

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.9700 of 2004

and

W.P.M.P.No.11347 of 2004

R.M.Subramanian

.. Petitioner

Vs.

1) The District Collector,
Pudukottai District
Pudukottai.

2) The Tahsildar,
Thirumayam Taluk,
Thirumayam,
Pudukkottai District.

3) The Executive Officer,
Ponnamaravathy Town Panchayat,
Ponnamaravathy,
Pudukkottai District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to restore the petitioner's house property as in original position or pay the sum of Rs.25 lakhs as compensation for demolished portion of the building and for mental agony, loss of peace of mind and damage to the petitioner's reputation incurred by the petitioner due to illegal demolition and Rs.10 lakhs for worth of jewels including gold and silver ornaments along with 50 sovereigns of gold and diamond jewels and 10,000/- cash taken by the 3rd respondent during the illegal demolition done by the respondents on 06.01.2004 at Ponnamaravathy, Pudukottai District.

For Petitioner : Mr.G.Ramadurai
For RR 1 & 2 : Mr.Akhil Akbar Ali,
Government Advocate

For R3 : Mr.S.Kamadevan

O R D E R

The petitioner has come up with this Writ Petition seeking to restore his house property to its original position or pay a sum of Rs.25 lakhs as compensation for causing mental agony, loss of peace of mind and damage to his reputation on account of illegal demolition of his building by the respondents on 06.01.2004.

2. According to the petitioner, he is residing at Door Nos.124 & 124 A, Anna Salai, Ponnamaravathy, Pudukkottai District and he is in possession and enjoyment of Grama Natham site property bearing Old Natham Survey Nos.841, 842, 843 and 844. According to the petitioner, one Late N.Lakshmanan Chettiar filed a case in O.S.No.85 of 1985 before the District Munsif Court, Pudukkottai for recovery of suit property, which includes Old Survey Nos.841 to 844, claiming arrears of rents against N.Vellaisamy, which was decreed on 23.09.1985 on merits and the same has been confirmed by this Court in S.A.No.1530 of 1998, by a judgment dated 16.11.2000. During the pendency of the suit, on 04.01.1993, the petitioner purchased the property measuring an extent of 1925 sq. ft. in Survey No.843, by a registered sale deed from the said N.Lakshmanan Chettiar and he paid all necessary charges due to the Revenue Department and the Government authorities.

3. Thereafter, patta proceedings were initiated before the Tahsildhar and the Revenue Divisional Officer and revision proceedings were initiated before the District Revenue Officer, which ended against the petitioner. These orders have been set aside by this Court by an order dated 28.11.2002 in W.P.No.18833 of 2011 and the matter was remitted to the Revenue Divisional Officer for a fresh enquiry.

4. It is the further case of the petitioner that he filed CrI.O.P.No.3973 of 2004 before this Court, which is pending and he approached this Court on several occasions and the Execution Court for recovery of the properties. He went on to add that a Civil Suit was filed by the District Collector in O.S.No.95 of 2003 for declaration and injunction and the same is pending. E.P.No.5 of 2001 was filed by the petitioner in order to claim back his property in terms of the order passed in E.A.No.31 of 2003 filed by the third respondent and during the pendency of the same, the third respondent, by using JCB machine, had demolished the entire building of the petitioner. Since the property has been demolished without any authority of law and that more than 15 sovereigns of gold, cash of Rs.10,000/-, valuables etc., also have been lost inside the rubble due to the illegal demolition by the third respondent, the petitioner has come forward with the aforesaid prayer.

5. In the counter affidavit filed by the 3rd respondent, it is stated that the 3rd respondent never interfered in the suit property and that the petitioner was in possession of a portion of the property in Survey No.843. According to him, the suit filed by the Deputy Collector does not pertain to Survey No.843, but, it pertains to some of the properties in Survey Nos.841, 842 and 844. It is further stated that there is no necessity for the third respondent to file O.S.No.95 of 2003 before the Sub Court, Pudukottai seeking declaration stating the said property belongs to the Government. The said suit in O.S.No.95 of 2003 was dismissed and the suit was transferred to District Munsif Court, Thirumayam in O.A.No.96 of 2004. In the Execution Court, by filing an application in E.A.No.11 of 2003, the petitioner obtained an order for fencing his property. Since, the petitioner tried to fence the property over and above the extent allowed to him and it was objected by the third respondent, finally, an order was passed in the Execution Petition and ultimately confirmed by an order dated 31.12.2003 in C.R.P.No.2092 of 2003, setting aside the fencing order.

6. It is further stated by the third respondent that after the remand order was passed by this Court on 28.11.2012 in W.P.18833 of 2011, setting aside the order dated 31.08.2010 passed by the Principal Secretary and Commissioner of Land Administration, Chennai, the matter was again taken up for hearing and fresh enquiry was conducted for issuance of patta and the authority concerned came to a conclusion that the petitioner is not entitled to any relief.

7. Learned counsel for the petitioner submitted that when the petitioner was in possession of the above mentioned property, demolition of the same by the respondents without any rhyme or reason muchless without any authority of law, is illegal.

8. Learned Government Advocate appearing for respondents 1 and 2 submitted that even though the petitioner has averred that only as per the instructions of the District Collector, the demolition of the suit property has taken place, there is no such direction given by the District Collector and that the bailiff has given a detailed report dated 09.01.2003 that the petitioner has taken the property in question and it was demolished only by him. According to him, he is unable to lay hands on any of the documents as to how the District Collector was instructed to file a suit for declaration in respect of a property, which belongs to the Government. That apart, the property in question in Survey No.843 is not the subject matter of the suit. He further submitted that the respondents never interfered with any property in Survey No.843 and did not

demolish the so-called 1925 sq. ft. property of the petitioner in Door Nos.124 and 124-A in Survey Nos.841/03 and 841/04.

9. Producing the Revenue Records, learned Government Advocate submitted that the property in Survey No.843 is a "mutt" belonging to N. Lakshmana Chettiyar and at no point of time, the petitioner was in occupation of the property in Survey No.843, after the Sale Deed, dated 04.01.1993. According to him, since the petitioner tried to fence the extra portion of the land, which is actually not in his possession, a dispute arose between him and the respondents herein. He further submitted that an appeal is pending before the District Revenue Officer against the order of the Revenue Divisional Officer and any finding rendered on the merits of the matter would affect both the parties, which would lead to further litigation.

10. Heard the learned counsel on either side and perused the records.

11. Though the aforesaid events are not in dispute, on a perusal of the survey report from the Revenue Records, it is clear that Survey No.843 is a "Mutt" and this Court has rendered a finding based on the said document. However, the same has been considered by the Civil Court in a different manner. The issue on hand is pending for more than three decades. Since the original suit with regard to recovery of property is filed as early as in 1985 and no finality has been arrived, this Court had set aside the said matter and remitted the same to the Revenue Divisional Officer for fresh enquiry, which is the subject matter of the above writ petition. The Revenue Divisional Officer had passed adverse orders, against which an appeal is pending before the District Revenue Officer.

12. It is seen that the present Writ petition does not refer to the portion of the property, that is said to have been demolished and the prayer itself is vague. Since the issue in question pertains to the year 1985 and the Writ Petition is of the year 2004, this Court is not inclined to reject the Writ Petition with regard to compensation, on technical grounds. However, the question as to whether the petitioner is entitled to compensation or not, has to be worked out before the appropriate forum, since the matter is pending before the District Revenue Officer.

13. The District Revenue Officer is expected to decide as to whether the petitioner is entitled to compensation or not, within a period of one month from the date of receipt of a copy of this order. Thereafter, if the petitioner is aggrieved by the said order of the District Revenue Officer, he is at liberty to file an appeal before the Land Commissioner within the

stipulated time, as per the provisions of the relevant Act. The Appellate Authority shall direct the authority concerned to pass appropriate orders on the appeal within a period of three months from the date of filing of the same by the petitioner.

14. It is made clear that the observations made herein is only for the purpose of deciding this Writ Petition and it will not affect the parties in any way with regard to the appeal pending before the District Revenue Officer or any proceedings initiated by the concerned parties.

The Writ Petition is disposed of accordingly. No costs. Consequently, connected W.P.M.P.No.11347 of 2004 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sts/aeb

To:

- 1) The District Collector,
Pudukottai District, Pudukottai.
- 2) The Tahsildar, Thirumayam Taluk,
Thirumayam, Pudukkottai District.
- 3) The Executive Officer,
Ponnamaravathy Town Panchayat,
Ponnamaravathy, Pudukkottai District.

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.56053
+1cc to Mr.G.Ramadurai, Advocate, S.R.No.56050
+1cc to the Government Pleader, S.R.No.56555

W.P.No.9700 of 2004

RRK (12/01/2018)

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