

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.Nos.24203 & 24204 of 2017

&

W.M.P.Nos.25577 & 25578 of 2017

Krishnan ... Petitioner in W.P.24203 of 2017

Sundarambal ... Petitioner in W.P.24024 of 2017

Versus

The Block Development Officer
Village Panchayat,
Tiruvannamalai.

... Respondent in both WPs

Common Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to the impugned order dated 03.08.2017 passed in Na.ka.No.Oo.A3/4267/2016 on the file of the respondent herein and quash the same.

For Petitioners in : Mr.K.Govi Ganesan
both WPs

For Respondent in : Mrs.P.Rajalakshmi,
both WPs Government Advocate

COMMON ORDER

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

By consent, the writ petitions are taken up for final disposal. Since the issue to be adjudicated in both the writ petitions is one and the same, both the writ petition are taken up for hearing and are disposed of by the following common order.

2. Mrs.P.Rajalakshmi, learned Government Advocate accepts notice on behalf of the sole respondent.

3. The petitioner in WP.No.24203/2017 claims that he belong to down trodden community and eking out his livelihood by doing coolie work and as per his own admission, he has encroached upon a portion of the land in SF.No.17/1, Savalapooni Village, which is classified as "Eri Poramboke" [water body] in the revenue records and his claim is that he has encroached and put up a superstructure, 200m away from the said water body, on a higher plain and therefore, in the event of rain and flooding, the flow of water will not be effected. The petitioner would further aver that the petitioner has also moved the concerned authorities for grant of patta and the neighbouring persons who are similarly placed in the same survey number, had also been given patta and to the shock and surprise of the petitioner, he was issued with the notice under section 7 of the Tamil Nadu Land Encroachment Act, 1905 on 29.05.2017, for which, the petitioner has submitted his objections / response and however, without considering the same, the respondent has issued the impugned notice under section 6 of the said Act on 03.08.2017 and challenging the legality of the same, the petitioner came forward to file the present writ petition.

4. The petitioner in WP.No.24204/2017, making a similar claim as that of the petitioner in WP.No.24203/2017, prays for a similar relief.

5. The learned counsel for the petitioners would submit that though the petitioners are termed as encroachers, the fact remains that they are in possession of the lands which lies on higher plateau, 200m away from the water body and persons similarly placed, have also been granted patta and though the petitioners have submitted detailed response to the notice issued under section 7 of the Tamil Nadu Land Encroachment Act, 1905, dated 29.05.2017, it was not at all considered and the respondent proceeded further and issued impugned notice under section 6 of the said Act on 03.08.2017 and since the act of the petitioner exhibit total non-application of mind, the petitioners need not avail the alternate remedy and prays for interference.

6. Per contra, Mrs.P.Rajalakshmi, learned Government Advocate appearing for the sole respondent would submit that since the petitioners are having an effective alternate remedy in the form of appeal under the provisions of the Tamil Nadu Land Encroachment Act, 1905, the writ petitions are 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. Section 10 of the Tamil Nadu Land Encroachment Act, 1905, speaks about the appeal and it says that "an appeal shall lie [a] to the Collector from any decision or order passed by the Tahsildar or Deputy Tahsildar under this Act, to do such act as may be specified and the State Government in this regard to the Act." The provision for stay is also provided under section 10-B of the said Act.

9. In the light of the said alternate remedy available, this Court is of the view that these writ petitions are not maintainable and the petitioners are at liberty to file appeals to the Appellate Authority along with the petitions for stay, within a period of four weeks from the date of receipt of a copy of this order and the till such time, the respondent shall defer further decision in pursuant to the impugned notices issued under sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, dated 29.05.2017 and 03.08.2017 respectively, and the Appellate Authority shall entertain the appeals, if the papers are otherwise in order and is at option, either to take up the stay petitions or the main appeal petitions itself and give a disposal on merits and in accordance with law within a further period of eight weeks thereafter and communicate the decision taken, to the petitioners.

10. The writ petitions stand disposed of subject to the above observation and direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

AP

To

The Block Development Officer
Village Panchayat,
Tiruvannamalai.

+2cc's to Mr.K.Goviganesan, Advocate, S.R.Nos.65529 & 65530
+1cc to Mr.P.Rajalakshmi, Advocate, S.R.No.65702

W.P.Nos.24203 & 24204 of 2017

EV(CO)
CA(05/10/2017)