

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.20618/2007 & MP.Nos.1/2007 & 1/2008

Kandasamy @ Kandappan ... Petitioner

vs

1 The District Collector
Dharmapuri.

2 The Tahsildar
Dharmapuri.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records in connection with the eviction order dated 18.05.2007 issued by the 2nd respondent in respect of the property of an extent of 88 cents in S.No.352/2B2 in Thoppur Village, Dharmapuri District and to quash the same.

For Petitioner : Mr.Ch.Pandian

For RR 1 & 2 : Mr.M.Digvijay Pandian, AGP

ORDER

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

By consent, the writ petition is taken up for final disposal.

2 The petitioner, challenging the legality of the notice issued under section 6 of the Tamil Nadu Land Encroachment Act, 1905, came forward to file the present writ petition.

3 The petitioner, in the affidavit filed in support of this writ petition, would aver among other things that he is in possession and enjoyment of the landed property admeasuring to

an extent of 1 acre and 75 cents in S.No.353/2B2 in Thoppur Village for more than 60 years and would further state that even though the said land was originally in the name of one Marimuthu, he was in possession and enjoyment of the same and the sons of Marimuthu, viz., Tvl.Devaraj and Arumugam, after receiving a sum of Rs.7000/- from the petitioner during the year 1982, had recognised his possession and right over the said property and further claims that he is in continuous possession and enjoyment of the same to the knowledge of everyone.

4 The petitioner would further state that he is also having patta lands on the Eastern, Western and Southern side of the above said land in S.No.352/2B2 and also laid a pipeline for irrigating the lands from the Well situate in his patta land in S.No.423/2A1. The petitioner had also put up a tiled house on the above said land and it is also subjected to the statutory levies and also obtained electricity connection to the said house in SC.No.658 and Patta No.1005 also stands in his name. The grievance expressed by the petitioner is that all of a sudden, to his shock and surprise, he was issued with the impugned notice dated 18.05.2007 by the 2nd respondent and challenging the legality of the same, the petitioner has filed the present writ petition.

5 This writ petition was admitted on 18.06.2007 and interim stay for a period of eight weeks was granted on that date and thereafter, it was not extended.

6 The learned counsel for the petitioner has drawn the attention of this Court to the materials placed before it and would submit that no doubt the petitioner do not have any document of title and however, filed OS.No.197/2005 on the file of the Court of the District Munsif, Dharmapuri against Devaraj, Janaki, Munusamy, Dhanalakshmi, Tamil Nadu Government represented by the District Collector, Dharmapuri as well as the Tahsildar, Dharmapuri [respondents 1 and 2 herein], praying for declaration to declare that he has the prescriptive title to the said property by adverse possession and after contest, the suit was dismissed and challenging the same, the petitioner has also filed an appeal before the Lower Appellate Court and it is still pending and the learned counsel would further add that despite the communication sent to the petitioner, he has not turned up and therefore, he is not in a position to tell as to the latest position of the Appeal Suit. It is the further submission of the learned counsel for the petitioner that section 6 notice should be preceded by the notice under section 7 of the Tamil Nadu Land Encroachment Act, 1905, and since it has not been issued, the impugned notice is liable to be quashed and prays for appropriate orders.

7 Per contra, Mr.M.Digvijay Pandian, learned Additional Government Pleader appearing for the respondents has drawn the attention of this Court to the counter affidavit filed on behalf of the respondents and would submit that the land in question has been assigned in favour of the persons belonging to the Adi Dravidar community and as such, the alleged handing over of the possession in favour of the petitioner is, per se unsustainable and would further submit that the assignment was cancelled and the land in question was ordered to be registered as "Podukal Poramboke" in the revenue records as per the proceedings of the Tahsildar, Dharmapuri dated 14.12.2005 and notice under section 7 of the Act was also issued on 07.05.2007 which was followed by the notice under section 6 of the Act on 21.05.2007 and would further state that the averment made by the petitioner that he is in possession of the land in question for over 60 years is also not correct. It is the further submission of the learned Additional Government Pleader that admittedly, the petitioner is the owner of the large extent of the nearby patta lands and since he claims to be in possession of the land assigned in favour of the Adi Dravidar Community, it was cancelled and action is being taken strictly in accordance with law and hence, prays for dismissal of the writ petition.

8 The Court has considered the rival submissions and also perused the materials placed before it.

9 The 2nd respondent, in the counter affidavit took a stand that the notice under section 7 of the Tamil Nadu Land Encroachment Act, 1905, was issued on 07.05.2007 followed by the notice under section 6 of the said Act on 21.05.2007 and therefore, it is established that the procedure contemplated under law has been followed and admittedly, the petitioner claims to be in possession and enjoyment of the land in question through a purported handing over possession by the sons of the original assignee and it is not supported by any registered document and even otherwise, the assignment granted in respect of the said land has also been cancelled by the 2nd respondent and it has been ordered to be classified as "podukal poramboke". The petitioner has also invoked the Civil Court jurisdiction by filing OS.No.197/2005 on the file of the Court of the District Munsif, Dharmapuri, praying for declaration, to declare that he has got the prescriptive title to the said property by adverse possession and the said suit, after contest, came to be dismissed and the Appeal Suit is said to be pending.

10 In the light of the above facts and circumstances, this Court is of the view that the writ petition lacks merit and it is liable to be dismissed.

11 However, the petitioner is at liberty to work out his remedy in the pending Appeal Suit preferred against the Judgment and Decree in OS.No.197/2005 on the file of the Court of the District Munsif, Dharmapuri.

12 The writ petition stands dismissed subject to the above observation. No costs. Consequently, the interim order granted on 18.06.2007, stands vacated and MP.No.1/2007 stands dismissed and MP.No.1/2008 is allowed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

AP

To

1 The District Collector
Dharmapuri.

2 The Tahsildar
Dharmapuri.

+1cc to Mr.C.H,Pandian, Advocate SR.No.79527

+1cc to Government Pleader SR.No.79342

PVS (CO)
GN (06/12/2017)

WP.No.20618/2007

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