

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.09.2017

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.15832/2017 and WMP.Nos.17140/17141 of 2017

K.Ulaganathan .. Petitioner

Versus

1.The District Collector,
Collectorate Office,
Salem, Salem District.

2.The Tahsildar,
Mettur Taluk Office,
Mettur Dam-636 401.

3.The Assistant Engineer,
Public Works Department,
Water Resource Department (Civil Section),
Mettur.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned notice of the 3rd respondent dated 24.05.2017 and quash the same and consequently, direct the respondents not to interfere with the peaceful possession and enjoyment of the property measuring 43560 sq.ft., comprised in old S.No.60/5,4 and Town Survey No.4, Ward D, Block 1, Thangamapuripattinam, Mettur Taluk, Salem District.

For Petitioner : Mr.S.S.Swaminathan

For RR 1 to 3 : Mr.A.N.Thambidurai, Spl.GP

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 states that originally his grandfather viz., Chinnagounder, was in possession and enjoyment of the property comprised in Old Survey No.60/5,4 and Town Survey No.4, Ward D, Block 1, Thangamapuripattinam, Mettur Taluk, Salem District, admeasuring to an extent of 9.4 Acres even prior to the year 1940 and he was carrying on agricultural activities and also put up a superstructure on a portion of the said land. The petitioner would further aver that the father of the petitioner viz., C.Kandasamy, was also in joint possession and enjoyment with his forefather viz., Chinnagounder. The necessary statutory levies were also duly paid. It is stated by the petitioner that after the demise of his father in the year 1991, he has succeeded to the said estate and is in possession and enjoyment of the property and claims that he is, at present, legal occupation and possession of about 43560 sq.ft in old survey number. Apart from it, there exist a Mosque, Mill Quarters, Nallasamy Gounder family and few

scheduled caste community also reside there. However, the petitioner would further aver that one Mr. Shanmugam started interfering in his possession. Therefore, he filed O.S.No.127 of 2003 on the file of the District Munsif, Mettur, against him, praying for permanent injunction restraining him from interfering in the peaceful possession of the said property and similarly, Mr. Shanmugam also filed the suit in O.S.No.73 of 2005 against the petitioner. Both the suits were disposed of and challenging the same, the writ petitioner filed appeals in AS.No.22 of 2011 and A.S.No.10 of 2012 on the file of the Sub Court, Mettur. The said appeals were also disposed of. The petitioner has contemplated to file the second appeal by challenging the disposal of these appeals.

3 The petitioner would further aver that the 2nd respondent on an earlier occasion has issued notice and the District Revenue Officer, Salem District and the Revenue Divisional Officer, Salem District started interfering with the peaceful possession and enjoyment of the above said land without resorting to due process of law. Hence, the petitioner has filed W.P.No.3906 of 2007 praying for issuance of a writ of Mandamus, forbearing the respondents from evicting the petitioner from the land in question without due process of law and the said writ

petition was disposed of on 05.12.2007 by directing the respondents not to evict the petitioner without due process of law and however, granted them liberty under the provisions of Tamil Nadu Land Encroachment Act, 1905.

4 Accordingly, the 2nd respondent had issued notice under Section 7 of the said Act, for which the petitioner along with his brothers and sisters, submitted the detailed response dated 16.11.2016 and the 2nd respondent without taking note of the same, has issued notice under Section 6 of the Act. However to the shock and surprise of the petitioner, the 2nd respondent did not proceed further and therefore, the 3rd respondent has issued the impugned notice under Form III of the Act, alleging the occupation of the land belonging to the Water Resource Department of the Public Works Department admeasuring to an extent of 39979.5 sq.mt. and challenging the legality of the same, the petitioner has come forward to file this writ petition.

5 Mr.S.S.Swaminathan, learned counsel appearing for the petitioner would submit that the petitioner was not all aware of the provisions under which the impugned Form III can be issued. It is submitted that no opportunity was given the petitioner to put forth his

stand and the same is *per se* in violation of the principles of natural justice and prays for appropriate orders.

6 Mr.A.N.Thambidurai, learned Special Government Pleader appearing for respondents has invited the attention of this Court to the counter affidavit of the 3rd respondent and would submit that the forefather of the petitioner as well as the petitioner are in occupation and possession of the huge extent of land belonging to the Water Resource Department of 3rd respondent. Therefore, action being taken under the sections of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, and rules framed thereunder and prays for dismissal of this writ petition.

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

8 A perusal of the materials, especially, the counter affidavit of the official respondent filed in W.P.No.3906 of 2017 as well as in the present writ petition, would prima facie disclose that the lease in respect of the land admeasuring to an extent of 9.4 Acres has been granted and now the 3rd respondent thought fit to evict the petitioner on the ground

that the land in question belonging to the Water Resource Department of the Public works Department.

9 A perusal of the reply submitted by the petitioner in response to Section 6 of the Land Encroachment Act, 1905 disclose that his forefather and after his father, he claim to be in possession of the land in question. Be that as it may, in the light of the above facts and circumstances, this Court is of the view that an opportunity has to be granted to the petitioner to put forth his stand with supporting evidence and materials such as tenable and authenticated documents.

10 In the result, the writ petition is disposed of and the petitioner is at liberty to submit his response to impugned Form III notice sent by the 3rd respondent along with supporting evidence and materials such as tenable and authenticated documents within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the 3rd respondent is directed to consider the same on merits and in accordance with law and pass orders within a further period of six weeks thereafter and communicate the decision taken to the petitioner and till such time the respondents shall defer further action in terms of the impugned notice. It is also made clear that till

the disposal of the representation by the 3rd respondent, the petitioner shall not create any third party rights in respect of the land in question and shall also not alter the physical features and not commit / create any further encroachment. No costs. Consequently, the connected miscellaneous petitions are closed.

[MSNJ] [NSSJ]
06.09.2017

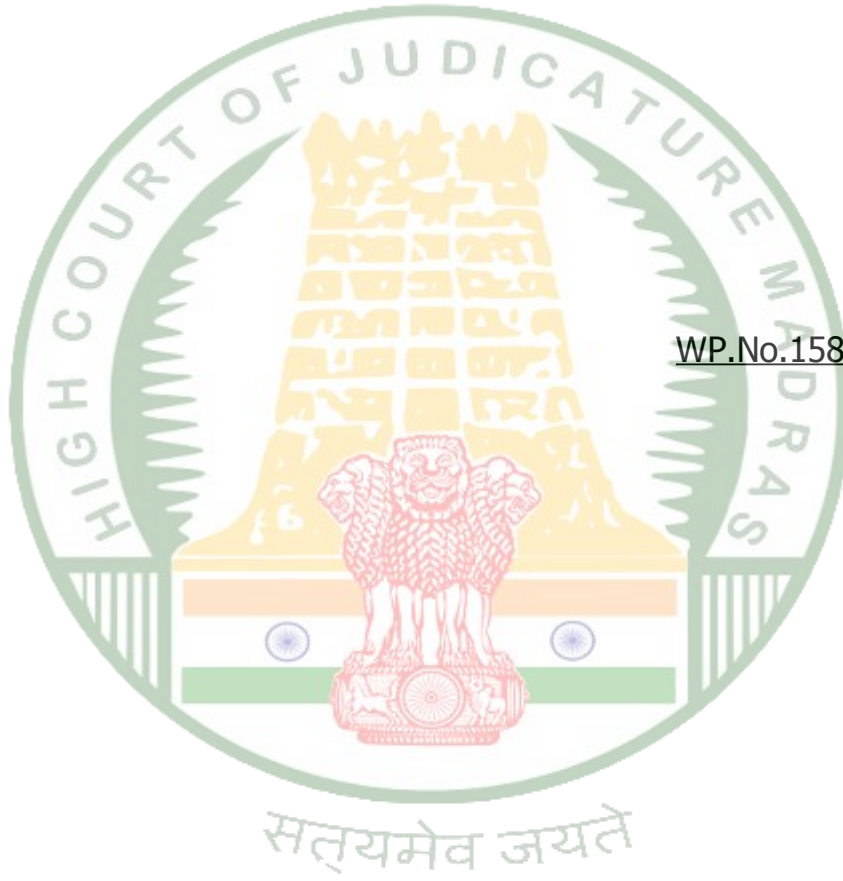
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1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai 600 003.
2. The Chairperson /
Zonal Executive Engineer (Zone 5),
(The Township Vending Committee),
Corporation of Chennai,
Chennai.
3. The Chairperson /
Zonal Executive Engineer (Zone 12),
(The Township Vending Committee),
Corporation of Chennai,
Chennai.
4. The Chairperson /
Zonal Executive Engineer (Zone 10),
(The Township Vending Committee),
Corporation of Chennai,
Chennai.

M.SATHYANARAYANAN.,J.
and

N.SESHASAYEE.,J.

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