

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.09.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.13056/2012 & MP.No.1/2012

K.Jayamohan

..

Petitioner

Versus

The Tahsildar
Pappireddipatty Taluk
Taluk Office,
Pappireddipatty 636905.

..

Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to the impugned notice dated 17.04.2012 made in Na.Ka.No.4691/12[B2] on the file of the respondent herein and quash the same.

For Petitioner : Ms.P.Sharmila
for Mr.V.Rajesh

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

ORDER

सत्यमेव जयते

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

By consent, the writ petition is taken up for final disposal.

2 The petitioner claims that he is in possession of Government Poramboke land situate in S.NO.81/1 of Kullampatty village, Dharmapuri District and originally the said land was in possession of his mother, viz., Tmt.Ponnuthayee, who was paying B Memo / penal charges for the possession and after her demise, the petitioner came into possession of the said land. The petitioner would state that his family has reclaimed the land

and planted nearly 600 arecanut trees and 10 coconut trees and adjoining to the said land, there are natham lands in S.No.81/2 and now, renumbered as S.Nos.127/1 and 127/2 and the owners of the land, viz., the legal heirs of Tmt.Lakshmiammal, had executed a registered Sale Deed dated 21.10.2009 in his favour bearing Doc.No.4072/2009, registered on the file of the office of the Sub Registrar, Harur and ever since then, he is in possession and enjoyment of the same. The petitioner would further state that the penal charges are continued to be paid in respect of the lands in S.No.81/1 and since the title to the land in S.No.81/2 was disputed, the petitioner filed OS.No.29/2012 on the file of the Court of the District Munsif-cum-Judicial Magistrate, Pappireddipatty, against one Raji, the Village Administrative Officer, Kullampatty Village, Surveyor, Pappireddipatty, Tahsildar, Pappireddipatty and the Collector of Dharmapuri District, praying for declaration, declaring his right over the suit property in S.No.81/2 and for ad-interim injunction, directing the defendants 2 to 5 therein to issue a separate patta and for other consequential relief and the suit has been entertained. The grievance expressed by the petitioner is that the sole respondent herein, without going through the documents and other materials and in utter violation of the provisions of the Tamil Nadu Land Encroachment Act, 1905, has straightaway issued the notice under section 6 of the said Act and therefore, the petitioner is constrained to approach this Court by filing this writ petition.

3 The writ petition was admitted and interim stay was granted on 03.05.2012. Learned counsel for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that the petitioner is in possession of very many documents to substantiate his case that he is in possession of the lands in S.Nos.81/1 and 81/2 [present

S.Nos.127/1 and 127/2] which are classified as "Natham Lands" and therefore, the provisions of the Tamil Nadu Land Encroachment Act, 1905, have no application to the case on hand and would further submit that admittedly, prior to the issuance of the notice under section 6 of the said Act, notice under section 7 has not been issued and hence, prays for interference.

4 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the sole respondent would contend that in the light of the institution of the suit, no further proceedings have taken place.

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

6 The civil suit instituted by the petitioner pertains to the land in S.No.81/2 [present S.Nos.127/1 and 127/2 of Kullampatti Village] and insofar as the claim of the petitioner that B-Memo / penal charges have been paid in respect of the lands in S.No.81/2, the documents filed in the typed set of documents do not evidence the said fact. Be that as it may, if the respondent want to evict the petitioner, he has to follow due process of law.

7 In the light of the submissions made by the learned Special Government Pleader that no action has been taken, this Court is of the view that the pendency or otherwise of the suit in OS.No.29/2012 is nothing to do with the land in S.No.81/1.

8 In the result, the writ petition stands disposed of and the respondent is at liberty to initiate appropriate action for getting possession of the land in question, strictly in accordance with law and as and when such action is taken, the petitioner is always at liberty to challenge the same in accordance with law before the competent Forum. No costs. Consequently, the interim order granted on 03.05.2012 is vacated and the miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

AP

To

The Tahsildar
Pappireddipatty Taluk
Taluk Office, Pappireddipatty 636905.

+ 1 cc to M/s.V.Rajesh, Advocate, SR.69346

+ 1 cc to The Govt.Pleader, SR.70087

WP.No.13056/2012

RK(CO)
NR 23/11/2017