

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.28330/2017 & WMP.No.30435/2017

K.Balamurali @ Bala ... Petitioner

vs

The Tahsildar
Cheyyur Village
Kancheepuram District.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records relating to the impugned notice dated 11.10.2017 under section 6 of the Tamil Nadu [Chennai Pattinam] Land Encroachment Act, 3 of 1905, on the file of the Tahsildar, Cheyyur, relating to Survey No.548/1A and quash the same.

For Petitioner : Mr.S.Kumaran

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 sole respondent.

2 The petitioner along with two other persons, viz., Tvl.Susil Adam Seelan [petitioner in WP.No.28331/2017] and A.Subramanian @ Subramani [petitioner in WP.No.28332/2017], claims that they are carrying on various charitable and social activities for poor and needy people and further claims that they are assisting financially and logistically in establishing institutions/factories/farms, with an intention of creating and generating income for the local residents, more particularly, the economically backward people, irrespective of caste, creed and religion, for the purpose of improvement of their livelihood. The petitioner further claims that during the Mega

Floods in the year 2015, the petitioner along with the above said two persons, claims to have rendered monetary and physical support for the needy people. The petitioner would further state that he and his two friends had a detailed discussion with the Panchayat Union, wherein a decision has been taken to establish a Farm for Crab Hatchery on the ground that Cheyyur Village is a coastal area and found suitable for establishment of Aqua Farm, for breeding of Crabs. Accordingly, it was developed and a major portion of the said Farm has been established near the coastal line and only a minor portion is located on the Poramboke land.

3 It is also the claim of the petitioner that the income generated out of the running of the Crab Farm is used for developmental purposes and the neighbouring villagers of Periyakuppam, have started demanding money and since it was not acceded to, they have given a representation alleging encroachment on the part of the petitioner and taking action in pursuant to the representation submitted, the respondent has issued the impugned notice dated 11.10.2017 under section 6 of the Tamil Nadu Land Encroachment Act, 1905. The petitioner has submitted his response dated 25.10.2017 and the apprehension expressed by the petitioner is that without considering the same, he and his two friends [petitioners in WP.Nos.28331 and 28332/2017] are likely to be dispossessed and hence, came forward to file the present writ petition.

4 The learned counsel for the petitioner would submit that even procedural-wise, the impugned notice is liable to be quashed for the reason that the notice issued under section 6 of the Tamil Nadu Land Encroachment Act, 1905, should be preceded by a notice under section 7 of the said Act and admittedly, no such notice has been given and hence, prays for quashment of the same.

5 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the sole respondent would submit that the petitioner is having an effective alternate remedy under section 10 and 10-B of the Tamil Nadu Land Encroachment Act, 1905 and as such, the writ petition is not maintainable.

6 This Court has considered the rival submissions and also perused the materials placed before it.

7 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."

8 In the light of the effective alternate remedy available, the petitioner is at liberty to submit an appeal along with the petition for stay to the Appellate Authority, viz., the Collector of Kancheepuram District, by enclosing all the relevant and authenticated documents within a period of three weeks from the date of receipt of a copy of this order and the Appellate Authority shall entertain the appeal, if the papers are otherwise in order and the said official or the delegated official, shall take up the petition for stay and give a disposal on merits and in accordance with law within a further period of three weeks thereafter and the Appellate Authority or the delegated official, is at option to 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 the disposal of the petition for stay by the Appellate Authority, the respondent shall defer further decision in terms of the impugned notice dated 11.10.2017 and the petitioner, till the disposal of the appeal, shall not create any further encroachment or alter the physical features of the Crab Farm.

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

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ap

To

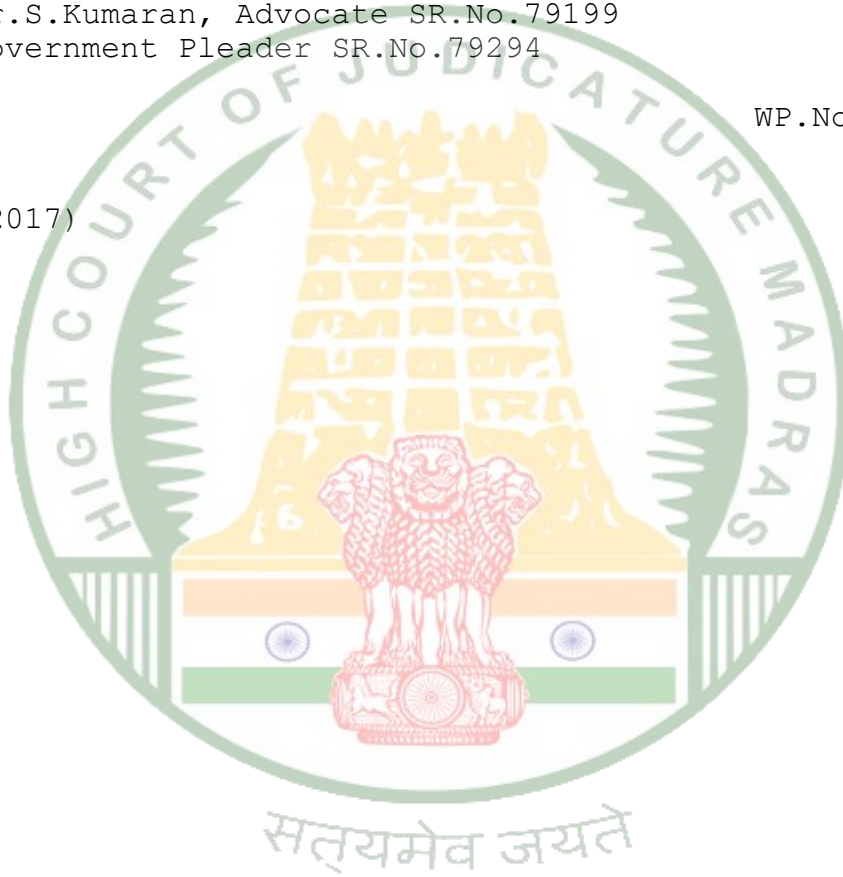
The Tahsildar
Cheyyur Village
Kancheepuram District.

Copy to:-
The Collector
Kancheepuram District.

+1cc to Mr.S.Kumaran, Advocate SR.No.79199
+1cc to Government Pleader SR.No.79294

WP.No.28330/2017

VGII(CO)
GN(28/11/2017)



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