

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.08.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.Nos.22639 to 22641/2017 & WMP.Nos.23745 to 23753/2017

D.Dhanavel ... Petitioner in
S.R.Govindasamy ... Petitioner in
Ramadev @ K.Daruram ... Petitioner in
WP.No.22639/2017
WP.No.22640/2017
WP.No.22641/2017

Versus

- 1.The District Collector
Vellore District.
- 2.The District Revenue Officer
Vellore District.
- 3.The Revenue Divisional Officer
Ranipet, Vellore District.
- 4.The Tahsildar
Walajapet Taluk, Vellore District.
- 5.The Muthavalli
Navalpur Jamiya Masjid, Ranipet,
Vellore District.

.. Respondents in
all WPs.

Common Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records dated 24.04.2017 issued under section 7 of the Tamil Nadu Land Encroachment Act and the notice dated 10.05.2017 under section 6 of the Tamil Nadu Land Encroachment Act issued by the 4th respondent and consequent order made in Na.Ka.D3/2028/2017 dated 17.07.2017 passed by the 2nd respondent and order made in Na.Ka.No.Aa1/2824/2017 dated 31.07.2017 issued by the 4th respondent and quash the same and consequently forbearing the

respondents from disturbing the petitioners' possession of the property comprised of Old S.No.159 Part and TS.No.116, in Ward No.B, Block No.6, measuring about 1748 sq.ft., 1225 sq.ft., and 1748 sq.ft., respectively situate at Door No.35A/2, MBT Road, Navalpur, Ranipet, Vellore District.

For Petitioners in
all WPs : Mr.A.Nagarathinam

For RR 1 to 4 in
all WPs : Mr.R.Vijayakumar, AGP

COMMON ORDER

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

By consent, the writ petitions are taken up for final disposal as the issue involved and to be adjudicated is one and the same. Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the respondents 1 to 4.

WP.No.22639/2017:-

2 The petitioner claims that he is in possession and enjoyment of the property comprised in Old S.No.159 Part and TS.Nos.113 and 116, in Ward No.B, Block No.6, situate at Door No.35A/2, MBT Road, Ranipet, Vellore District, from the year 2003 and the superstructure is also subjected to statutory levies. The petitioner would further claim that the said property originally belongs to one Kalayani and after her life time, one Rani was in possession and enjoyment and from her, the petitioner claims to have purchased the same through an unregistered Sale Deed. It is further stated by the petitioner that the 5th respondent has also filed suits in OS.Nos.265/1998 and 57/2013 on the file of the Courts of the Subordinate Judge as well as the District Munsif, Ranipet, respectively, for eviction and both the suit are pending. The petitioner, on an earlier occasion moved the 4th respondent for grant of patta and it was rejected on 15.11.2015 on the ground that the petitioner sought to make a claim based upon the unregistered Sale Deed and on appeal, the 2nd respondent has rejected the same on the ground that the land in question belongs to the 5th respondent. In the interregnum, the petitioner was also issued with

the notices under sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, and challenging the same, he along with

Tvl.S.R.Govindasamy [petitioner in WP.No.22640/2017] and Ramadev @ K.Daruram [petitioner in WP.No.22641/2017] filed WP.Nos.12987 to 12989/2017 and a Division Bench of this Court vide common order dated 17.05.2017, has granted liberty to the petitioners therein to file an appeal before the Appellate Authority. The petitioner, aggrieved by the rejection of his request for patta as well as challenging the eviction proceedings initiated against him under the provisions of the Tamil Nadu Land Encroachment Act, 1905, has filed an appeal and the same was rejected on 17.07.2017 and the 4th respondent consequent upon the same, has issued the impugned notice dated 31.07.2017, calling upon the encroachers to remove the encroachment within a period of fifteen days from the date of receipt of the notice, failing which, action will be taken under the provisions of the Tamil Nadu Land Encroachment Act, 1905, and the costs will be recovered from them. Challenging the legality of the orders dated 17.07.2017 and 31.07.2017 respectively, the petitioner has filed the present writ petition.

WP.No.22640/2017:-

3 The petitioner claims that he is in possession and enjoyment of the property comprised in Old S.No.159 Part and TS.No.116, in Ward No.B, Block No.6, situate at Door No.35A/2, MBT Road, Ranipet, Vellore District, from the year 1997 and the superstructure is also subjected to statutory levies. The petitioner would further claim that the said property originally belongs to one Kalayani and after her life time, one Rani was in possession and enjoyment and from her, the petitioner claims to have purchased the same through an unregistered Sale Deed. It is further stated by the petitioner that the 5th respondent has also filed suits in OS.Nos.265/1998 and 57/2013 on the file of the Courts of the Subordinate Judge as well as the District Munsif, Ranipet, respectively, for eviction and both the suit are pending. The petitioner on 31.03.2017, submitted a representation seeking for patta and in the interregnum, he was issued with the notices under sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, dated 24.04.2017 and 10.05.2017 respectively and challenging the same, he along with Tvl.D.Dhanavel [petitioner in WP.No.22639/2017] and Ramadev @ K.Daruram [petitioner in WP.No.22641/2017] filed WP.Nos.12987 to 12989/2017 and a Division Bench of this Court vide common order dated 17.05.2017, has granted liberty to the petitioners therein to file an appeal before the Appellate Authority. The petitioner, aggrieved by the eviction proceedings initiated against him under the provisions of the Tamil Nadu Land Encroachment Act, 1905, has filed an appeal and the same was rejected on 17.07.2017 and the 4th respondent consequent upon the same, has issued the impugned notice dated 31.07.2017, calling

upon the encroachers to remove the encroachment within a period of fifteen days from the date of receipt of the notice, failing which, action will be taken under the provisions of the Tamil Nadu Land Encroachment Act, 1905, and the costs will be recovered from them. Challenging the legality of the orders dated 17.07.2017 and 31.07.2017 respectively, the petitioner has filed the present writ petition.

WP.No.22640/2017:-

4 The petitioner claims that he is in possession and enjoyment of the property comprised in Old S.No.159 Part and TS.Nos.113 and 116, in Ward No.B, Block No.6, situate at Door No.35A/2, MBT Road, Ranipet, Vellore District, from the year 2007 and the superstructure is also subjected to statutory levies. The petitioner would further claim that the said property originally belongs to one Kalayani and after her life time, one Rani was in possession and enjoyment and from her, the petitioner claims to have purchased the same through an unregistered Sale Deed. It is further stated by the petitioner that the 5th respondent has also filed suits in OS.Nos.265/1998 and 57/2013 on the file of the Courts of the Subordinate Judge as well as the District Munsif, Ranipet, respectively, for eviction and both the suit are pending. The petitioner on 31.03.2017, submitted a representation seeking for patta and in the interregnum, he was issued with the notices under sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, dated 24.04.2017 and 10.05.2017 respectively and challenging the same, he along with Tvl.D.Dhanavel [petitioner in WP.No.22639/2017] and S.R.Govindasamy [petitioner in WP.No.22640/2017] filed WP.Nos.12987 to 12989/2017 and a Division Bench of this Court vide common order dated 17.05.2017, has granted liberty to the petitioners therein to file an appeal before the Appellate Authority. The petitioner, aggrieved by the eviction proceedings initiated against him under the provisions of the Tamil Nadu Land Encroachment Act, 1905, has filed an appeal and the same was rejected on 17.07.2017 and the 4th respondent consequent upon the same, has issued the impugned notice dated 31.07.2017, calling upon the encroachers to remove the encroachment within a period of fifteen days from the date of receipt of the notice, failing which, action will be taken under the provisions of the Tamil Nadu Land Encroachment Act, 1905, and the costs will be recovered from them. Challenging the legality of the orders dated 17.07.2017 and 31.07.2017 respectively, the petitioner has filed the present writ petition.

5 The learned counsel for the petitioners would submit that admittedly, the suits filed by the 5th respondent for eviction are pending and according to the petitioners, the lands are classified as Natham Poramboke and therefore, the provisions

of the Tamil Nadu Land Encroachment Act, 1905, cannot be made applicable. The learned counsel has also drawn the attention of this Court to the proceedings of the District Revenue Officer, Ranipet dated 26.12.2016 [in WP.No.22639/2017] and would submit that the said official has recorded the finding that the patta sought for by the petitioner, cannot be granted as the land in question belong to the Tamil Nadu Wakf Board and in such an event, it is not open to the 4th respondent to initiate action under the provisions of the Tamil Nadu Land Encroachment Act, 1905, and the Appellate Authority, viz., the 2nd respondent has also failed to take into consideration, the said material aspect and hence, prays for appropriate orders.

6 Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents 1 to 4 would submit that admittedly, the lands are classified as Natham Poramboke and therefore, it is open to the official respondents to invoke the provisions of the Tamil Nadu Land Encroachment Act, 1905, and insofar as the suits filed by the 5th respondent for eviction are concerned, finality is yet to be reached and hence, prays for dismissal of these writ petitions.

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

8 Insofar as WP.No.22639/2017 is concerned, the petitioner made a challenge in respect of the rejection order of patta and also made a further challenge to the proceedings initiated under the provisions of the Tamil Nadu Land Encroachment Act, 1905. The 2nd respondent, while rejecting his request for issuance of patta, has recorded a finding that the land in question belongs to the Tamil Nadu Wakf Board and admittedly, the suits filed by the 5th respondent for eviction are pending on the file of the Courts of the District Munsif, Ranipet, and the Subordinate Judge, Vellore, respectively and the complaints in both the suits have not been filed as documents in these writ petitions and this Court has also put a specific question to the learned counsel for the petitioners as to the whether the Government is one of the defendants in the said suits and for want of proper instructions, the learned counsel for the petitioners is unable to answer to the said question.

9 In the considered opinion of the Court, the land in question is Natham Poramboke or the land belonging to the Wakf Board, cannot be adjudicated in these writ petitions as it revolves around the adjudication of the disputed question of fact. The petitioner is also having an effective alternate remedy under section 10-A[1][b] of the Tamil Nadu Land Encroachment Act, 1905.

10 Similarly, insofar as the petitioners in WP.Nos.22640 and 22641/2017 are concerned, they made a challenge to the initiation of the proceedings under the provisions of the Tamil Nadu Land Encroachment Act, 1905, and since the appeals filed by them have also been rejected, they are also at liberty to invoke section 10-A[b] of the said Act. It is also pertinent to point out at this juncture that the representations submitted by them seeking for issuance of patta is pending consideration.

11 In the light of the above facts and circumstances, the petitioners are at liberty to file revision petitions before the Commissioner, Land Administration, Ezhilagam, Chepauk, Chennai 600 005, under section 10-A[1][b] of the Tamil Nadu Land Encroachment Act, 1905, if they are so advised, within a period of four weeks from the date of receipt of a copy of this order, along with the petitions for stay under section 10-B of the said Act and till the filing of the revision petitions by the petitioners herein, the respondents 1 to 4 shall defer further proceedings in terms of the impugned notices dated 17.07.2017 and 31.07.2017 respectively. The Commissioner, Land Administration, shall entertain the revision petitions, if the papers are otherwise in order and without putting the issue of limitation and after putting the 5th respondent on notice, shall take up either the petitions for stay or the main revision petitions and give a disposal on merits and in accordance with law within a further period of ten weeks thereafter and communicate the decision taken, to the petitioners as well as the 5th respondent herein.

12 The petitioners, depending upon the disposal of the revision petition filed by them by the Commissioner, Land Administration, Ezhilagam, Chepauk, Chennai, as well as the suits filed by the 5th respondent by the respective Courts below, are at liberty to work out their remedy insofar as the request seeking issuance of patta is concerned, in accordance with law.

13 In the result, the writ petitions stand disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

AP

To

1. The District Collector
Vellore District.
2. The District Revenue Officer
Vellore District.
3. The Revenue Divisional Officer
Ranipet, Vellore District.
4. The Tahsildar
Walajapet Taluk, Vellore District.

Copy to-

The Commissioner for Land Administration
Ezhilagam, Chempauk, Chennai-600 005.

+ 3 cc to Mr.A.Nagarathinam, Advocate, SR.60974
+ 1 cc to The Govt.Pleader, SR.61970

WP.Nos.22639 to 22641/2017

NR 01/09/2017



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