

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
And
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.29258 of 2017

and WMP.No.31526 and 31527 of 2017

B.Rafi Ahmed .. Petitioner

vs.

1.The Tahsildar,
Poonamallee Taluk,
Poonamallee, Tiruvallur District,
Chennai-56.

2.The Revenue Inspector,
Poonamallee Taluk,
Poonamallee, Tiruvallur District,
Chennai-56.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the second respondent Notice No.7 dated 31.05.2017 and the first respondent in Rc.2242/2016/Aa1 dated 10.11.2017 and quash the same.

For Petitioner : Mr.N.A.Nissar Ahmed

For Respondents : Mrs.M.E.Raniselvam,
Additional Government Pleader

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner claims that he has purchased a Grama Natham property in S.No.246 of Kattupakkam Village, Poonamallee Taluk, through a registered Sale Deed dated 18.02.1985 under Doc.No.732/85 on the file of the Sub-Registrar Office, Poonamallee and according to him, the lands in S.Nos.379 and 468

of Kattupakkam Village, Poonamallee Taluk vests with the Cantonment Board as per revenue records. The petitioner would further aver that the land in S.No.379 is situated in front of his house in S.No.246 and in S.No.379, he is running a tailoring shop for the past several years. However, to his shock and surprise, he has been issued with a notice dated 31.05.2017 under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 by the Revenue Inspector/second respondent stating that the petitioner has encroached upon 0.01.0 hectares of land out of 24,629 sq.mtrs in S.No.379 and put up three shops. The petitioner, in response to the said notice, has submitted his explanation dated 14.06.2017, pointing out that the lands in question is classified as Grama Natham and as such, the provisions of the Tamil Nadu Land Encroachment Act, 1905 has no application and in respect of lands falling within the purview of the Cantonment Board, the respondents lack jurisdiction to initiate proceedings under the said Act and however, without considering the same, the first respondent has issued the impugned notice dated 10.11.2017 under Section 6 of the said Act and challenging the legality of the same, the petitioner has filed this writ petition.

3. Mr.N.A.Nissar Ahmed, learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents, especially the Revision-Survey and Re-Settlement Register of the Village of Kattupakkam (Cantonment) and would submit that except the lands in S.No.379, other lands fall within the jurisdiction of the Cantonment Board and as such, the respondents lack jurisdiction to initiate proceedings under the Tamil Nadu Land Encroachment Act, 1905. The learned counsel appearing for the petitioner would further submit that though resurvey was said to have been done, it has been done without affording opportunity to the land owners and the survey and measurement of lands was also not done correctly and hence, prays for interference.

4. Per contra, Mrs.M.E.Rani Selvam, learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that the petitioner is having effective alternative remedy by way of appeal under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 and as such, the present writ petition is not maintainable.

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

6. It is relevant to extract Sections 10 and 10-B of the Tamil Nadu Land Encroachment Act, 1905:

"S.10.Appeal - An appeal shall lie (a) to the Collector from any decision or order passed by a

Tahsildar or Deputy Tahsildar under this Act, and to such officer as may be specified by the State Government in this behalf (hereinafter referred to as the appellate authority) from any decision or order passed by an authorised officer under this Act and different appellate authorities may be specified for different classes of cases; and

(b) to the District Collector from any decision or order of a Collector passed otherwise than on appeal, and

(c) to the Commissioner of Land Administration from any decision or order of a District Collector passed otherwise than on appeal.

S.10-B. Stay pending decision in appeal or revision.- Pending the disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, the Appellate Authority, the Commissioner of Land Administration 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. Though the petitioner prays for 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 petitioner, permits the petitioner to file an appeal under Section 10 along with a petition for Stay under Section 10-B of the Tamil Nadu Land Encroachment Act, 1905 to the Collector of Tiruvallur District by enclosing a copy of this order as well as relevant authenticated documents within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the Collector of Tiruvallur District or his delegated official shall entertain the appeal along with the petition for stay, if the papers are otherwise in order and shall take up the petition for stay initially and give disposal on merits and in accordance with law within a period of two weeks thereafter and till such time, the respondents 1 and 2 shall defer further proceedings in terms of the impugned notice. The Collector of Tiruvallur District or his delegated official shall also take up the main appeal itself and give disposal on merits and in accordance with law within a period of eight weeks from the date of entertainment of the appeal and communicate the decision taken, to the petitioner.

8. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

jvm

To

1.The Tahsildar,
Poonamallee Taluk,
Poonamallee, Tiruvallur District,
Chennai-56.

2.The Revenue Inspector,
Poonamallee Taluk,
Poonamallee, Tiruvallur District,
Chennai-56.

3.The Collector,
Tiruvallur District.

+ 1 cc to Mr.N.A.Nissar Ahmed, Advocate,SR.81119

+ 1 cc to The Govt.Pleader, SR.81713

W.P.No.29258 of 2017

SR(CO)
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