

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.26090/2017 & WMP.No.27711/2017

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Petitioner

Vs

- 1 The District Collector
Office of the Collectorate
Salem.
- 2 The District Revenue Officer
O/o.The Collectorate
Salem.
- 3 The Revenue Divisional Officer
O/o.The Collectorate
Salem.
- 4 The Tasildar
Taluk Office, Gangavalli Town
and Taluk, Salem District.
- 5 The Revenue Inspector,
Veeraganur Firka, Veeranganur
Town and Post, Gangavalli Taluk
Salem District.
- 6 The Village Administrative Officer
Veeraganur North, Veeraganur Town
and Post, Gangavalli Taluk,
Salem District.

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Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance a Writ of certiorarified mandamus calling for the records of the proceedings of the 4th respondent in Notices dated 05.09.2017 and 18.09.2017 under section 6 of the Tamil Nadu Land Encroachment Act 3 of 1905 for

Veeraganur Village Natham Land in survey Nos.351/20, 351/21 respectively and quash the same and consequently, direct the respondents not to interfere with the peaceful possession and enjoyment of the petitioner's property measuring about 2305.5 sq.ft., purchased vide Doc.No.1782/2000 on the file of the Sub Registrar, Gangavalli.

For Petitioners : Mr.K.R.Samrat

For RR 1 to 6 : Mr.A.N.Thambidurai, Spl.GP

ORDER

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

By consent, the writ petition itself is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents 1 to 6.

2 The petitioner claims that she is the wife of Vadivel - a retired staff of the Tamil Nadu Electricity Board and he had purchased a house site [Natham] property in Veeraganur Village Survey No.352/6, admeasuring to an extent of 2613 ssq.ft., through a registered Sale Deed bearing Doc.No.63/1992 dated 13.01.1992 registered on the file of the office of the Sub Registrar, Gangavalli. The petitioner further claims that she subsequently purchased the adjacent land on the Southern side which is classified as "Natham" in the very same village comprised in Survey No.351/20 and 21, admeasuring to an extent of 2305.5 sq.ft., vide registered Document bearing No.1782/2000 dated 30.11.2000, registered on the file of the office of the very same Registrar, from one Rajaganthan, S/o.Duraisamy. The petitioner also claims that a superstructure was constructed with RCC roof after obtaining necessary permission and continued to reside there for quite a long time. However, to her shock and surprise, she was issued with a notices under section 7 of the Tamil Nadu Land Encroachment Act, 1905, dated 21.08.2017 and 24.08.2017 respectively, by the 5th respondent stating that the petitioner had encroached upon the Government Poramboke lands in S.Nos.351/20 and 351/21, admeasuring to an extent of 0.0027.0 sq.m and 0.0212.5 sq.m. respectively. The petitioner, in response to the same, through her lawyer, sent a detailed reply dated 24.08.2017 to the respondents and however, without considering the same, the 4th respondent has issued the notices under section 6 of the said Act dated 05.09.2017 and 18.09.2017 respectively and apprehending dispossession, the petitioner came forward to file the present writ petition challenging the said impugned notices.

3 The learned counsel for the petitioner has invited the attention of this Court to the typed set of documents and would submit that in view of the availability of the overwhelming documents to prove her right, title and possession, it is not open to the 4th respondent to proceed under the provisions of the Tamil Nadu Land Encroachment Act, 1905, and prays for interference.

4 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1 to 6 would submit that since the petitioner is having an effective alternate remedy under section 10 of the said Act, the present writ petition is not maintainable.

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

6 It is relevant to extract sections 10 and 10-B of the Tamil Nadu Land Encroachment Act, 1905:-

"Section 10:- An appeal shall lie [a] to the Collector from any decision or order passed by a Tahsildar or Deputy-Tahsildar [or an authorised officer] under this Act, and [b] to the District Collector from any decision or order passed otherwise than on appeal, and [c] to the Board of Revenue from any decision or order of a District Collector otherwise than on appeal.

Section 10-B:- Pending disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, the Board of Revenue, or the State Government, as the case may be, may by order, and subject to such conditions as may be specified therein, stay the execution of the decision or order appealed against or sought to be revised."

7 Though the petitioner has prayed for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, permits the petitioner to prefer an appeal to the 1st respondent under section 10 of the Tamil Nadu Land Encroachment Act, 1905, along with a petition for stay under section 10-B of the said Act, within a period of four weeks from the date of receipt of a copy of this order and if the papers are otherwise in order, the 1st respondent shall entertain the appeal and the said official [or] delegated, is at option, either to take up

the petition for stay and give a disposal at an early date or the main appeal 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 petitioner and till such time, the 4th respondent shall defer further decision in terms of the notices issued under sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905.

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

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

AP

To

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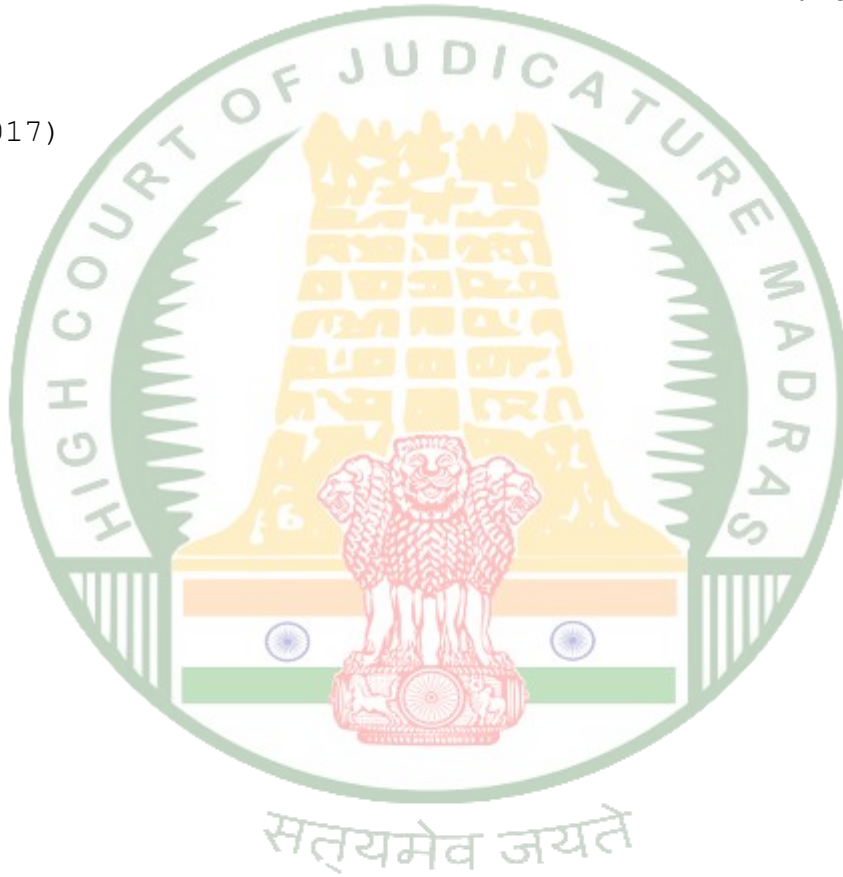
6 The Village Administrative Officer
Veeraganur North, Veeraganur Town
and Post, Gangavalli Taluk,
Salem District.

+1cc to M/s.K.R.Samratt, Advocate sr.71588

+1cc to Government Pleader sr.71692

WP.No.26090/2017

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