

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.No.29123 of 2016 and
WMP No.25170 of 2016 & WMP.No.5081 of 2017

S.P.Velu

...

Petitioner

Vs

1. The Tahsildhar (Revenue),
Veppanthattai Taluk,
Perambalur District

2. K.Periyasamy

...

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 in Na.Ka.E1/1179/2016 dated 11.07.2016 passed by the 1st respondent and quash the same.

सत्यमेव जयते

For Petitioner : Mr.A.S.Balaji

For Respondents : Mr.R.Vijayakumar,
Additional Government Pleader
for R1
Mr.R.Murali for R2

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ORDER

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

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

2 The petitioner in the affidavit filed in support of this writ petition would aver among other things, that his father Thiru.Palanivel Gounder had purchased lands admeasuring to an extent of 6.19 acres in Survey No.337/2B1 and 12.5 acres in Survey No.338 totaling to 19 acres along with 40 links width passage on the eastern side of S.No.335/2 running from South to North for personal usage, through a registered Sale Deed bearing document No.490/1968 dated 06.03.1968 at the Office of Sub-Registrar, Veppanthattai, from Thiru.Ramasamy Padayachi and others and from the day of purchase, they are in possession and enjoyment of the same. The petitioner would further aver that in order to meet out the medical expenses of his father who has become sick, he along with his two minor sons and daughter and his son-in-law had sold 4.5 ½ acres out of 12.51 acres in Survey No.338/1 by virtue of a Sale Deed dated 23.04.2001 bearing document No.2108 of 2001 on the Office of Sub Registrar, Veppanthattai, along with the passage and also sold 0.22 ½ cents in Survey No.337/2B1 to one Mr.Ganapathy on the same day and rest of the portion continues to be in possession and enjoyment and Joint Patta No.583 was also issued in the name of the petitioner as well as one Mr.Ganapathy.

3 The learned counsel appearing for the petitioner would submit that on an earlier occasion, the 1st respondent herein has passed the proceedings dated 27.12.2013 stating that a 25 feet pathway has been in existence for the past 15 years and the petitioner do not have any right over a pathway and with a further direction to remove the encroachment made over the pathway on or before 07.01.2014, and challenging the said proceedings, the petitioner has filed a WP .No.1074 of 2014 and the said writ petition was disposed on merits by setting aside the impugned order with a further direction to conduct fresh enquiry, by affording an opportunity to the petitioner as well as to all other necessary parties and pass a fresh detailed order within the stipulated time frame.

4 It is a primordial submission of the learned counsel appearing for the petitioner that though this Court while dismissing the said writ petition, has clearly indicated that the 1st respondent herein has to conduct fresh enquiry after

affording an opportunity to the petitioner as well as to other parties and though the 1st respondent sent a notice fixing the date of appearance on 14.06.2017 and though the petitioner prayed for time to submit the relevant documents, since the documents were with the Advocate at Chennai, without affording any proper and sufficient time, the 1st respondent has passed the impugned order dated 11.07.2016 holding that the land in question has been classified as a land belonging to Tamil Nadu Boomidhan Board and therefore, issued further direction for removal and therefore, treated the petitioner as an encroacher and issued further direction for the purpose of initiating action under the Tamil Nadu Land Encroachment Act, 1905, and therefore, the petitioner is constrained to make a challenge by filing this writ petition.

5 Per contra, Mr.R.Vijayakumar, the learned Additional Government Pleader appearing for the 1st respondent has drawn the attention of this Court to the impugned order and counter affidavit and would submit that though the petitioner was afforded with an opportunity he did not avail the same and therefore, after taking into consideration of the relevant records, a finding was given that the land comprised in Survey No.337/2B1 belonging to Tamil Nadu Boomidhan Board vide patta No.506 and it was further found that the petitioner is using the 25 feet passage for more than 15 years and as such, the encroacher upon the said land, was directed to be removed by following the due process of law and hence prays for dismissal of this writ petition.

6 The learned counsel appearing for 2nd respondent has invited the attention of this Court to the Sale Deed dated 23.04.2001 executed by the petitioner and his sons in his favour and would submit that as per the description of the property, a pathway right has been given and however, the petitioner has encroached upon the said pathway and thereby preventing to have access of the same and as such the encroachment made by him upon the said pathway is to be removed.

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

8 A perusal of the counter affidavit filed by the 1st respondent would disclose that 10 acres of land comprised in Survey No.337/2 situated at Malayalampatti Village, Perambalur District owned by one Ramasamy Padayatchi, has been donated by

him to the Tamil Nadu Boomidhan Board and it was brought to the knowledge of the District Collector of Perambalur District by the Secretary to Government Revenue Department vide letter No.24311/L.R.1(1)/2010-1 dated 18.06.2010 and accordingly, a direction was given to transfer the revenue records in the name of Boomidhan Board and the District Revenue Officer, Perambalur vide letter dated 12.02.2013 has directed the Revenue Divisional Officer, Perambalur and all Tahsildhars to transfer necessary records Village A register, Patta, Chitta in the name of Tamil Nadu Boomidhan Board and further action is also taken to prove the said land is classified as Tamil Nadu Boomidhan Board, and the petitioner being the encroacher cannot claim any right over the property and therefore, took a stand in the light of the said fact the petitioner being the encroacher, is liable to be removed after following due process of law.

9 In response to the said submission, the learned counsel for the petitioner would submit that admittedly the Patta has been issued in respect of lands in Survey No.337/2B1 admeasuring to an extent of 1.79 hectares and as such the stand of the 1st respondent in the said land belong to Tamil Nadu Boomithan Board is not at all correct.

10 This Court is of the considered view that the facts appreciated and the submissions made by the respective learned counsel appearing for the petitioner and the 2nd respondent revolves around adjudication and this Court in excise of its power under Article 226 of Constitution of India cannot do the said excise. It is a categorical stand of the 1st respondent that the land in question belong to Tamil Nadu Boomidhan Board and only during the year 2010, the said fact came to the knowledge of the concerned officials and the steps are being taken to make the necessary entries in the relevant revenue records. It is also surprise to note that one Ramasamy Padayatchi donated the land to Tamil Nadu Boomidhan Board and however, the concerned revenue officials did not take any action and only when it was brought to the knowledge of the Collector of Perambalur District by the Secretary to Government, Revenue Department in the years 2010, steps are being taken and the lethargic / in-action on the part of the concerned revenue official is deprecated.

11 The question is whether the land belonging to Tamil Nadu Boomidhan Board are not and the relevant entries made in the revenue registers can be adjudicated in the proceedings to be instituted by invoking common law and this Court cannot expected to do that excise.

12. In the result, the writ petition is disposed of, the petitioner and the 2nd respondent is at liberty to invoke the common law remedy if it is permissible in law by initiating appropriate proceedings and the concerned Court, depending upon the pleading and quality of the evidence rendered in respect of land in question, shall decide the matter and declare the rights of the parties. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Tahsildhar (Revenue),
Veppanthattai Taluk, Perambalur District.

+1cc to M/s.A.S.Balaji, Advocate, S.R.No.48432

+1cc to M/s.R.Murali, Advocate, S.R.No.48578

+1cc to the Government Pleader, S.R.No.49114

WP.No.29123/2017

RK(CO)
CU(02/08/2017)

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