

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.24145 of 2004

1.Kamakshi Thevar

2.P.Prabhuraj

... Petitioners

Vs.

1.The Government of Tamil Nadu
Rep.by the Secretary to Govt.
Public Works Department,
Fort.St.George,
Chennai - 600 009.

2.The Superintending Engineer,
Public Works Department,
Buildings (Construction &
Maintenance) Division II
Madurai 625 002.

3.The District Collector,
Theni District,Theni.
(R3 amended as per order dated 21.08.05 by KRPJ
in WPMP No.32734 of 2004)

4.The Revenue Inspector
Andipatti Taluk, Theni District.

... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondents their men, servants or agents or anyone claiming under them from in any manner interfering with the peaceful possession and enjoyment of the land of an extent of 2.26 acres in Survey No.1506/2 in Kovilpatty Village, Andipatti Taluk, Theni District or from putting up any construction without following the due process of law by acquisition of the said lands in the manner known to law.

For Petitioners
For Respondents

: M/s.A.L.Gandhimathi
:Mr.Elumalai,Govt.Advocate

O R D E R

This Writ Petition has filed, forbearing the respondents, their men, servants or agents or anyone claiming under them from

in any manner interfering with the peaceful possession and enjoyment of the land of an extent of 2.26 acres in Survey No.1506/2 in Kovilpatty Village, Andipatti Taluk, Theni District or from putting up any construction without following the due process of law by acquisition of the said lands in the manner known to law.

2. The case of the petitioner is that the petitioner purchased an extent of 2 acres 26 cents in Survey No.1506/2 for valuable consideration of Rs.800/- by sale deed dated 21.07.1963 in D.No.500/1963 on the file of Sub-Registrar, Aandipatti. Ever since, from the date of purchase, the petitioner was in peaceful possession and enjoyment of the property and cultivating the crops in the said land.

3. While so, the second respondent floated the tender of construction of circuit house and the same was published in the Newspaper publication in the issue dated 12.08.2004. Aggrieved by the said publication, the petitioner filed the present Writ Petition.

4. Admittedly, the petitioner was issued with notice under Section 5 of the Land Encroachment Act, the fourth respondent. After receipt of the notice, the petitioner also submitted their explanation. Thereafter, the learned counsel for the petitioners would submit that after issuing the notice under Land Encroachment Act, the respondents did not proceed further. However, the second respondent issued publication for constructing the circuit house without following the due process of law is bad. Accordingly, the learned counsel prayed for allowing the Writ Petition.

5. Per contra, the learned Government Advocate filed a counter. In the counter, it is averred that the writ petitioner might have purchased the land in Survey No.1506/1, there is no dispute for the land in Survey No. 1506/1. The petitioner might have wrongly noted the Survey No.1506/2 instead of Survey No.1506/1. However, the circuit house going to be constructed only in Survey No.1506/2 wherein that said land is classified as Government Poromboke land. Hence, the apprehension of the petitioner is not correct.

6. Apart from the above contention, the learned Government Advocate has submitted that the prayer cannot be granted in favour of the petitioners in this Writ Petition unless the petitioners so establishes their title over the property before the appropriate forum approaching under article 226 of the Constitution is not maintainable and sought for dismissal of the Writ Petition.

7. I have gone through the materials and heard the petitioner as well as the respondents. Initially, the petitioner was issued notice under Section 5 of the Land Encroachment Act after receipt of the notice, the petitioners also submitted their explanation. Thereafter, the publication was issued for construction of circuit house under Survey No.1506/2 which is classified as Government Poramboke Land. Hence, prayer in the Writ Petition cannot be granted.

8. In view of the above factual position, the prayer sought for by the petitioner cannot be granted and it is for the petitioner to move appropriate forum for appropriate remedy. The learned Government Advocate also agreed that without due process of law, no land can be acquired. The same is recorded.

9. In the result, this Writ Petition is dismissed. No costs.

-sd/-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

- 1.The Secretary to Government
Government of Tamil Nadu
Public Works Department,
Fort.St.George,
Chennai - 600 009.
- 2.The Superintending Engineer,
Public Works Department,
Buildings (Construction &
Maintenance) Division II
Madurai 625 002.
- 3.The District Collector,
Theni District,Theni.
- 4.The Revenue Inspector
Andipatti Taluk, Theni District.

+1 C.C. to M/S.AL.Gandhimathi Advocate SR.NO.67478

+1C.C. to The Government Pleader, High Court, Madras 104
SR.NO.68357

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PPA (CO)
VS 31.10.2017



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