

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

W.P.No.22711 of 2017
&
W.M.P.No.23804 of 2017

P.Ramamurthy

... Petitioner

Versus

1. The Tahsildar
Sholinganallur Taluk
O/o.The Tahsildar,
Sholinganallur, No.3,
1st Street, Kumaran Nagar
Rajiv Gandhi Salai, Sholinganallur,
Chennai-119.

2. N.Thangaraja

3. Mr.Logambari

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the respondent relating to the impugned notice Na.Ka.No.4596/2017/Aa3 dated 17.08.2017 and quash the same.

For Petitioner : Mrs.R.Revathi for
M/s.Black and Red Law Associates

For R1 : Mr.P.Sanjay Gandhi,
Additional Government Pleader

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.P.Sanjay Gandhi, learned Additional Government Pleader accepts notice on behalf of the 1st respondent.

2. The petitioner claims that he is the owner of 1575 sq.ft., of land and superstructure consisting of Ground, First and Second Floors bearing Door No.2/198, Vengaivasal Main Road, Santhoshapuram, Chennai-600 073, comprised in Survey No.78/2, having purchased the same from the 2nd respondent, through a registered Sale Deed bearing Document No.2091/2015 dated 27.02.2015 on the file of the Office of the Sub Registrar, Selaiyur. The petitioner would further aver that he is running a shop in the ground floor and residing along with his family in the first floor and the second floor is being used as a Godown for his business purposes. The petitioner would also aver that after making due and proper enquiry only, he had purchased the property and it is also subjected to statutory levies. The petitioner further aver that to his shock and surprise, he has been issued with the Notice dated 17.08.2017 in Na.Ka.No.4596/2017/Aa3 by the 1st respondent calling upon the predecessors in title, viz., the respondents 2 and 3 to remove the encroachment in the form of superstructure in "Arasu Meikkal Poramboke" in Survey No.78/1 as per the provisions of the Tamil Nadu Land Encroachments Act, 1905, on or before 27.08.2017, failing which action will be taken to remove the same and the cost will be recovered from them. The petitioner was informed of the said notice by the respondents 2 and 3 and later on came to know that the notices under sections 7 and 6 of the Tamil Nadu Land Encroachments Act, 1905, have been issued to the predecessors in title and therefore, came forward to file the present writ petition challenging the initiation of the said proceedings.

3. The learned counsel for the petitioner would submit that admittedly, the petitioner has purchased the land along with the superstructure through a registered Sale Deed and without looking into the relevant documents, the 1st respondent seem to have issued the notices to the predecessors in title and in all fairness, the notices should have been issued to the petitioner also, so as to enable him to put forth his stand, since he is carrying on the business and is also residing in the premises in question and prays for appropriate orders.

4. Per contra, Mr.P.Sanjay Gandhi, learned Additional Government Pleader appearing for the 1st respondent would submit that admittedly, the predecessors in title, viz., Thiru.Dasarathan, said to have purchased a vacant site through an unregistered document and the 2nd respondent in whose favour the property has been settled, did not obtain any planning permission to put up a superstructure and since the classification of the land continues to be shown as "Government Meikkal Poramboke", action is taken strictly in accordance with law and further added that the petitioner is also having an effective alternate remedy under section 10 of the Tamil Nadu

Land Encroachments Act, 1905, before the Appellate Authority and as such, the writ petition is not maintainable and prays for dismissal of the same.

5. In response to the said submission, the learned counsel for the petitioner would submit that the fact of non - obtaining of the planning permission for putting up the alleged unauthorized construction, is to be verified with the predecessors in titled.

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

7. As rightly submitted by the learned Additional Government Pleader appearing for the 1st respondent, the petitioner is having an effective alternate remedy of appeal under section 10 of the Tamil Nadu Land Encroachments Act, 1905, to the Appellate Authority, viz., the Collector, Kancheepuram District and section 10-A[iii] also provides for interim orders pending disposal of the appeal. Therefore, the petitioner, if so advised, he is at liberty to file an appeal before the Collector, Kancheepuram District along with necessary and relevant documents within a period of four weeks from the date of receipt of a copy of this order and till such time, the 1st respondent shall defer further decision in terms of the impugned notice dated 17.08.2017. The Appellate Authority, viz., the Collector, Kancheepuram District, shall entertain the appeal, if the papers are otherwise in order and thereafter, give a disposal of the same on merits and in accordance with law within a further period of ten weeks thereafter and communicate the decision taken, to the petitioner herein.

8. The Commissioner, St. Thomas Mount Panchayat Union, Chitlapakkam, Chennai-600064, shall put the petitioner on notice and cause inspection regarding the superstructure put up on the said land and find out whether the construction is in accordance with the sanctioned/approved building plan and depending upon the result of the inspection, shall initiate further action in accordance with law.

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

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

AP

To

The Tahsildar
Sholinganallur Taluk
O/o.The Tahsildar,
Sholinganallur, No.3,
1st Street, Kumaran Nagar
Rajiv Gandhi Salai, Sholinganallur,
Chennai-119.

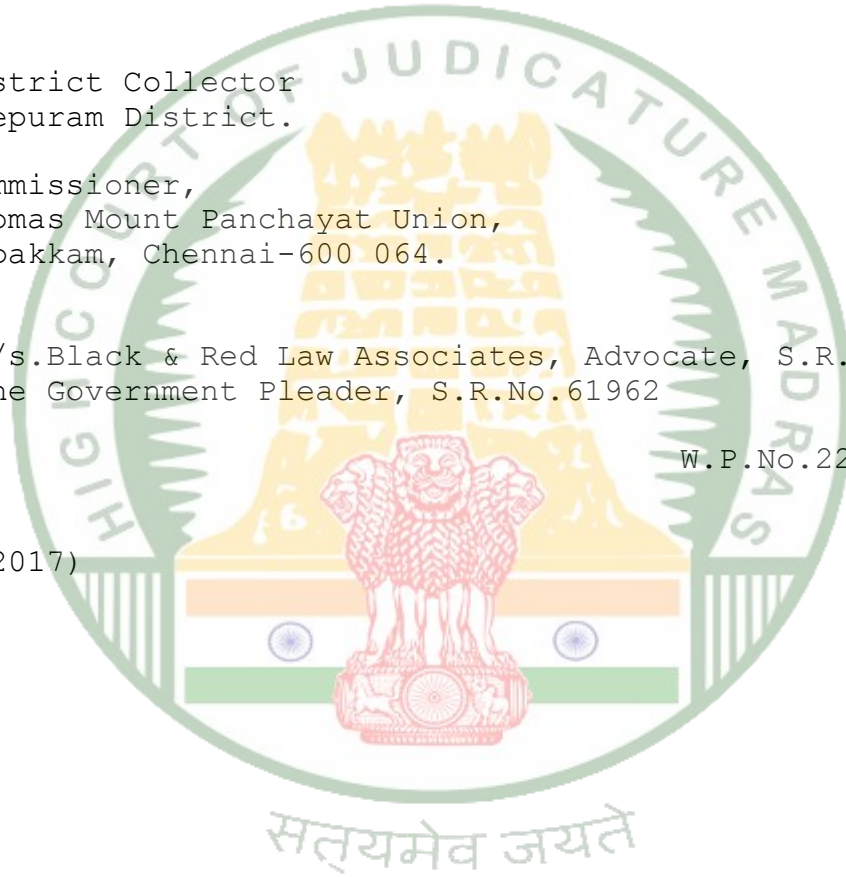
Copy to

1. The District Collector
Kancheepuram District.
2. The Commissioner,
St. Thomas Mount Panchayat Union,
Chitlapakkam, Chennai-600 064.

+1cc to M/s.Black & Red Law Associates, Advocate, S.R.No.61365
+1cc to the Government Pleader, S.R.No.61962

W.P.No.22711 of 2017

CS V
CA(01/09/2017)



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