

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.12.2017
CORAM:
THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
And
THE HON'BLE MR.JUSTICE P.RAJAM ANICKAM
W.P.No.33352 of 2017

Manoharan

.. Petitioner

vs.

1.The District Collector,
Tiruvannamalai District,
Tiruvannamalai.

2.The Tahsildar,
Arani Taluk,
Tiruvannamalai District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the proceedings of the second respondent passed in Na.Ka.G1/2226/2005 dated 06.12.2017 and quash the same and further direct the 2nd respondent herein to consider and dispose of the petitioner's representation dated 24.11.2017 before taking any further action under the Tamil Nadu Land Encroachment Act.

For Petitioner : Mr.M.R.Vivekananthan
for M/s.S.A.Palaninathan

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J.)

By consent, this Writ Petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents.

2. The petitioner claims that he is a small time businessman, running a eatery at Arani Town, selling food stuffs and income earned out of it is his only source of his livelihood. The petitioner would further state that he has submitted an application for issuance of patta in respect of site/land admeasuring 460 sq.ft. comprised in T.S.No.60, E1 Block, Arani Town and the Land Tax Assessment Officer, Thiruvannamalai has sent a communication to the Director of Survey and Land Records, vide communication in Mu.Mu.Aa2/4897/94 dated 06.02.1995 pointing out among other things that even prior to the submission of application for Ryotwari Patta, as per Tamil Nadu Act 3 of 1905, patta cannot

be granted and as such, remedy open to the petitioner is to approach the Revenue Department for getting patta and it is the case of the petitioner that he has also approached the Revenue Officials in this regard.

3. The learned counsel appearing for the petitioner would submit that the second respondent, on an earlier occasion, issued notice dated 07.02.2012 under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, for which the petitioner has submitted his response dated 13.02.2012 and thereafter, no action has been taken and all of sudden, to his shock and surprise, the impugned notice dated 06.12.2017 has been issued by the second respondent and as such, the petitioner is constrained to approach this Court by filing this writ petition. It is further submitted by the learned counsel appearing for the petitioner that the petitioner's predecessor in title and the petitioner continues to remain in possession of very meager extent of land and there cannot be any impediment on the part of the second respondent to grant patta and hence, prays for appropriate orders.

4. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that due process of law has been followed by issuing notice under 6 of the Tamil Nadu Land Encroachment Act, 1905 and admittedly, the petitioner is yet to get patta and since the petitioner is categorized as encroacher, he is liable to be evicted and since due process of law has been followed, the petitioner cannot have any grievance and the petitioner is having an alternative remedy by way of appeal under Section 10 of the Tamil Nadu Encroachment Act, 1905.

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

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

"S.10.Appeal - An appeal shall lie (a) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar under this Act, and to such officer as may be specified by the State Government in this behalf (hereinafter referred to as the appellate authority) from any decision or order passed by an authorised officer under this Act and different appellate authorities may be specified for different classes of cases; and

(b) to the District Collector from any decision or order of a Collector passed otherwise than on appeal, and

(c) to the Commissioner of Land Administration from any decision or order of a District Collector passed otherwise than on appeal.

S.10-B. Stay pending decision in appeal or revision.- Pending the disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, the Appellate Authority, the Commissioner of Land Administration 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 prays for 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 under Section 10 along with a petition for Stay under Section 10-B of the Tamil Nadu Land Encroachment Act, 1905 to the first respondent/Collector of Tiruvannamalai District by enclosing a copy of this order as well as relevant authenticated documents, challenging the notice dated 06.12.2017 issued by the second respondent, within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the first respondent or his delegated official shall entertain the appeal along with the petition for stay, if the papers are otherwise in order and shall take up the petition for stay initially and give disposal on merits and in accordance with law within a period of four weeks thereafter and till such time, the respondents shall defer further decision in terms of the impugned notice. The first respondent or his delegated official is also at liberty to take up the main appeal itself and give disposal on merits and in accordance with law within a period of ten weeks from the date of entertainment of the appeal and communicate the decision taken, to the petitioner. It is made clear that the petitioner, till the dispose of the appeal, shall not create any third party rights in respect of the land/superstructure in question and shall not alter it's physical features also.

8. This Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm

To

1.The District Collector,
Tiruvannamalai District,
Tiruvannamalai.

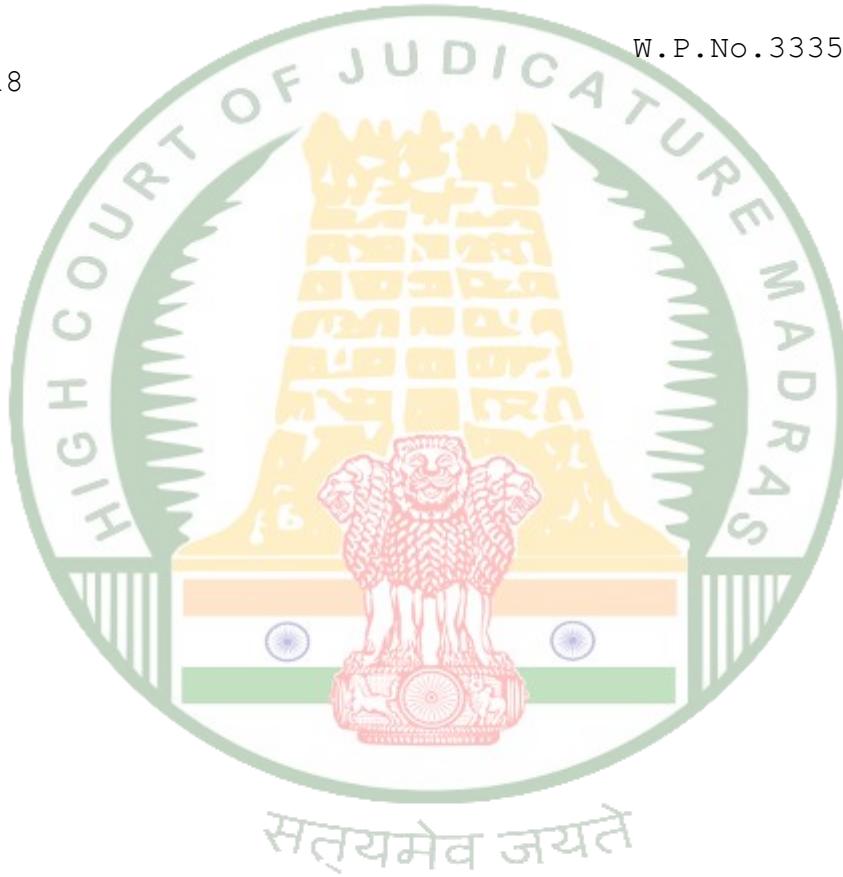
2.The Tahsildar,
Arani Taluk,
Tiruvannamalai District.

+lcc to Mr.S.A.Palaninathan, Advocate SR.No.90795

+lcc to Government Pleader SR.No.91452

W.P.No.33352 of 2017

sm:9.1.2018



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