.32396/2017

Vs

- 1.The District Collector,
Kancheepuram District,
Kancheepuram.
- 2.The Tahsildar,
Sholinganallur Taluk,
Kancheepuram District.
- 3.The Revenue Inspector,
Pallikaranai,
Sholinganallur Taluk,
Kancheepuram District. .. Respondents in all WP.s

COMMON 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 the impugned notice dated 21.11.2017 issued by the 3rd respondent U/s.7 of the Tamil Nadu Land Encroachment Act 1905 in respect of the land measuring to an extent of 653 sq.ft. and 1526 sq.ft. comprised in Old Survey No.123/22B, New Survey No.123/107 bearing Plot Nos.3 and 3B mentioned as Survey No.123/26 in the impugned notice dated 21.11.2017, by the respondents, situated at No.52, Kovilambakkam Village, previously Tambaram Taluk, now Sholinganallur Taluk, Kancheepuram and consequently direct the respondent not to interfere with the peaceful possession and enjoyment of the petitioners property.

For Petitioners in all WPs : Mr.K.M.Manikandan

For Respondents in all WPs: Mr.M.Digvijaya pandian, AGP

COMMON ORDER

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

By consent, the writ petitions are taken up together for hearing and are disposed of by the following common order, since the issue to be adjudicated is one and the same. Mr.M.Digvijaya pandian, learned Additional Government Pleader accepts notice on behalf of respondents 1 to 3.

2 The petitioner in WP.No.32394/2017 claims to be the absolute owner of the land measuring to an extent of 1526 sq.ft comprised in S.No.123/22B bearing Plot No.3B, situated at No.52, Kovilambakkam Village, Sholinganallur Taluk, Kancheepuram District. The said land has been assigned in favour of the petitioner and likewise, his father viz., Mr.Pattu Naicker was also issued with Assignment Patta in respect of the land measuring to an extent of 3 cents comprised in Survey No.123/1B situated at No.52, Kovilambakkam Village, Kancheepuram District vide proceedings of the Special Tahsildar, MMRO Schemes, Saidapet on 03.11.1974. A superstructure has also been put up on the said land in question and in respect of 1 ½ acres of land owned by his father in S.No.123/2B, land acquisition proceedings were initiated by the Government for road widening purpose, for which, he has also been paid with compensation. The petitioner in WP.No.32394/2017 would further state that on 05.03.1999, his father executed registered Settlement Deed bearing Document No.579 of 1999 registered on the file of the office of the Sub Registrar Office, Pallavaram in respect of 653 sq.ft comprised in S.No.123/22B. Thus, the petitioner became the owner of the said land and also 1 ½ cents of land as per the Assignment Patta and the petitioner has also put up two storeyed building (Commercial complex). The petitioner in WP.No.32396/2017 is his son and the petitioner in WP.No.32395/2017 is the daughter-in-law of the petitioner in WP.No.32394/2017. However to the shock and surprise of the petitioners, the petitioners were issued with Notices under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, dated 21.11.2017 and challenging the legality of the same, the petitioners came forward to file this writ petition.

3. The learned counsel appearing for the petitioners would submit that since the lands were assigned in favour of the father of the petitioner in WP.No.32394 of 2017 and the said land is in possession of the petitioners, the petitioners cannot be construed as encroachers and prays for appropriate orders.

4. Per contra, Mr.Digvijaya Pandian, learned Additional Government Pleader appearing for the respondents would submit

that it is doubtful whether the father and son, viz., Pattu Naicker and P.Elumalai [petitioner in WP.No.32394/2017] have been issued with the Assignment Patta and seeks time to get instruction as to the authenticity of the Assignment of Patta in favour of the father and son and would further add that even otherwise, the writ petition is not maintainable for the reason that they have an effective alternate remedy under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 and prays for dismissal of this writ petition.

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

6. Insofar as the authenticity of the Patta granted in favour of the father and son, viz., Pattu Naicker and P.Elumalai [petitioner in WP.No.32394/2017], it is open to the 2nd respondent, to do the needful in accordance with law and insofar as challenge made to the impugned notice dated 24.11.2017 is concerned, the petitioners are having an effective alternate remedy under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, before the Appellate Authority with the petition for stay under Section 10B of the said Act. A perusal of the photograph would also disclose that two storeyed commercial complex has been put up on the land which according to the petitioners is as per the sanctioned plan obtained from the Local Body.

7. This Court in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioners grants liberty to the petitioners to file an appeal, along with petition for stay challenging the impugned Section 7 notice issued by the 2nd respondent before the 1st respondent, along with the copy of this order and also enclosing the relevant and authenticated documents within a period of three weeks from the date of receipt of a copy of this order and upon receipt of the same, the 1st respondent or delegated official shall entertain the appeal if the papers are otherwise in order and take up the petition for stay and give a disposal in accordance with law within a further period of three weeks thereafter and till such time, the 2nd respondent shall defer further decision in terms of the impugned notice and 1st respondent or delegated official is at liberty to take up the main appeal itself and give a disposal on merits and in accordance with law within a further period of eight weeks from the date of entertainment of the appeal and communicate the decision taken to the petitioners. It is also made clear that the petitioners till the disposal of the appeal shall not create third party rights and shall not alter the physical features of the land and superstructure in question also.

8. The writ petition stands disposed of. No costs. Consequently connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Kancheepuram District,
Kancheepuram.
2. The Tahsildar,
Sholinganallur Taluk,
Kancheepuram District.
3. The Revenue Inspector,
Pallikaranai,
Sholinganallur Taluk,
Kancheepuram District.

+1cc to Mr.K.M.Manikandan, Advocate, S.R.No.89675
+1cc to the Government Pleader, S.R.No.90613 TO 90615

WP.Nos.32394 to 32396 of 2017and
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GMI (CO)
CS/24/01/18

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