

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.27353/2017 & WMP.No.29240/2017

S.P.Prabhu

Petitioner

Vs

1 The District Collector,
Collectorate, Villupuram District.

2 The District Revenue Officer
Collectorate, Villupuram District.

3 The Revenue Divisional Officer
Kallakurichi Taluk, Villupuram District.

4 The Tahsildar
Chinnsalem Post and Taluk
Villupuram District.

Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance a Writ of certiorari calling for the records relating in A4/7643/2016 the proceedings of section 7 notice of the Encroachment Act dated 11.09.2017 passed by the 4th respondent and quash the same based on the petitioner representation dated 18.09.2017.

For Petitioner : Mr.A.Rajakumar

For Respondent : 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. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents.

2 The petitioner would state that his father, viz., S.Palaniappan, was in possession and enjoyment of the lands admeasuring to an extent of 0.04.0 and 0.01.0 Hectares comprised in S.Nos.31/1 and 38/8, Ellavadi Village, Mungilpadi Post, Chinnasalem Taluk, Villupuram District, for more than 40 years and he has also been issued with patta bearing No.786 in respect of the lands comprised in S.No.31/1 [1.18.50 Hectares] ; S.No.38/8 [0.46.00 Hectares] ; S.No.39/8 [0.4.00 Hectares]. The grievance expressed by the petitioner is that to his shock and surprise, the 4th respondent has issued the impugned notice dated 11.09.2017 in m4-7643-2016 under section 7 of the Tamil Nadu Land Encroachment Act, 1905, and in response to the same, the petitioner has submitted his representation/reply dated 18.09.2017 to the respondents 3 and 4 pointing out that the said lands are in occupation of his predecessor in title and he is also doing agricultural operation and prays for an opportunity to put forth his case and the apprehension expressed by the petitioner is that the 4th respondent is proceeding further is taking emergent and urgent steps to dispossess the petitioner from the lands in question and therefore, the petitioner is constrained to approach this Court by filing the present writ petition.

3 The learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that admittedly, the lands originally belong to the predecessor in title and the petitioner, by way of succession, is in possession and occupation of the lands in question and the patta still stands in the name of his father and as such, it is wrong on the part of the 4th respondent to conclude that the petitioner had encroached upon the public land and hence, prays for interference.

4 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that in the light of the effective alternate remedy available under section 10 of the Tamil Nadu Land Encroachment Act, 1905, 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 In the light of the effective alternate remedy available, the petitioner is at liberty to submit an appeal by invoking section 10 of the Tamil Nadu Land Encroachment Act, 1905 along with the relevant and authenticated documents to the 1st respondent within a period of four weeks from the date of receipt of a copy of this order along with the petition for stay and and if the papers are otherwise in order, the 1st respondent or his delegated official, shall entertain the appeal and the said official [or] the delegated official, is at option, either to take up the petition for stay and give a disposal within a period of two weeks thereafter or take up 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 proceedings in terms of the impugned notice issued under section 7 of the Tamil Nadu Land Encroachment Act, 1905, dated 11.09.2017.

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

सत्यमेव जयते

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AP

To

- 1 The District Collector,
Collectorate, Villupuram District.
- 2 The District Revenue Officer
Collectorate, Villupuram District.
- 3 The Revenue Divisional Officer
Kallakurichi Taluk, Villupuram District.
- 4 The Tahsildar
Chinnsalem Post and Taluk
Villupuram District.

+1 cc to the Govt Pleader sr 75708

+1 cc to Mr.A.Rajakumar Advocate sr 76010

WP.No.27353/2017

svi(co)
aa22/11/2017



WEB COPY