

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE
W.P.No.33740/2017 and WMP.Nos.37374 and 37375 of 2017

C.Dharmalingam

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Petitioner

Vs

1. The District Collector,
District Collectorate,
Erode District.

2. The Executive Engineer
Public Works Department
Vendipalayam, Erode-638 002.

3. The Assistant Engineer,
Public Works Department
Vendipalayam, Erode-638 002.

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Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the impugned notice issued by the 3rd respondent to the petitioner dated 18.11.2017 and quash the same.

For Petitioner : Ms.S.Varsha

For Respondents : Mr.A.N.Thambidurai
Special 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.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of respondents 1 to 3.

2 The petitioner filed an affidavit in support of this writ petition would aver among other things that the Government of Tamil Nadu had acquired several lands during the year 1950, for the purpose of formation of the Lower Bhavani Project (LBP) Canal and in the process, the lands belonging to the petitioner was also acquired by the Government of Tamil Nadu in Nasianoor "A" Village and after acquiring the land, it was assigned with Resurvey No.368 and the channel was formed in the eastern and

northern portion of the said survey number.

3 The petitioner would further aver that very nearby the said channel, the vacant space on the western and northern portion remains unutilised and the predecessors and thereafter, the petitioner had continued to be in possession of a triangular portion of the said land admeasuring to an extent of 0.26.5 Hectares in R.S.No.368 ever since the year 1956 and also running a commercial business enterprises and it is also subjected to statutory levies and Electricity Service connection has also been provided.

4 The petitioner would further aver that on an earlier occasion, the petitioner was issued with notice for eviction by the 2nd respondent herein and he filed O.S.No.146 of 2014 on the file of the First Additional District Munsif Court, Erode against the respondents 1 to 3 praying for declaration that the land in R.S.No.368 which is triangular in shape marked as "ABC" in the plain plan and situate on south of RS.No.369 and north and west of LBP Jeep road admeasuring 200 feet along "AB" and 48 feet along with "BC" and 190 feet along "CA" and also for permanent injunction and however, there is no interim order is in operation.

5 The grievance expressed by the petitioner is that despite the pendency of the suit, the 3rd respondent has issued the impugned notice dated 18.11.2017 under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and challenging the legality of the same, the petitioner came forward to file this writ petition.

6 The learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that the 3rd respondent before issuing notice under Section 7 of the said Act, has not taken into consideration of the pendency of the said suit and that the predecessor of the petitioner and the petitioner continue to remain in possession for quite long time, ought to have deferred the proceedings to evict the petitioner from the land in question and prays for interference.

7 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that the action is being taken strictly in accordance with law and the petitioner who is admittedly an encroacher on the land in question and would further aver that the petitioner is having remedy under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, and as such, the writ petition is not maintainable.

8 This Court has considered the rival submission and also perused the materials placed before it.

9 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 under section 10 of the Tamil Nadu Land Encroachment Act, 1905, along with a petition for stay under section 10-B of the said Act to the 1st respondent /Appellate Authority by enclosing relevant and authenticated documents and along with copy of this order within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the 1st respondent / Appellate Authority or delegated official shall entertain the appeal, if the papers are otherwise in order and the said official is at option either to take up the petition for stay at the earliest and after following due process of law, give a disposal on merits and in accordance with law within a further period of four weeks thereafter and till such time, the respondents 2 and 3 shall defer further communications in terms of the impugned notice dated 18.11.2017 and it is open to the 1st respondent or the delegated official to take up the main appeal itself and give a disposal on merits within a period of ten weeks from the date of entertainment of the appeal memo and communicate the decision taken, to the petitioner and it is also made clear that till the disposal of the appeal by the Appellate Authority, the petitioner shall not create any third party rights and shall not alter the physical features of the site / superstructure in question.

10 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected Miscellaneous petitions are also closed.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To
1. The District Collector,
District Collectorate,
Eorde District.

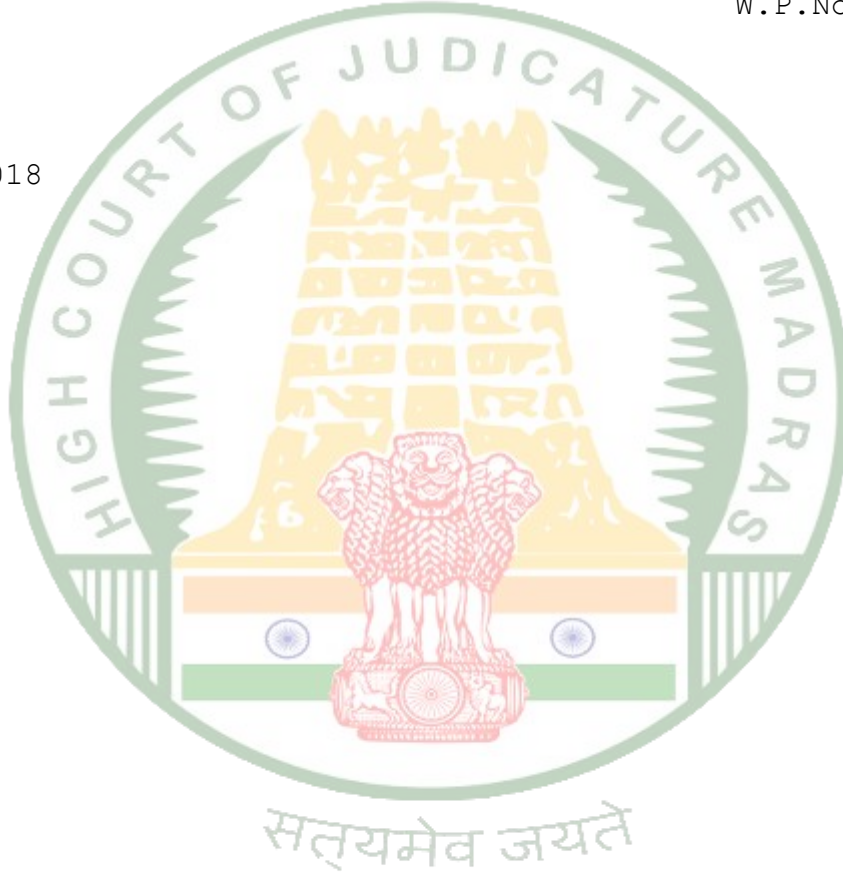
2. The Executive Engineer
Public Works Department
Vendipalayam, Erode-638 002.

3. The Assistant Engineer,
Public Works Department
Vendipalayam, Erode-638 002.

+1 cc to M/s.S.Varsha Advocate sr 92230
+1 cc to the Govt Pleader sr 92477

W.P.No.33740/2017

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