

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP No.32846/2017

C.Chandra

..

Petitioner

Vs

1.The District Collector
Kancheepuram District.

2.The Tahsildar
Thiruporur Taluk
Kancheepuram District.

..

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus directing the respondents not to disturb the peaceful possession and enjoyment of the property in Survey No.128/A20 at Mambakkam, Tiruporur Taluk, Kancheepuram District in view of the order passed by this Court in WP.No.42026/2016 dated 30.11.2016.

For petitioner

: Mr.G.Muthukumar

For R1&R2

: 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. Ms.M.E.Rani Selvam, learned Additional Government Pleader accepts notice on behalf of the respondents.

2 The petitioner claims that she had purchased the property comprised in S.No.128/A21, 128/A22 and 128/A23 admeasuring to an extent of 3.03 acres and another landed property admeasuring to an extent of 0.18/5 Hectares in S.No.128/A20 at Mambakkam Village, Tiruporur Taluk, Kancheepuram District, through a registered Sale Deed bearing Document No.2543/1979 dated 27.06.1979 registered on the file of the office of the Sub Registrar, Tambaram and claims that right from the date of purchase, she is possession and enjoyment of the said landed properties and also cultivating the same. The petitioner would aver that on an earlier occasion, she was issued with a notice dated 21.04.2015 u/s.6 of the Tamil Nadu Land Encroachment Act, 1905, by the 2nd respondent and challenging the same, she filed an appeal along with a petition for stay u/s.10 of the said Act before the 1st respondent during April 2015 and since it was not considered and disposed of, she

filed WP.No14594/2015 and another person who is similarly placed, viz., one Mohanraj, Managing Director of Diamond Engineering, had also filed WP.No.14595/2015 and a Division Bench of this Court, vide common order dated 13.05.2015, had disposed of the said writ petitions, by directing the 1st respondent to consider and dispose of the appeals filed by the said writ petitioners in accordance with law within a period of four weeks from the date of receipt of a copy of that order and till such time the stay applications are disposed of, directed to maintain status quo as on that date by the respondents therein. The grievance now expressed by the petitioner is that *de hors* the order of status quo granted by this Court in the said writ petitions and further that the appeal filed by the petitioner is yet to be disposed of by the 1st respondent, the 2nd respondent has once again issued the notice dated 14.11.2016 u/s.6 of the Act 3 of 1905 and once again, it was put to challenge in WP.No.42026/2016 and this Court has taken note of the fact that the earlier appeal is pending for more than 1 ½ years, had directed the concerned respondent to dispose of the appeal within one month from that date. The further grievance expressed by the petitioner is that despite such a positive direction, the appeal is yet to be disposed of and however, to her shock and surprise, on 08.12.2017, the 2nd respondent along with the jurisdictional Village Administrative

Officer and the revenue officials came to the property and tried to evict the petitioner forcefully from the land in S.No.128/A20, admeasuring to an extent of 0.18.5 Hectares, which according to them, is classified as "Vaikkal" [water stream] and prays for appropriate orders.

3 *Per contra*, Mrs.M.E.Rani Selvam, learned Additional Government Pleader appearing for the respondents would submit that it is for the petitioner to follow the Appellate Authority as to the fate of her appeal and since the petitioner had encroached a vast extent of Government land, which is also classified as water stream, action is taken strictly in accordance with law.

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

5 The petitioner challenging the notice dated 21.04.2015 issued u/s.6 of the Act 3 of 1905, filed an appeal during April 2015 and this Court vide order dated 13.05.2015 made in WP.No.14594/2015, has directed the disposal of the said appeal within the stipulated time and also granted an order of status quo till the disposal of the petition for stay. The petitioner was once again issued with a notice dated

14.11.2016 and it was put to challenge in WP.No.42026/2016 and a Division Bench of this Court, has taken into consideration the fact of pendency of the appeal and had passed an order for disposal of the said appeal within one month from that date and according to the learned counsel for the petitioner, despite two positive directions earlier, the appeal dated April 2015, is yet to be disposed of. In the considered opinion of this Court, on account of the issuance of the fresh notice dated 14.11.2016 u/s.6 of the Tamil Nadu Land Encroachment Act, 2007, by the 2nd respondent, the earlier appeal dated April 2015, submitted by the petitioner to the 1st respondent, no longer survives for adjudication and in the light of the fresh cause of action enure on account of the above said notice dated 14.11.2016, the remedy open to the petitioner is to file a fresh appeal against the said notice.

6 It is relevant to extract sections 6, 7, 10 and 10-B of the Tamil Nadu Land Encroachment Act, 1905:-

“Section 6:- [1] Any person unauthorisedly occupying any land for which he is liable to pay assessment under section 3 [or section 3-A] may be summarily evicted by the Collector [or subject to his control, by the Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government in this behalf [hereinafter

referred to as the 'authorised officer']] and any crop or other produce raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector [or subject to his control, the Tahsildar or Deputy Tahsildar or authorised officer] may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector [or subject to his control, the Tahsildar or Deputy Tahsildar or authorised officer] and any property so forfeited shall be disposed of as the Collector [or subject to his control, the Tahsildar or Deputy Tahsildar or authorised officer] may direct.

[2] An eviction under this section shall be made in the following manner, namely -

By serving a notice in the manner provided in section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector [or the Tahsildar or Deputy Tahsildar or the Authorised officer] may deem reasonable after receipt of the said notice to vacate the land, and, if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstructed by any person, the Collector [or the Tahsildar or Deputy Tahsildar or the

Authorised officer] shall hold a summary enquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector [or of any Tahsildar or Deputy Tahsildar or authorised officer] for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for imprisonment in the civil jail of the District for the like period ;

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under sections 183, 186 of the Indian Penal Code in respect of the same facts.

[[3] Any authorised officer taking proceedings under this section shall make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction.]

Section 7:- *Before taking proceedings [under section 6] the Collector [or Tahsildar or Deputy Tahsildar or Revenue Inspector or any*

authorised officer or any officer of the Highways Department not below the rank of a Section Officer and not being an authorised officer] as the case may be] shall cause to be served on the person reputed to be in unauthorised occupation of land being [the property of Government] a notice specifying the land so occupied and calling on his to show cause before a certain date why he should not be proceeded against [under section 6].

Such notice shall be served in the manner prescribed in section 25 of the [Tamil Nadu] Revenue Recovery Act, 1864, or in such other manner as the [State Government] by rules or orders under section 8 may direct:

[Provided that no such notice shall be necessary in the case of any person unauthorisedly occupying any land, if he has been previously evicted from such land u/s.6 or if he has previously vacated such land voluntarily after the receipt of a notice u/s.5-B or under this section :

***Provided** further that where the notice under this section is caused to be served by any Revenue Inspector or any officer of the Highways Department not below the rank of a Section Officer and not being an authorised officer, he shall require the person reputed to be in unauthorised occupation of the land to show cause against such*

notice to the Collector, Tahsildar, Deputy Tahsildar having jurisdiction and shall also make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction.

.....

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 This Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, grants liberty to the petitioner to file an appeal against the notice dated 14.11.2016 issued by the 2nd respondent within a period of four weeks from the date of receipt of a copy of this order by enclosing all the relevant and authenticated documents with a petition for stay and give a disposal in accordance with law to the 1st respondent and upon receipt of the same, the 1st respondent / Appellate Authority shall entertain the said 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 four weeks thereafter and the 1st respondent – Appellate Authority / delegated official is also 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 six weeks from the date of entertainment of the appeal and communicate the decision taken, to the petitioner. The 1st respondent, till the disposal of the petition for stay petition to be filed by the petitioner, shall defer further decision in terms of the notice dated 14.11.2016. It is made clear that the petitioner, till the disposal of the appeal by the 1st respondent / delegated official, shall not create any third party rights in respect of the land in question and shall not alter the physical features of the

same.

8 The writ petition stands disposed of with the above direction. No costs.

[M.S.N.,J] [P.R.M., J]
18.12.2017

Internet : Yes

AP

To

1.The Commissioner

Directorate of Town and Country Planning
Chengalvarayan Building, 4th Floor
807, Anna Salai, Chennai 600 002.

2.The Deputy Director,

Directorate of Town & Country Planning
Salem Region, 6, Sannathi Street
Subramaniya Ngar, Suramangalam,
Salem 636 005.

3.The Commissioner

Attur Municipality
Municipality Office, Attur 636 102.

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M.SATHYANARAYANAN.,J.,
and
P.RAJAMANICKAM.,J.,

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WP No.32846/2017

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18.12.2017