

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

WP.No.29022/2017 & WMP.No.31262/2017

K.Gunalan ... Petitioner

vs

1.The District Collector
Collectorate, Salem District,
Pin 636 001.

2.The Revenue Inspector,
Kattukottai, Attur Taluk
Salem District.

3.The Revenue Divisional Officer
Attur Taluk, Salem District.

4.The Tahsildar
Attur Taluk, Salem District. ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents 1 to 4 to defer further decision in respect of the proceedings initiated under the provisions of the Tamil Nadu Land Encroachment Act, 1905, without passing any order and without adhering to the procedure established as per G.O.Ms.No.540, Revenue [LD.6[2]] Department, dated 04.12.2014.

For Petitioner : Mr.P.Vishnu
For R1 to R4 : Mrs.M.E.Rani Selvam, AGP

ORDER

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

By consent, the writ petition is taken up for final disposal. Mrs.M.E.Rani Selvam, learned Additional Government Pleader accepts notice on behalf of the respondents 1 to 4.

2 According to the petitioner, the lands comprised in S.No.397/23, 7, 21 and 6 in Navalur Village, Attur Taluk, Salem District, originally belonged to his grandfather and the said lands have been classified as "Grama Natham". The Special Tahsildar had also issued a Joint Patta bearing No.985 in respect of pieces of lands comprised in Old S.No.175/1 to the occupants therein under the Land Ownership Record Maintenance Scheme. The very same official had also issued Patta bearing No.380 in respect of the lands in S.Nos.397/7 and 23 [Old S.No.175/1] in favour of the petitioner vide proceedings dated 30.10.1991. The petitioner would further claim that he has also put up a superstructure and it is also subjected to statutory levies. The petitioner also aver that based upon a complaint dated 16.08.2012 lodged by one Mr.Maruthamuthu stating that the petitioner has put up an unauthorised construction, action was sought to be taken and the petitioner had filed OS.No.193/2013 on the file of the Court of the District Munsif, Attur, against [1] Maruthamuthu, [2] the Collector, Salem District ; [3] the Revenue Divisional Officer, Attur and [4] the Tahsildar, Attur, praying for permanent injunction restraining the defendants therein from interfering with his peaceful possession and enjoyment of the said and the said suit, after contest, came to be dismissed on 30.06.2017 and challenging the same, the petitioner has also filed an appeal in AS.NO.9/2017 on the file of the Court of Subordinate Judge, Attur and the same is pending. The grievance expressed by the petitioner is that despite pendency of the appeal, the 4th respondent has issued a notice dated 02.08.2017 under section 6 of the Tamil Nadu Land Encroachment Act, 1905, and in this regard, he has submitted a representation dated 21.09.2017, stating among other things that as per G.O.Ms.No.540, Revenue [LD.6[2]] Department, dated 04.12.2014, certain procedures have been contemplated for removal of the encroachment and the same has not been followed and since the petitioner is in possession and enjoyment of the Grama Natham land for over 90 years, patta is to be granted and therefore, prays for appropriate orders and despite pendency of the representation, further action is being taken to remove the encroachment and hence, the petitioner has come forward to file the present writ petition.

3 The learned counsel for the petitioner would submit that it would be suffice to direct the 4th respondent to consider and dispose of the petitioner's representation dated 21.09.2017 on merits and in accordance with law within a stipulated time.

4 Mrs.M.E.Rani Selvam, learned Additional Government Pleader appearing for the respondents 1 to 4 would submit that the petitioner has suffered an adverse finding vide judgment and decree dated 30.06.2017 in OS.No.193/2013 and since he is having

an effective alternate remedy under the provisions of the Tamil Nadu Land Encroachment Act, 1905, the writ petition is not maintainable.

5 The Court has considered the rival submissions and also perused the materials placed before it.

6 The fact remains that the petitioner had suffered adverse findings vide judgment and decree dated 30.06.2017 in OS.No.193/2013 and challenging the legality of the same, he has also filed an appeal in AS.No.9/2017 on the file of the Court of Subordinate Judge, Attur and the same is pending. In the light of the dismissal of the suit, the 4th respondent has issued the impugned notice dated 02.08.2017. Further, this Court is of the view that the petitioner is having an effective alternate remedy under the provisions of the Tamil Nadu Land Encroachment Act, 1905. It is relevant to extract sections 10 and 10-B of the said Act:-

"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 along with the petition for stay to the 1st respondent, 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 1st respondent 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 two weeks thereafter and till the disposal of the petition for stay by the 1st respondent/delegated official, the 4th respondent shall defer further decision in terms of the impugned notice dated 02.08.2017. The 1st respondent / the delegated official shall take up the main appeal itself and give a disposal on merits and in accordance with law within a further period of eight weeks from the date of disposal of the stay petition and communicate the decision taken, to the petitioner

and the petitioner, till the disposal of the appeal, shall not create any third party rights in respect of the land and superstructure in question and shall also not alter the physical features of the same.

8 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

- 1.The District Collector
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Salem District.
- 3.The Revenue Divisional Officer
Attur Taluk, Salem District.
- 4.The Tahsildar
Attur Taluk, Salem District.

+1cc to Mr.P.Vishnu, Advocate SR.No.82951

+1cc to Government Pleader SR.No.82903

SS(CO)
GN(12/12/2017)

WP.No.29022/2017

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