

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.29051/2017 & W.M.P.Nos.31280 & 31281/2017

1 M.Krishnan
2 K.Harikumar
3 K.Prabhakaran

... Petitioners

vs

1 The District Collector,
Tiruvallur District,
Tiruvallur.

2 The Revenue Divisional Officer,
Tiruvallur,
Tiruvallur District.

3 The Tahsildar,
Poonamalle Taluk,
Poonamalle,
Chennai-56.

4 The Commissioner,
Poonamallee Municipality,
Poonamallee,
Chennai-56.

.... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus, directing the 1st respondent to forthwith take up the petitioners' appeal along with petition for interim stay dated 10.11.2017 preferred against the notices N.K.No.2242/2016/B1 dated 10.11.2017 on the file of the 3rd respondent and to decide the same on merits and in accordance with law, without evicting the petitioners from their property with building having total extent of 512 Sq.Mts comprised in S.No.246/2, having extent of 242 Sq.Mts; S.No.246/3, having extent 240 Sq.Mts and S.No.246/4, having extent of 30 Sq.Mts., in Kattupakkam Village, Poonamallee Taluk and Municipality limit, Tiruvallur District.

For Petitioners: Mr.R.Neelakandan
For R1 to R3 : Mrs.M.E.Raniselvam, AGP
For R4 : Mr.R.Sivakumar

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.Raniselvam, learned Additional Government Pleader accepts notice on behalf of the respondents 1 to 3 and Mr.R.Sivakumar, learned Standing counsel accepts notice on behalf of the 4th respondent.

2 The petitioners claim that the petitioners 2 and 3 are the absolute owners of the landed property admeasuring to the total extent of 512 sq.m., 242 sq.m. comprised in S.No.246/2 ; 240 sq.m. comprised in S.No.246/3 ; and 30 sq.m., comprised in S.No.246/4 in Kattupakkam Village, Poonamallee Taluk, Tiruvallur District and according to them, the 1st petitioner had purchased 30 sq.m. of land in S.No.246/4, from one Ismail and other two properties were owned by their forefathers. It is further averred that in pursuant to the purchase of the land admeasuring to the extent of 30 sq.m., in S.No.246/4, the 1st petitioner became the title holder and Patta No.740 has also been issued by the Zonal Deputy Tahsildar, Poonamallee Taluk and th 1st petitioner had also put up a superstructure by getting the Building Plan Approval from the 4th respondent and put up Ground + I Floors. The 1st petitioner had also executed a Settlement Deed during the year 2009, bequeathing the properties in favour of the petitioners 2 and 3 and as such, they are in possession and enjoyment of the same.

3 The learned counsel for the petitioners would submit that one Mr.T.M.S.Sivakumar, had filed WP.No.41414/2016 against the respondents 1 to 3 herein, praying for the issuance of a writ of mandamus, to remove the encroachments in the water body comprised in S.Nos.246 and 246/1 of Kattupakkam Village, Poonamallee Taluk and vide order dated 25.11.2016, this Court had disposed of the said writ petition, by directing the 2nd respondent to cause inspection and in the event of any encroachments being found, granted them liberty to proceed in accordance with law. It is the further submission of the learned counsel that the 4th respondent has proceeded further and issued a notice dated 14.02.2017 calling upon the petitioners to evict from the land in question within seven days, failing which, appropriate proceedings will be initiated under the provisions of the Tamil Nadu District Municipalities Act, 1920. The petitioners, challenging the legality of the said Notice, had filed WP.No.4841/2017 and vide order dated 24.02.2017, a Division Bench of this Court, had directed the respondents/authorities to re-survey the property in question and then, proceed in accordance with law after issuing fresh notice in case of any encroachment is concerned and till such

time, the respondents were restrained from taking any precipitative action. Thereafter, the petitioners were issued with the Notices u/s.7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, by the 3rd respondent and challenging the legality of the same, statutory appeal u/s.10 of the said Act, along with the petition for stay has been filed.

4 The grievance expressed by the petitioners is that though the appeal has been presented along with the petition for stay, without waiting for the entertainment and the result of the same, the 4th respondent is taking further action to dispossess the petitioners and therefore, the petitioners are constrained to approach this Court by filing the present writ petition.

5 Per contra, Mrs.M.E.Rani Selvam, learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that since the encroachments have been found on the water body, on account of the rain due to monsoon, there is a likelihood of inundation and flooding which may affect the lives and properties of the resident and as such, a fair decision has been taken to remove the encroachment committed by the petitioners from the water body and it cannot be faulted with.

6 The Court heard the submissions of Mr.R.Sivakumar, learned Standing counsel appearing for the 4th respondent and also perused the materials placed before it.

7 Though the petitioners have prayed 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 petitioners in this writ petition, directs the 1st respondent to entertain the appeal along with the petition for stay if the papers are otherwise in order and either the 1st respondent or the delegated official shall take up the petition for stay first and give a disposal in accordance with law within a period of two weeks from the date of receipt of a copy of this order and till such time, the 3rd respondent shall defer further decision in terms of the provisions under the Tamil Nadu Land Encroachment Act, 1905. The 1st respondent / delegated official shall take up the main appeal 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 petitioners. The 4th respondent shall also cause inspection of the superstructure put up by the petitioners on the land in question and if the said official finds that the said construction is unauthorised/deviated from the sanctioned plan, he is at liberty to take appropriate action in accordance with law.

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

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1 The District Collector,
Tiruvallur District,
Tiruvallur.

2 The Revenue Divisional Officer,
Tiruvallur,
Tiruvallur District.

3 The Tahsildar,
Poonamalle Taluk,
Poonamalle,
Chennai-56.

4 The Commissioner,
Poonamallee Municipality,
Poonamallee,
Chennai-56.

+1 cc to Govt Pleader sr 80537

+1 cc to Govt Pleader sr 80943

+1 cc to M/s.R.Sivakumar Advocate sr 80816

+1 cc to M/s.R.Neelakandan Advocate sr 80619

W.P.No.29051/2017

nm(co)
aa15/11/2017

WEB COPY