

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.12.2017

CORAM:

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

WP No.32461 of 2017 and WMP No.35761 of 2017

M/s.Avish Automotives Pvt Ltd
Represented through its Director
Shri.V.S.J.Dinakaran
Plot No.1, M.T.H.Road,
Manikandapuram, Thirumullaivoyal,
Chennai - 600 062. ...Petitioner

Vs

1. The District Collector,
Thiruvallur District,
Thiruvallur.
2. The Deputy Tahsildar,
Saidapet, Chennai - 600 015.
3. The Divisional Officer,
Public Works Department-Water Resources,
Redhills Irrigation Department,
Redhills, Chennai - 600 067. ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the impugned records pertaining to the Notice No.KO11/P.A/2016/21.11.2017 dated 21.11.2017 on the file of the 3rd respondent herein and quashed the same illegal.

For petitioner : Mr.C.Shankar
For Respondents : Mrs.M.E.Rani Selvam, AGP

ORDER

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

By consent, the writ petition is taken up for final disposal. Mrs. M.E.Rani Selvam, learned Additional Government Pleader, accepts notice for respondents.

2 The petitioner is a Private Limited Company and claimed to have purchased the land with commercial building in the name of "M/s.Sakthi Motors" at Plot No.1, Old.S.No.569/4A1E [Patta No.4805], M.T.H.Road, Manikandapuram Thirumullaivoyal, Ambattur Taluk, Thiruvallur District, admeasuring to an extent of 3090 Sq.ft. along with electricity connection and other appurtenants attached to the scheduled property, vide registered Sale Deed bearing Document No.3036 of 2017 dated 20.03.2017 registered on the file of the Sub Registrar, Ambattur, and would further claim that ever since the date of purchase, the petitioner company is in absolute possession and enjoyment of the said property and running show room.

3 The petitioner would further state that the previous owner was issued with a notice in form No.III dated 15.07.2016 under the Provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the Rules framed thereunder, for which, the previous owner namely Tr.N.Vasudevan S/o.L.Natarajan, Proprietor of Shakthi Motors and also sent a detailed legal notice dated 18.07.2016, specifically pointing out that he is the owner of the property in old survey No.569/4A1E and also put up construction in accordance with the planning permission issued by the Chennai Metropolitan Development Authority vide order in No.461/02/F2 dated 24.05.2002 and he has never encroached Arabath Eri (Water body) in survey No.567 for nearly 140 Sq.mts and prayed for withdrawal of notice and since no response was forthcoming, he filed the W.P.No.26887 of 2016 against the respondents herein and a Division Bench of this Court, vide final order dated 08.08.2016, has granted liberty to the respondents/authorities to verify, withdraw the notice served on the petitioner therein and proceed against the correct person, who has encroached upon the land in question and disposed of the writ petition accordingly.

4 The learned counsel appearing for the petitioner would submit that the petitioner herein had purchased the said property from the previous owner Mr.N.Vasudevan S/o. Mr.L.Natarajan , Proprietor of Shakthi Motors through a registered Sale Deed dated 20.03.2017 and is possession and enjoyment of the same and once again, the third respondent has issued the impugned notice under Form III and a reference was made to the order dated 19.09.2016 passed in W.P.Nos.22177 to 22194 of 2016 was taken into consideration and without understanding the scope and purport of the order, proceeds on the footing as if the petitioner is an encroacher in Survey No.567 and ignoring the fact that it is specific case of the petitioner Company that he is in lawful possession and occupation of the land admeasuring to an extent of 3090 Sq.ft along with the superstructure in old survey No.569/4A1E (Patta No. 4805) and prays for quashment of the same.

5 Per contra Mrs. A.E.Rani Selvam, learned Additional Government Pleader appearing for the respondents would submit that the 3rd respondent, after following due to process of law, is taking appropriate action in respect of encroachment which is on the water body in the dismissal of the writ petition.

6. The Court heard the rival submissions and also perused the materials placed before it.

7 The predecessor in title of the property in question namely, Mr.Vasudevan filed W.P.No.26887 of 2016 and this Court, while finally disposing of the said writ petition on 08.08.2016, observed that it is for the respondents therein/herein to verify and withdraw the notice served on the petitioner therein and proceed against the correct persons who has encroached upon the land in question in accordance with law. It is categorical stand of the predecessor in title of the petitioner as well as the petitioner that they have never encroached upon the water body in survey No.567 and it is the specific case of the petitioner that he is in lawful possession and enjoyment of the land admeasuring to an extent of 3090 sq.ft., along with superstructure old Survey No.569/4A1E.

8 It appears impugned notice that the said vital aspect has not been considered by the third respondent. This Court, in the light of the above facts and circumstances and without going into merits of the claim projected by the petitioner, permits the petitioner to submit his response to the impugned notice dated 21.11.2017 passed by the 3rd respondent in the form of representation along with a copy of this order and also enclosing relevant and authenticated documents within in a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the third respondent shall provide an opportunity of personal hearing to the authorised representative of the petitioner and thereafter consider and dispose of the representation on merits and in accordance with law within a further period of six weeks thereafter and communicate the decision taken, to the petitioner and till such time, the third respondent shall defer further decision in terms of the impugned notice on 21.11.2017. It is made clear that the petitioner/Company, till the disposal of the said representation to be submitted by the petitioner, by the third respondent, the petitioner/company shall not create any third party rights in respect of land and superstructure in question and shall also not alter the physical features of the same.

9 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1. The District Collector,
Thiruvallur District,
Thiruvallur.
 2. The Deputy Tahsildar,
Saidapet, Chennai - 600 015.
 3. The Divisional Officer,
Public Works Department-Water Resources,
Redhills Irrigation Department,
Redhills, Chennai - 600 067.
- + 1 cc to Mr.C.Shankar Advocate, SR.88430
- + 1 cc to The Govt.Pleader, SR.89697

WP No.32461 of 2017

nr 08/01/2018

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