

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.27358/2017 & WMP.No.29242/2017

A.Subramani

... Petitioner

Vs

The Block Development Officer
Village Panchayat, Tiruvannamalai.

... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance 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 Petitioner : Mr.K.Govi Ganesan

For Respondents : Ms.M.E.Rani Selvam, AGP

ORDER

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

By consent, the writ petition is taken up for final disposal. Mrs.M.E.Rani Selvam, learned Additional Government Pleader accepts notice on behalf of the sole respondent.

2 The petitioner claims that he belongs to down-trodden community and is eking her livelihood by doing coolie works and he would further aver that though the lands in SF.No.17/1, Savalapoondi Village is classified as "Eri Poramboke" in the revenue records, the said lands are located on a higher plateau and does not have the characteristics of the water catchment area and even in the event of rain or inundation, there may not be any flooding and it is also situate about more than 200m away from the Tank Bund and most of the times, it remains as a dry land. The petitioner would further state that about 20 years back, he had put a thatched house and residing with his family and the said superstructure is also assessed to statutory levies and electricity service connection has also been provided and

Family/Ration Card, Voters ID Card etc., have also been issued. It is also stated that as per the "Kalaighar Housing Scheme 2010-2016", the said land has also been identified for the purpose of putting up a superstructure and however, to his shock and surprise, he has been issued with a notice under section 7 of the Tamil Nadu Land Encroachment Act, 1905, for which, the petitioner has also submitted his reply/response and in spite of it, the respondent proceeded further and issued another notice under section 6 of the said Act dated 03.08.2017 and hence, he is constrained to approach this Court by making a challenge to the said notice.

3 The learned counsel for the petitioner has invited the attention of this Court to the typed set of papers and would submit that though the land in question has been classified as Eri Poramboke, it is located on the higher plateau and as such, there is no question of stagnation or inundation during rainy season and most of the time, the alleged Eri Poramboke remains only as a dry land and the forefathers of the petitioner had put up the superstructure also and it is also subjected to statutory levies and the said land has also been identified for "Kalaighar Housing Scheme 2010-2016" and as such, the impugned notice is unsustainable and prays for quashment of the same.

4 Per contra, Mrs.M.E.Rani Selvam, learned Additional Government Pleader appearing for the sole respondent would submit that the respondent has strictly followed the due process of law by issuing notices u/s.7 and 6 of the Tamil Nadu Land Encroachment Act, 1905 and in the light of the effective alternate remedy available 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 section 10 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 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.

8 In the light of the said alternate remedy available, this Court is of the view that these writ petition is not maintainable and the petitioner is at liberty to file an appeal to the Appellate Authority along with the petition 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 appeal, if the papers are otherwise in order and he is at option, either to take up the stay petition 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.

9 The writ petition stands disposed of subject to the above observation and direction. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

AP
To

The Block Development Officer
Village Panchayat, Tiruvannamalai.
+1 cC to Mr.Goviganesan, advocate sr 75910.

WP.No.27358/2017

SVI (CO)
SP(21/11/2017)