

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.18540 of 2017
and WMP.Nos.20105 & 20106 of 2017

M.Venkatesh

.. Petitioner

Vs.

1.The District Collector,
District Collectorate Office,
Krishnagiri District,

2.The Tahsildar,
Tahsildar Office,
Oozur.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records of the second respondent vide proceedings under Section 6 of the Tamil Nadu Encroachment Act, 1905, dated 10.07.2017 for the land mentioned in S.No.86 to an extent of 3 acres 70 cents out of 29 acres in B.S.Thimma Sadhiram Village, Sulagiri Taluk, Krishnagiri District and quash the same and also direct the respondents to grant pata for the above mentioned land.

For Petitioner : Mr. G.Mohammed Aseef

For Respondents : Mr. A.N.Thambidurai
Special Government Pleader

ORDER

By consent, the writ petition is taken up for final disposal.

2. The petitioner claims that he is in possession and enjoyment of the land admeasuring to an extent of 3 acres 70 cents out of 29 acres in Survey No.86 in B.S.Thimma Sadhiram Village, Sulagiri Taluk, Krishnagiri District and derived his possession from his forefathers who were in possession of the said land for more than 100 years, and to his shock and surprise, he was issued with a notice dated 10.07.2017 under

Section 6 of the Tamil Nadu Land Encroachment Act, 1905 by the second respondent. Challenging the legality of the same, the petitioner has filed the present writ petition.

3. The learned counsel appearing for the petitioner would submit that admittedly prior to the issuance of the impugned notice of eviction, the petitioner is not issued with Section 7 notice, and as such the issuance of the impugned notice is per se in violation of the statutory provisions contained in the said Act, and prays for quashing the impugned notice.

4. Per contra, Mr. A.N. Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents and on instructions, would submit that since the petitioner is having effective alternate remedy in the form of appeal under Section 10 of the said Act, this writ petition is not maintainable.

5. This Court has considered the rival submissions and also perused the typed set of papers placed before it.

6. The petitioner is having an effective alternate remedy under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, and in the light of the same, this writ petition is not maintainable for the present. The petitioner is at liberty to challenge the legality of Section 7 impugned notice to the first respondent within a period of two weeks from the date of receipt of a copy of this order, and till such time, all further proceedings in pursuant to the impugned Section 7 notice is stayed by the second respondent. The first respondent shall entertain the appeal, if the papers are otherwise in order, along with the petition for stay under Section 10(B) of the said Act. Further, till filing of the appeal, the second respondent shall defer proceedings in terms of the impugned notice dated 10.07.2017. It is made clear that the said authorities shall take up either the stay petition or the main appeal itself and give disposal in accordance with law for a further period of six weeks thereafter, and communicate the decision taken, to the petitioner.

7. This writ petition is dismissed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To:

1. The District Collector,
District Collector Office,
Krishnagiri District,
2. The Tahsildar,
Tahsildar Office,
Oozur.

+ 1 cc to M/s.G.Mohammed Aseef, Advocate, SR.52294

+ 1 cc to The Govt.Pleader, SR.53336

W.P.No.18540 of 2017

NR 29/08/2017



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