

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:26.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.Nos.19068 & 19140/2017 & WMP.Nos.20587, 20588, 20646 &
20647/2017

S.Manikandan ..Petitioner in WP.No.19068/2017

T.Murugesan ..Petitioner in WP.No.19140/2017

Vs

1.The Tahsildar
Cheyyur Taluk
Kancheepuram District.

2.The Revenue Inspector
Cheyyur Taluk,
Kancheepuram District.

3.Village Administrative Officer
No.74, Thiruvathur Village
Cheyyur Taluk, Kancheepuram District.

.. Respondents in both writ petitions

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records relating to impugned orders dated 08.05.2017 passed by the 2nd respondent and the consequential impugned order made in Na.Ka.No.1687/2017/B1 dated 07.07.2017 passed by the 1st respondent and quash the same and consequently forbear the respondents from disturbing the peaceful possession of the petitioners in S.No.145B, at Thiruvallur Village, Cheyyur Taluk, Kancheepuram District.

For Petitioners in
both writ petitions

: Mr.R.Dhanram

For Respondents in
both writ petitions

: Mr.A.N.Thambidurai,
Spl.GP

COMMON ORDER

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

By consent, the writ petitions are taken up for final disposal. Since the matter in issue is one and the same, the writ petitions are being disposed of by the following common order. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents.

WP.No.19048/2017

2.The petitioner states that the lands comprised in S.Nos.145/B and 146/6, at Thiruvathur Village, Cheyyur Taluk, Kancheepuram District, belongs to his grandfather, viz., [late] Thanthoni Naiker and after his demise, his sons, viz., the father of the petitioner and his brother, T.Murugesan, had succeeded to the estate and were in joint possession and enjoyment of the same and in pursuant to the registered Partition Deed bearing Doc.No.277/1985 dated 29.08.1985, they divided the properties and the petitioner's father became the absolute owner of the lands comprised in S.Nos.145/B and 146/6, admeasuring to an extent of 3 acres and after the demise of his father, the petitioner had succeeded to the estate and started doing agricultural operations. The petitioner would further aver that to his shock and surprise, he was issued with a notice under section 7 of the Tamil Nadu Land Encroachment Act, 1905, by the 2nd respondent and he has submitted a detailed response pointing out that the lands in question is not located in the water body and he has enjoyed the landed property as his own property and carrying on agricultural operation and also sought for particulars as to the reasons for coming to the conclusion that the petitioner had encroached upon the water body. However, the 1st respondent, without taking note of the response submitted by the petitioner, has passed the cryptic impugned order dated 07.07.2017 holding that the petitioner had encroached upon the "Odai Poramboke" and in terms of G.O.Ms.No.540, Revenue [LD-6 [2]] Department, dated 04.12.2014, the petitioner is liable to be evicted and challenging the legality of the same, the petitioner came forward to file the present writ petition.

WP.No.19140/2017:-

3.The petitioner states that the land comprised in S.Nos.145/Bat Thiruvathur Village, Cheyyur Taluk, Kancheepuram District, belongs to his grandfather, viz., [late] Thanthoni Naiker and after his demise, his sons, viz., petitioner and his brother, [late] Shanmugam, had succeeded to the estate and were in joint possession and enjoyment of the same and in pursuant to the registered Partition Deed bearing Doc.No.277/1985 dated 29.08.1985, they divided the properties and the petitioner became the absolute owner of the land

comprised in S.Nos.145/B admeasuring to an extent of 3 acres and started doing agricultural operations. The petitioner would further aver that to his shock and surprise, he was issued with a notice under section 7 of the Tamil Nadu Land Encroachment Act, 1905, by the 2nd respondent and he has submitted a detailed response pointing out that the lands in question is not located in the water body and he has enjoyed the landed property as his own property and carrying on agricultural operation and also sought for particulars as to the reasons for coming to the conclusion that the petitioner had encroached upon the water body. However, the 1st respondent, without taking note of the response submitted by the petitioner, has passed the cryptic impugned order dated 07.07.2017 holding that the petitioner had encroached upon the "Odai Poramboke" and in terms of G.O.Ms.No.540, Revenue [LD-6 [2]] Department, dated 04.12.2014, the petitioner is liable to be evicted and challenging the legality of the same, the petitioner came forward to file the present writ petition.

4.The learned counsel for the petitioners has invited the attention of this Court to the affidavit of documents and would submit that despite the stand taken by the petitioners that they have not encroached any water body and they are enjoying the properties and carrying on agricultural operations, the 1st respondent, without due and proper application of mind, has passed cryptic orders, holding that the petitioners had encroached upon the water body and in the light of the stand taken by the petitioners that no required particulars with regard to the conclusion reached by the 2nd respondent as to the classification fo the lands in question as water body coupled with the fact that the said orders had also exhibited non-application of mind, prays for interference.

5.Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that the petitioners are having effective alternate remedy under section 10 of the Tamil Nadu Land Encroachment Act, 1905, and as such, the present writ petitions are not maintainable.

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

7.The primordial point urged by the learned counsel for the petitioners is that the title of the properties has been traced in the form of the registered Partition Deed and in the light of the stand taken by the petitioners that they have not encroached upon the water body, it is obligatory on the part of the 2nd respondent to furnish the relevant particulars as to how the lands in question are being treated as water body and though the said fact was brought to the knowledge of the 1st respondent in the form of representations, the 1st respondent did not consider the same and passed cryptic and non-speaking

orders and as such, the petitioners need not invoke the alternate remedy available in the form of Appeal under section 10 of the Tamil Nadu Land Encroachment Act, 1905.

8.It is well settled position of law that the Appellate Authority, constituted under the Statute, is expected to perform his duties strictly in accordance with law and this Court cannot presume that the Appellate Authority would not apply his mind to the points urged in the appeal. This Court is of the view that the petitioners are having effective alternate remedy under section 10 of the Act and therefore, if they are so advised, they are at liberty to avail the said remedy.

9.Therefore, the petitioners are at liberty to avail the appellate remedy before the Collector of Kancheepuram District, along with the petitions for stay under section 10-B of the Tamil Nadu Land Encroachment Act, 1905, within a period of four weeks from the date of receipt of a copy of this order and till such time, the respondents 1 to 3 shall defer further decision in respect of the proceedings initiated under the provisions of the Tamil Nadu Land Encroachment Act, 1905, and the Collector of Kancheepuram District shall entertain the appeals filed by the petitioners, if the papers are otherwise in order and either take up the petitions for stay or the appeals itself and dispose of the same on merits and in accordance with law and pass appropriate orders within a further period of eight weeks thereafter and communicate the decision taken, to the petitioners.

10.The writ petitions stand dismissed with the above observations. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

AP

To

1.The District collector,
Kancheepuram,
Kancheepuram District.

2.The Tahsildar
Cheyyur Taluk
Kancheepuram District.

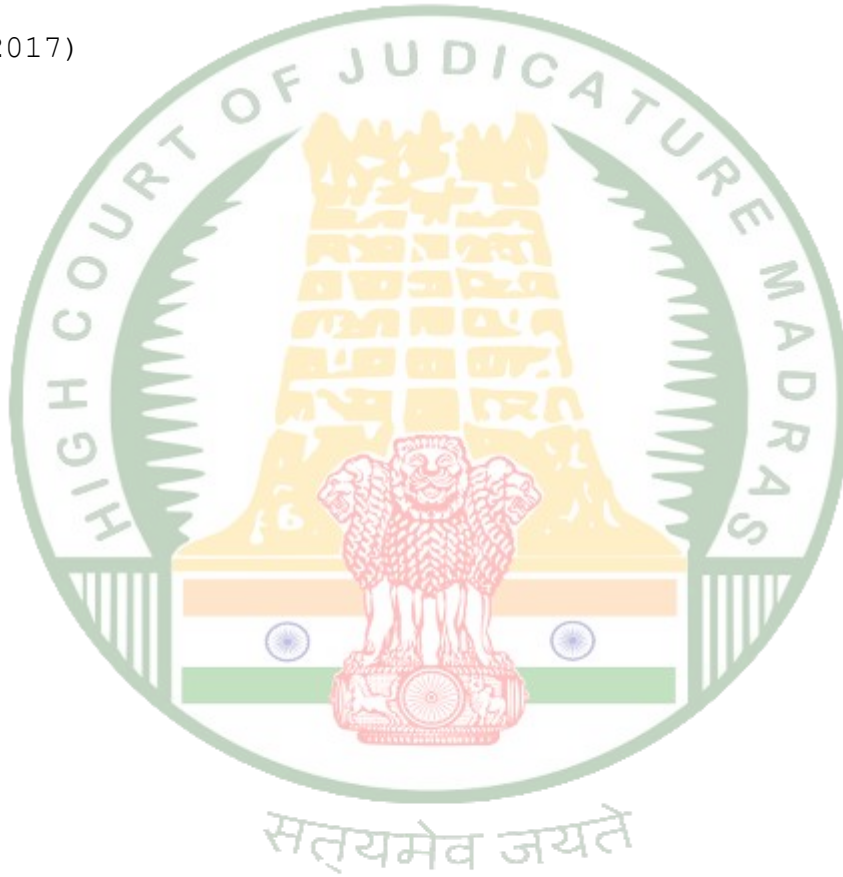
3.The Revenue Inspector
Cheyyur Taluk,
Kancheepuram District.

4.Village Administrative Officer
No.74, Thiruvathur Village
Cheyyur Taluk, Kancheepuram District.

+2cc to Mr.R.Dhanan, Advocate SR.No.52650
+1cc to Government Pleader SR.No.53346

WP.Nos.19068 & 19140/2017

GN(04/08/2017)



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