

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.09.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.23819/2017 & WMP.No.25050/2017

S.Govindan

.. Petitioner

Versus

1.The District Collector
Villupuram District,
Villupuram.

2.The Tahsildar
Kallakurichi Taluk
Villupuram District.

3.The Executive Officer
Thiyagadurgam Town Panchayat
Kallakurichi Taluk,
Villupuram District.

... 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 pertaining to the impugned order in Na.Ka.No.158/2017/A2 dated 18.08.2017 under section 6 of Act 3 of Tamil Nadu Land Encroachment Act, 1905, issued by the 3rd respondent and to quash the same.

For Petitioner : Mr.R.Kumaravel

For RR 1&2 : Mr.R.Vijayakumar, AGP

For R3 : Mr.M.Perumal

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the respondents 1 and 2 and Mr.M.Perumal, learned Standing Counsel accepts notice on behalf of the 3rd respondent.

2 The petitioner, in the affidavit filed in support of this writ petition would aver among other things that he has put up a superstructure in patta land in Survey No.85/1B3 admeasuring to an extent of 2690 sq.ft., [Patta No.554] and would further aver that the land is ancestral in nature and his forefathers, by way of succession, is residing in the said property for quite some time. The petitioner has also put up a residential house, measuring to an extent of 725 sq.ft., after obtaining necessary planning permission vide Building Permit No.36 dated 02.02.2016 and the said construction is also strictly in accordance with the sanctioned plan. It is the case of the petitioner that his neighbour, viz., Thiru.Kathirvel, who is his cousin, is said to have given a complaint as if the petitioner is an encroacher on account of the fact that there is a dispute with regard to ancestral property.

3 The 2nd respondent, purportedly acting on the said complaint, has issued a notice under section 7 of the Tamil Nadu Land Encroachment Act, 1905, on 27.07.2017, alleging that the petitioner had encroached upon the land classified as "Odai" in Survey No.84 and the lands in Survey Nos.382 and 385/1, which are classified as " Street" in Periyamampattu Village, and put up a superstructure. The petitioner has submitted a detailed representation / response dated 31.07.2017 to the 3rd respondent pointing out that the property is ancestral in nature and he has not committed any encroachment and therefore, prayed for dropping of all further proceedings.

4 However, the 3rd respondent, without due and proper application of mind to the response submitted by the petitioner to the notice issued under section 7 of the Tamil Nadu Land Encroachment Act, 1905, has proceeded further and issued notice under section 6 of the said Act on 18.08.2017 and challenging the legality of the same, the petitioner came forward to file the present writ petition.

5 The learned counsel for the petitioner would submit that an obligation is cast upon the 3rd respondent to take into consideration the response / representation dated 31.07.2017

submitted by the petitioner to the notice under section 7 of the Tamil Nadu Land Encroachment Act, 1905, and without any application of mind, had issued section 6 notice and therefore, it may not be necessary for the petitioner to avail the alternate remedy under section 10 of the said Act and prays for interference.

6 Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that the 3rd respondent, acting on the report of the 2nd respondent, has rightly reached the conclusion that the petitioner had encroached and in the light of the effective alternate remedy available, the writ petition is not maintainable and prays for dismissal of the same.

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

8 It is the stand of the petitioner that on account of the convex of pentagon shape [irregular shape] of the land, the original boundary lines are not traceable and if measurement is done, it would clearly disclose that the petitioner is not an encroacher and despite the said fact being brought to the knowledge of the 3rd respondent, he blindly proceeded further and issued the notice under section 6 of the Tamil Nadu Land Encroachment Act, 1905. In the considered opinion of the Court, the points urged by the learned counsel for the petitioner revolve around adjudication of the disputed question of fact.

9 In the light of the stand taken by the petitioner as to the irregular shape of the land, it is open to the petitioner to approach the 3rd respondent for survey and measurement and fixation of the boundary stones and as and when such an application is filed along with prescribed fee and if it is in order, the 3rd respondent shall entertain the same and take appropriate action in accordance with law. This Court, taking into consideration that the petitioner is having an effective alternate remedy under section 10 of the Tamil Land Encroachment Act, 1905, and that the Appellate Authority is also having power to pass interim orders under section 10-B of the said Act, grants liberty to the petitioner to file an appeal to the Appellate Authority within a period of four weeks from the date of receipt of a copy of this order and till such time, the 3rd respondent shall defer further proceedings in terms of the notices issued under section 7 and 6 of the Act. The Appellate Authority shall entertain the appeal if the papers are otherwise in order and the said official is at liberty to take up either the petition for stay or the main appeal itself and give a disposal in accordance with law as expeditiously as possible and not later than eight weeks from the date of entertainment of the appeal and communicate the decision taken, to the petitioner.

The Appeal Authority while disposing fo the appeal, shall also take note of the Revenue Standing Order 26 and do the needful in accordance with law.

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

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

AP

To

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- 3.The Executive Officer
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+1 cc to the Government Pleader sr 64909
+1 cc to Mr.R.Kumaravel Advocate sr 64508

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