

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.No.28886 of 2017 and WMP No.31101 of 2017

A.Vengatachalam .. Petitioner

Vs

1.The District Collector,
Villupuram.

2.The Revenue Divisional Officer,
Kallackurichi.

3.The Tahsildar,
Chinna Salem Taluk,
Villupuram.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus, forbearing the respondents from interfering with the petitioner's peaceful with the possession of the property in S.Nio.376/8, situate in Rayapanoor Village, Chinna Salem Taluk, Villupuram and further direct the 3rd respondent to pay compensation @ Rs.75,000/- for the loss incurred due to the destroyal of crops cultivated in the aforesaid field.

For Petitioner : Mr.Muruganandham for
Mr.V.Ragavachari

For Respondents : Mr.M.Digvijay Pandian, AGP

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.M.Digvijay Pandian, learned Additional Government Pleader accepts notice on behalf of the respondents.

2 The petitioner claims to be an agriculturalist and is a resident of Royappanur Village and doing agricultural operation with the help of his son and would further state that his father viz., Aththiyappa Gounder had purchased the land admeasuring to an extent of 1 hectare ad 3.0 acres in S.No.376/1A, 43.0 acres in S.No.376/2/A5, 2.5 acres in S.No.376/5D and 56.5 acres in S.No.376/7D and had also put up superstructure in S.No.376/7D. The petitioner would state that after the demise of his father, he is succeeded to the said estate and continues to be in possession and enjoyment of the said land.

3 It is further stated by the petitioner that the land admeasuring to an extent of 36 acres comprised in S.No.376/8 is classified as "Government Punjai Tharisu" and it was lying barren and his father requested the Government to utilize the lands effectively for the purpose of agriculture or to allot in his favour by way of lease for doing the agricultural activity ; but no response was forthcoming. His father on his own efforts, had converted the barren land in S.No.376/8 into a cultivable one and doing agricultural work for over 50 years and after his demise, the petitioner continue to do the same and necessary charges have also been paid for utilisation of the above said land right from the year 1975.

4 It is also contended by the petitioner that a small part of the land in S.No.376/8, was used for drains during raining season and rest of the water is being used for carrying out agricultural operation in S.Nos.376/1A and 376/7D. All the facts are within the knowledge of the Government Officials. The petitioner had received the show cause Notice under Section 7 of the Tamil Nadu Land Encroachment Act,1905 on 03.08.2017 from the 3rd respondent and immediately he has submitted the explanation dated 07.08.2017 and without considering the same, the 3rd respondent has issued notice under Section 6 of the Said Act on 05.09.2017 and challenging the initiation of the proceedings under the said Act, the petitioner filed an appeal before the 2nd respondent on 13.09.2017 and pending disposal of the same, prayed for stay of all other proceedings.

5 However, the office of the 2nd respondent vide Memo dated 19.09.2017 in O/Mu.A2/6422/2017 has directed the 3rd respondent to conduct survey and enquiry and inform the same to the petitioner and further sent communication to their office. However to the shock and surprise of the petitioner all of a sudden, the 3rd respondent brought a Poclain and destroyed all the standing crops and thereby, caused loss to the petitioner to the tune of Rs.75,000/- for the said illegal act.

6 The learned counsel appearing for the petitioner would submit that in Paragraph No.3 of the affidavit filed in support of this writ petition, it has been inadvertently stated that the petitioner has encroached upon 36 acres of land and even as per the notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, the petitioner is in possession of the said land for more than 30 years and despite the fact that statutory appeal is pending before the 2nd respondent and without disposing of the petition for stay, the 3rd respondent had taken the law in his own hand and destroyed the standing crops and thereby, caused huge loss to the petitioner and that apart from his prayer for earlier disposal of the appeal, the respondents are bound to compensate the petitioner and hence prays for appropriate relief.

7 Per contra, Mr.M.Digvijay Pandian, learned Additional Government Pleader appearing for respondents 1 to 3 would submit that even as per the petitioner's own admission, he is an encroacher of a "Government Punjai Tharisu" and though he has filed an appeal along with the petition for stay, he has not pressed for taking up for stay. In the absence of stay, it is open to the 3rd respondent to proceed further. The 3rd respondent, after complying with the mandatory procedures, had rightly passed the impugned order for removal of the encroachment and prays for dismissal of this writ petition.

8 It is relevant to extract Section 6 and 7 of the Land Encroachment Act, 1905:

"Section 6: Liability of person unauthorisedly occupying land to summary eviction, forfeiture of crops etc.- (1) Any person unauthorisedly occupying any land for which he is liable to pay assessment under section 3 or section 3-A may be summarily evicted by the Collector or subject to his control, by the Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government in this behalf (hereinafter referred as the Authorised Officer) and any crop or other product raised on the land shall be

liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector or subject to his control, the Tahsildar or Deputy Tahsildar or authorised officer may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector or subject to his control by the Tahsildar, or Deputy Tahsildar, or authorised Officer and any property so forfeited shall be disposed of as the Collector or subject to his control the Tahsildar or Deputy Tahsildar or authorised officer) may direct.

(2) An eviction under this section shall be made in the following manner namely: By serving a notice in the manner provided in section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector or the Tahsildar or Deputy Tahsildar or Authorised Officer may deem reasonable after receipt of the said notice to vacate the land, and, if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstructed by any person, the Collector or the Tahsildar, or Deputy Tahsildar or authorised officer shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector or of any Tahsildar or Deputy Tahsildar or authorised officer for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for imprisonment in the civil jail of the district for the like period.

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under sections 183, 186 or 188 of the Indian Penal Code in respect of the same facts.

(3) Any authorised officer taking

proceedings under this section shall make a report in writing containing such particulars as may be specified in rules or orders made under Section 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction.

Section 7: Prior notice to person in occupation: Before taking proceedings under section 6 the Collector or Tahsildar or Deputy Tahsildar or Revenue Inspector or any authorised officer or any other officer specified by the State Government in this behalf (not being an authorised officer) (hereinafter referred to as the 'specified officer' as the case may be) shall cause to be served on the person reported to be in unauthorised occupation of land being the property of Government a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under section 6.

Such notice shall be served in the manner prescribed in section 25 of the Tamil Nadu Revenue Recovery Act, 1864, or in such other manner as the State Government by rules or orders under Section 8 may direct.

Provided that no such notice shall be necessary in the case of any person unauthorisedly occupying any land, if he had been previously evicted from such land under section 6 or if he has previously vacated such land voluntarily after the receipt of a notice under section 5-B or under this section:

Provided further that where the notice under this section is caused to be served by any Revenue Inspector or any specified officer he shall require the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Collector, Tahsildar, Deputy Tahsildar or authorised person having jurisdiction, as the case may be and shall also make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar, Deputy Tahsildar or authorised person having jurisdiction, as the case may be".

9 Admittedly, the notices under Sections 7 and 6 of the Act have been issued to the petitioner and as per Section 6, any person who is unauthorisedly occupying any land may be summarily

evicted by the Collector or subject to his control, by the Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him is liable for forfeiture and forfeited property shall be disposed of also.

10 No doubt, the petitioner challenging the legality of the proceedings initiated under Provisions of Tamil Nadu Land Encroachment Act, 1905, had filed an appeal dated 13.09.2017 before the 2nd respondent who in turn vide Memo dated 19.09.2017, directed the 3rd respondent to conduct the spot inspection and inform the decision taken to the petitioner as well as to their office.

11 Now the fact remains that the petition has been dispossessed and according to him, the standing crops worth about Rs.75,000/- have been damaged.

12 In the light of the above facts and circumstances, the prayer sought for grant of compensation cannot be granted as the adjudication of the issue relating to compensation would also require pleadings and evidence.

13 Thus, this Court taken into consideration the above facts and circumstances and without going into the merits projected by the petitioner directs the 3rd respondent to respond to the memo of the 2nd respondent dated 19.09.2017 in O/Mu.A2/6422/2017 and sent report within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the 2nd respondent is directed to consider and dispose of the appeal dated 13.09.2017 on merits and in accordance with law within a further period of six weeks thereafter and communicate a decision taken to the petitioner and depending upon the result of the same, the petitioner is at liberty to work out his further remedy including the availability of common law remedy.

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

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

sk

To

1.The District Collector,
Villupuram.

2.The Revenue Divisional Officer,
Kallackurichi.

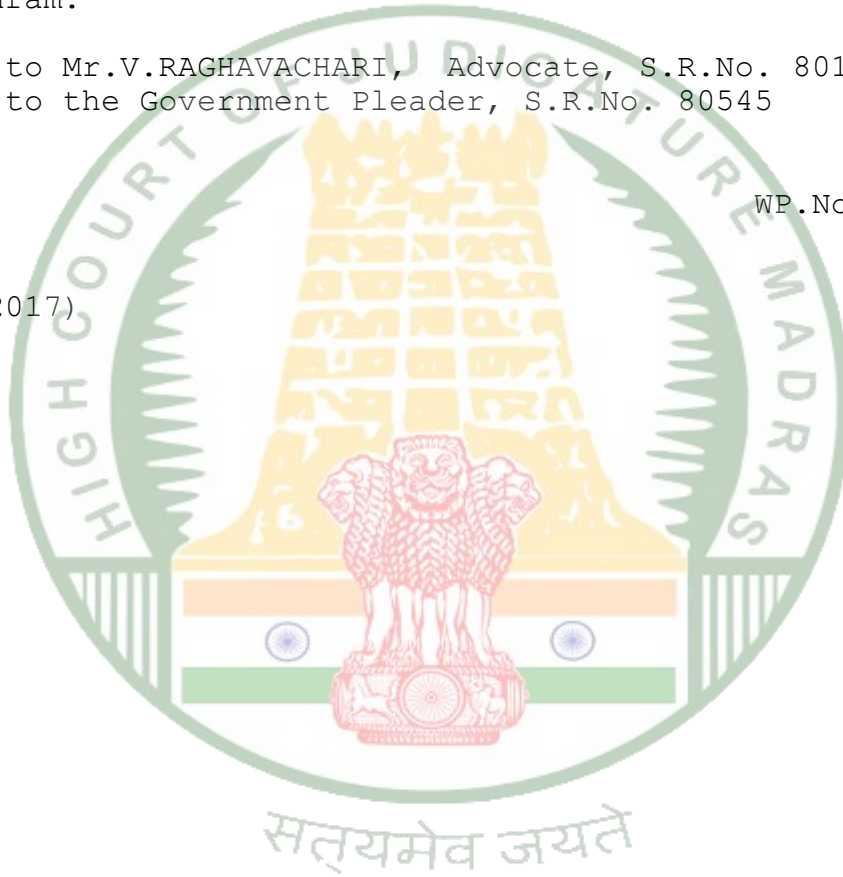
3.The Tahsildar,
Chinna Salem Taluk,
Villupuram.

+1cc to Mr.V.RAGHAVACHARI, Advocate, S.R.No. 80193

+1cc to the Government Pleader, S.R.No. 80545

WP.No.28886/2017

MP (CO)
TR(11/12/2017)



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