

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

WP No.32503/2017 & WMP.No.32822/2017

A.Perumal

..

Petitioner

Vs

The Tahsldar
Aarani Taluk, Tiruvannamalai District.

..

Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari calling for the records relating to the impugned order dated 18.11.2017 issued in Annexure XXXII issued by the respondent and quash the same.

For petitioner

: Mr.N.Manoharan

For Respondent

: Mrs.M.E.Rani Selvam, AGP

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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 respondent.

2 The petitioner claims that his father [late] Adhikesavan had occupied a site admeasuring to an extent of 728 sq.ft., in TS.No.60, E/1 Block of Arani Town, nearly 50 years ago and is running a business by putting up "Pandhal" and after his demise, the petitioner continues to be in possession and enjoyment of the property and it is subjected to statutory levies. The petitioner would further aver that on an earlier occasion, the respondent has issued a notice u/s.5 of the Tamil Nadu Land Encroachment Act, 1905, to the father of the petitioner and thereafter, no action has been taken and all of a sudden, the respondent has issued the notice u/s.7 of the said Act and challenging the legality of the same, the petitioner came forward to file the present writ petition.

3 The learned counsel for the petitioner would submit that the father of the petitioner had occupied the land in question and was doing a small business by putting "Pandal" and after his demise, the petitioner is continuing to do so and also put up a small superstructure and it is also subjected to statutory levies and without affording any opportunity whatsoever, attempts are being made to dispossess the petitioner under the guise of initiation of the proceedings under the

Tamil Nadu Land Encroachment Act, 1905, and prays for appropriate orders.

4 *Per contra*, the learned Additional Government Pleader would submit that the long passage of time would not lead to the presumption that the petitioner is having a lawful right, title and possession in respect of the site in question and would further add that the petitioner is also having an effective alternate remedy u/s.10 of the Tamil Nadu Land Encroachment Act, 1905 and as such, the writ petition is not maintainable and prays for dismissal of the same.

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

6 It is relevant to extract sections 10 and 10-B of the Tamil Nadu Land Encroachment Act, 1905:-

"Section 10:- *An appeal shall lie [a] to the Collector from any decision or order passed by a Tahsildar or Deputy-Tahsildar [or an authorised officer] under this Act, and [b] to the District Collector from any decision or order passed otherwise than on appeal, and [c] to the Board of*

Revenue from any decision or order of a District Collector otherwise than on appeal.

Section 10-B:- Pending disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, the Board of Revenue, or the State Government, as the case may be, may by order, and subject to such conditions as may be specified therein, stay the execution of the decision or order appealed against or sought to be revised.”

7 Though the petitioner has prayed for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, permits the petitioner to file an appeal along with a petition for stay u/s.10 and 10-B of the Tamil Nadu Land Encroachment Act, 1905, to the Appellate Authority, viz. The Collector, Tiruvannamalai District, within a period of two weeks from the date of receipt of a copy of this order, by enclosing all the relevant and authenticated documents and upon receipt of the same, the Appellate Authority shall entertain the appeal along with the petition for stay, if the papers are otherwise in order and the Appellate Authority / delegated official shall take up the petition for stay initially and give a disposal in accordance with law within a further period of four weeks thereafter. The Appellate Authority/delegated official is also

at option to take up the main appeal itself and give a disposal in accordance with law within a period of ten weeks from the date of entertainment of the appeal petition. It is made clear that the respondent, till the disposal of the petition for stay by the Appellate Authority/delegated official, shall defer further decision in terms of the impugned notice dated 18.11.2017. It is also made clear that till the disposal of the appeal to be filed by the petitioner, by the Appellate Authority / delegated official, the petitioner shall not create any third party rights in respect of the land and superstructure in question and shall also not alter the physical features of the same.

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

[M.S.N.,J] [S.P.I., J]
14.12.2017

Internet : Yes

AP

M.SATHYANARAYANAN.,J,
and

SATRUGHANA PUJAHARI.,J.,

AP

To
The Tahsldar
Aarani Taluk, Tiruvannamalai District.

Copy to:-
The Collector
Tiruvannamalai District.



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