

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE M.SUNDAR
W.P.No.14958/2017 & WMP.Nos.16191 & 16192/2017

P.Abdul Hakim

...Petitioner

Vs

1.The District Collector
Coimbatore District,
Coimbatore.

2.The Tahsildar
Sulur Taluk, Coimbatore District.

3.The Revenue Inspector
Karuthampatti Village
Sulur Taluk, Coimbatore District.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the entire records pertaining to the notice issued by the 2nd and 3rd respondents dated 02.05.2017 and 18.05.2017 and quash the same and issue further direction to the respondents 1 and 2 to issue house patta to the petitioner in Survey No.131A/2 of Somanur Village, Sulur Taluk, Coimbatore District, within the time frame to be fixed by this Court.

For Petitioner: Mr.S.Rajinikanth

For Respondents: Mr.R.Vijayakumar, AGP

ORDER

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

The petitioner, challenging the legality of the notices issued under sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905 [Tamil Nadu Act 3 of 1905], has come forward to file the present writ petition.

2 The petitioner, in the affidavit filed in support

of this writ petition, would aver among other things that he is an encroacher upon "Mayaanam Poramboke land" in Survey No.131A/2 of Somanur Village, Suler Taluk, Coimbatore District and also put up a superstructure which is also subjected to statutory levies. It is further averred by the petitioner that on an earlier occasion, attempts were made to dispossess him and hence, he filed OS.No.215/1995 on the file of the Court of District Munsif, at Palladam against the Tahsildar, Palladam and the Collector of Coimbatore District, praying for permanent injunction, restraining the defendants from interfering with his possession and the suit, after contest, came to be decreed on 23.11.1995 and no further challenge has been made to the said judgment and decree and thereby, it has become final. The petitioner would further aver that he was issued with a notice under section 7 of the Tamil Nadu Land Encroachment Act, 1905, followed by another notice under section 6 of the said Act and without giving him any sufficient opportunity to put forth his grievance, the respondents 2 and 3 brought "Poclain" for the purpose of demolishing the superstructure and therefore, the petitioner is constrained to approach this Court by filing the present writ petition.

3 The contention of the learned counsel appearing for the petitioner is that though notices under sections 7 and 6 have been issued, the respondents 2 and 3 have not followed the mandatory procedure and since threat of dispossession is imminent and further that the petitioner is residing with his family, he is left with no other option except to approach this Court for immediate relief and prays for appropriate orders.

4 Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader who accepts notice on behalf of the respondents, on instructions, would submit that after following due and proper procedure only, steps are being taken to demolish the superstructure which has been constructed without any planning permission and admittedly, the petitioner is an encroacher and therefore, he cannot retain or claim possession, as a matter of right and would further add that the petitioner is having an effective alternate remedy under section 10 of the Tamil Nadu Land Encroachment Act, 1905, and it is open to him to invoke and avail the said remedy and prays for dismissal of this writ petition.

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

6 Admittedly, notices under Sections 7 and 6 of the said Act have been issued and the petitioner is having an effective alternate remedy under section 10 of the Tamil Nadu Land Encroachment Act, 1905. It is also the submission of the learned Additional Government Pleader that till the disposal of

the said appeal to be filed by the petitioner, his dispossession may not be disturbed.

7 In the light of the submission made and on the facts and circumstances, this Court permits the petitioner to prefer an appeal under section 10 of the Tamil Nadu Land Encroachment Act, 1905, challenging the legality of the notice issued under section 6 of the said Act within a period of two weeks from the date of receipt of a copy of this order and the Appellate Authority, upon receipt of the same, shall entertain the appeal, if the papers are otherwise in order and dispose of the same in accordance with law within a further period of four weeks thereafter and till such time, shall defer further proceedings in pursuant to the notice issued under section 6 of the Act. It is also made clear that the petitioner, in the interregnum, shall not create any third party right in respect of the land and superstructure.

8 The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1.The District Collector
Coimbatore District, Coimbatore.

2.The Tahsildar
Sulur Taluk, Coimbatore District.

3.The Revenue Inspector
Karuthampatti Village
Sulur Taluk, Coimbatore District.

+1cc to Mr.S.Rajinikanth, Advocate, S.R.No.42050

W.P.No.14958/2017

VSN(CO)
RS(19/06/2017)