

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.11.2017

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.29071 of 2017

and

W.M.P.No.31306 of 2017

S.A. Abdul Razack

.. Petitioner

Versus

The Tahsildar,
Office of the Tahsildar,
Poonamallee,
Chennai.

.. Respondent

PRAYER:- Writ petitions filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorari to quash the impugned notice of the respondent bearing Na.Ka.No.2242/2016/AA1, dated 10.11.2017.

For Petitioner : Mr.Mohammed Fayaz Ali

For Respondent : Mr.A.N.Thambidurai,
Special Government Pleader

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 is a resident of Door No.462, Trunk Road, Kumananchavadi, Poonamallee, Chennai - 56 and would claim that he has been granted "Grama Natham (Village Site) Patta" No.140 dated 10.08.2017 with respect to the land comprised in S.No.400, admeasuring to an extent of 1708 Sq.ft. The petitioner further claims that he has also been issued with Chitta and Adangal by the respondent. The grievance expressed by the petitioner is that all of a sudden, the respondent issued notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, dated 10.11.2017, alleging that the petitioner is an Encroacher in respect of 131 Sq. metres out of total extent of 1708 and 2164 Sq.ft, in Kattuppakkam in Survey No.400 and 401 which is classified as "Sarkar (Government) Poramboke" and also

constructed five shops. The petitioner challenging the legality of the said notice, came forward to file this writ petition.

3. The writ petition was listed for admission on 13.11.2017 and on that date, this Court directed the petitioner to file an additional affidavit as to whether the construction of five shops indicated in the impugned notice are authorised/permited or in deviation of the sanctioned plan, along with the photographs. Accordingly, the petitioner has filed additional affidavit dated 14.11.2017 supported by additional typed set of documents containing photographs and Property Tax Receipts.

4. Mr.Mohammed Fayaz Ali, learned counsel appearing for the petitioner has invited the attention of this Court to the Village Site Patta issued by the Zonal Deputy Tahsildar, Poonamallee Taluk, Thiruvallur District and would submit that the land admeasuring to an extent of 1708 Sq.ft in Kattuppakkam in S.No.400 is classified as "Village Natham" and he has also been issued with Chitta and would further submit that once the land is classified as Village Natham, the provisions of Tamil Nadu Land Encroachment Act, 1905 cannot be invoked and would further add that before issuing notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, It should be preceded by notice under Section 7 of the said Act and admittedly, the said notice has not been issued. Hence, prays for quashment of the same.

5. This Court has also put up a specific question to the learned counsel appearing for the petitioner as to whether the additional affidavit of the petitioner dated 14.11.2017 contains any averments as to whether the five shops put up on the land in question are authorised or not. The learned counsel appearing for the petitioner would state that the shops are in existence for more than 25 years and it is also subjected to statutory levies and since the building came into being before 01.04.2007/ cut off date prescribed under Section 113-C of the Tamil Nadu Town and Country Planning Act, 1971, the petitioner is also entitled to go for regularisation on subject to fulfillment of the condition.

6. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondent has invited the attention of this Court to the letter of the respondent dated 20.11.2017 addressed to the Government Pleader wherein it is to be stated among other things, that the petitioner got an extract of 10 (1) Chitta in Form 11 from the Zonal Deputy Tahsildar and the verification of the records would disclose that the land in question is classified as "Contonment Poramboku" in the Permanent "A" Register and accordingly, the action was initiated under the provisions of the Tamil Nadu Land

Encroachment Act, 1905.

7. It is the further submission of the learned Special Government Pleader appearing for the respondent that the petitioner also having effective alternative remedy under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 with the provision of interim orders under section 10-B and as such, the writ petition is not maintainable and prays for dismissal of the writ petition.

8. This Court had considered the rival submissions and also perused the materials placed before it.

9. It is a specific case of the petitioner that the land in question which is the subject matter of impugned notice classified as "Grama Natham (Village Site) Patta", and whereas, it is the stand of the respondent in his communication dated 10.11.2017 addressed to the petitioner which is classified as "Contonment Poramboke".

10. In the considered opinion of this Court, the petitioner is having effective alternative remedy under Section 10 of the Tamil Nadu Land Enchroachment Act, 1905 with the provision for interim orders under Section 10-B.

11. 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."

12. It is also brought to the knowledge of this Court that prima facie five shops put up by the petitioner is an unauthorised one.

13. In the light of the above facts and circumstances, this Court permits the petitioner to file an appeal under Section 10 of the Tamil Nadu Land Enchroachment Act, 1905 with the petition for stay under Section 10-B of the said Act to the appellate authority, viz., Revenue Divisional Officer, Thiruvallur District by enclosing relevant and authenticated documents within a period of four weeks from the date receipt of a copy of this order. The appellate authority on receipt of the same, shall taken up the petition for stay filed under Section 10-B of the Tamil Nadu Land Enchroachment Act, 1905 and give disposal in accordance with law within a further period of three weeks thereafter and till such time, the respondent shall defer further proceedings in terms of the impugned notice dated 10.11.2017. It is also open to the appellate authority to take up the main appeal itself and give a disposal on merits in accordance with law within a further period of eight weeks thereafter and communicate the decisions taken to the petitioner.

14. Accordingly, the writ petition stands disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

rsi/sk

To

1.The Tahsildar,
Office of the Tahsildar,
Poonamallee, Chennai.

2.The Revenue Divisional Office,
Thiruvallur. Thiruvallur dist.

+1cc to Mr.MOHAMMED FAYAZALI Advocate, S.R.No. 84809
+1cc to the Government Pleader, S.R.No. 85439

W.P.No.29071 of 2017
and
W.M.P.No.31306 of 2017

TR(21/12/2017)