IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.10.2017
CORAM:
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE
W.P No.27657 and W.M.P.No.29602 of 2017

Sivakumar ...Petitioner

Vs

1. The State of Tamil Nadu,
Represented by its Secretary,
Department of Local Administration,
Fort St.George, Chennai - 600 009.

2. Block Development Officer,
Panchayat Union Office, Marakkanam
Panchayat Union, Marakkanam Taluk,
Villupuram District. ..Respondents

Prayer:- The Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Ceritorari, calling for the records and notice in Na.Ka.A2/224/2017 dated 11.10.2017 on the file of the second respondent herein and quash the same as illegal and pass orders.

For Petitioner : Mr.J. Antony Jesus
For Respondents : Mr.A.N.Thambidurai, SPL GP

ORDER

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

2. The petitioner in the affidavit filed in support of this writ petition would aver among other things that he is eking out for his livelihood by doing agriculture coolie work and claims to be in possession and enjoyment of "kulam Poramboke" in survey no.372, Kilputhupattu Village, Marakkanam taluk, admeasuring to an extent of one acre and that he is in possession and enjoyment of the said land for over twenty years.

3. The petitioner would further state that to his shock and surprise, the 2nd respondent has issued the impugned notice dated 11.10.2017 stating that notices under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, issued to him on 20.02.2017 and 24.03.2017 respectively. In spite of it, he has failed to remove the encroachments and therefore, the 2nd respondent has called upon the petitioner to remove the

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encroachments on or before 19.10.2017, failing which, the same will be removed with the help of police and revenue officials and he will be evicted on 20.10.2017 and challenging the legality of the same, the petitioner came forward to file this writ petition.

4. Mr.J.Antony Jesus, learned counsel appearing for the petitioner would submit that though in the impugned notice, it is stated that the petitioner has been issued with notices under Sections 7 and 6 of the Tamil Nadu Land Enrcoahment Act, 1905, no such notices have been received and though, the land in question is classified as water body, the land lies on a higher plateau and as such, there will not be any inundation during rainy season and hence, prays for appropriate direction.

5. Per Contra Mr.A.N.Thambidurai, the learned Special Government Pleader appearing for the respondents would submit that admittedly the land in question has been classified as water body and as per Government Order and various decisions, no encroachment on water body can be done and on account of impending North East Monsoon, there is likely of inundation and other consequential threats and taking into consideration of the said aspects, the action has been taken strictly in accordance with law and prays for dismissal of this writ petition.

6. The Court has considered the rival submissions and also perused the material placed before it.

7. It is not in dispute the land in survey no. 372, Kilputhupattu Village, Marakkanam Taluk, Villupuram District has been classified as water body. The petitioner claims to be in possession and enjoyment of the particular extent of the land for over 20 years and also put up superstructure and residing there along with his wife and children and the said superstructure is also subjected to statutory levies.

8. Though the petitioner prays 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 him to avail the appeal remedy under Section 10 of the Tamil Nadu Encroachment Act 1905. The petitioner is at liberty to file an appeal before the Collector of Villupuram District under Section 10 of the Land Encroachment Act 1905, within a period of four weeks from the date of a receipt of copy of this order along with the petition for stay as well as relevant and authenticated documents evidencing his claim and upon receipt of the same, the Collector of the Villupuram District, shall entertain the appeal, if the papers are otherwise in order and take up the petition for stay and give a disposal in accordance with law, within a period of two weeks thereafter and the said official is at option to take up the

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main appeal itself and give a disposal within a further period of eight weeks thereafter and till the disposal of the petition for stay, the 2nd respondent shall defer further decision in terms of the above said notices.

9. In the result, the writ petition stands disposed of accordingly.

/sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

rka/smn
To
1. The Secretary to the Government
Tamil Nadu Department of Local Administration,
Fort St.George, Chennai - 600 009.

2 The District Collector, Villupuram District

3. Block Development Officer,
Panchayat Union Office, Marakkanam
Panchayat Union, Marakkanam Taluk,
Villupuram District.

+1 CC to Mr. Antony Jesus , Advocate Sr.No. 76528
+1 CC to Govt., Pleader, Sr.No. 78276

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MD: 27/11/2017

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