

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P. No.26481 of 2004

R.Kannan

.. Petitioner

Vs.

1.The Tahsildar,
Mayiladuthurai,
Nagapattinam District.

2.The Revenue Divisional Officer,
Mayiladuthurai,
Nagapattinam District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified mandamus to call for the records relating to the order of the first respondent dated 31.8.2004 and to quash the same as without jurisdiction and consequently forbear the respondents herein from in any way disturbing the peaceful possession of the petitioner residing in the property situated in Door No.38, T.S.No.1410, Thiruindalur, Mayiladuthurai.

For Petitioner : Mr.R.Shivakumar

For Respondents: Mr.T.M.Pappiah, Spl.G.P.

ORDER

The property that is subject matter of this writ petition is land and superstructure comprised in T.S.No.1410 in 45, Thiruindalur village, Mayiladuthurai Taluk, Nagapattinam District, admeasuring an extent of 2231 square feet or thereabouts. In the superstructure therein, there are three shops (iron and furniture shops) and one residential house. This property is hereinafter referred to as the 'said property' in this writ petition for the sake of brevity, convenience and clarity.

2 The said property, which is subject mater of this writ petition, is therefore, put to both residential and non residential use. As stated supra, non residential use is by way of three commercial shops.

3 Mr.R.Shivakumar, learned counsel appearing for the writ petitioner, adverting to the affidavit filed in support of the writ petition, would say that the writ petitioner is a lessee under one Anbanathapuram Vagaiara Charities Trust, Mayilduthurai qua the said property. It is also the say of the writ petitioner that the writ petitioner along with some other co-owners filed a suit in O.S.No.473 of 2004 on the file of the Munsif Court, Mayiladuthurai for an injunction restraining the respondents from interfering with their peaceful possession of the said property.

4 It is averred in the writ affidavit that the prayer in the said suit is one for mandatory injunction. There is also reference to suit by 'co-owners'. When the writ petitioner was admittedly a lessee under the above said charities qua the said property, there is no way the writ petitioner can become a co-owner.

5 To buttress the submission that the writ petitioner is a lessee qua the said property and that the said property is demised property belonging to the above said charities, learned counsel for the writ petitioner draws my attention to a decree dated 27.10.1971 made in a suit being O.S.No.563 of 1971 also on the file of the District Munsif Court, Mayavaram. A perusal of the decree shows that the above said charities, i.e., Anbanathapuram Vagaiara Charities, Mayiladuthurai, has filed a suit for recovery of possession against three individuals, namely, Ramakrishnan, Sethu Ammal and Nagarajan and obtained, inter-alia, a decree for recovery of possession. It is also the further case of the writ petitioner that there is a rival claim for the said land by another trust, which goes by name Sanniyasi Madam and also Pillaiyar Koil.

6 The two official respondents before me (there are only two respondents in the writ petition) have filed a counter affidavit dated 28.4.2005. Mr.T.M.Pappiah, learned Special Government Pleader, draws my attention to the rival claim by Sanniyasi Madam and also Pillaiyar Koil.

7 Be that as it may, it is the specific case of the official respondents / State that the said property is 'Government poramboke Nandavanam'. In other words, it is the specific case of the official respondents that the said property is in Government land and that it is an encroachment. Therefore, proceedings under the Tamil Nadu Land Encroachment Act, 1905 (hereinafter referred to as the 'said Act' for the sake of brevity) have been initiated.

8 After the issue of the show cause notice under Section 7 of the said Act, an order has been passed by the jurisdictional Tahsildar (first respondent before me) dated 31.8.2004. It is not in dispute that the said order passed by the first respondent jurisdictional Tahsildar has been served on the writ petitioner on the same day, namely, 31.8.2004.

quash the said order dated 31.8.2004 passed by the first respondent. Prayer in the writ petition is one for certiorarified mandamus. Mandamus limb is to protect the possession of the writ petitioner.

10 Considering the rival submissions, pleadings and records placed before me, it is clear that there is a statutory appeal provision available for the writ petitioner against the impugned order. Statutory appeal is under Section 10 of the said Act, which provides for an appeal to the jurisdictional Collector. Vide Section 11 of the said Act, limitation has been prescribed for such appeals and limitation prescribed in Section 11 of the said Act is thirty days from the date on which the order sought to be appealed against is received by the appellant.

11 In the instant case, there is no dispute as between the writ petitioner and the learned Special Government Pleader that the impugned order made by the first respondent was received by the writ petitioner on 31.8.2004. Therefore, the writ petitioner has thirty days time to file an appeal. It is also seen that the instant writ petition has been filed on 15.9.2004, i.e., within a fortnight, which is well within thirty days limitation for the above said statutory appeal.

12 In the light of the order that I propose to pass, I am not delving further into the merits of the matter as that may sway the appellate authority one way or the other.

13 Therefore, the following order is passed :

(a) It is open to the writ petitioner to file an appeal under Section 10 of the said Act, i.e., the Tamil Nadu Land Encroachment Act, 1905, against the impugned order, i.e., order dated 31.8.2004, made by the Tahsildar, Mayiladuthurai (first respondent before me).

(b) Such an appeal, if the writ petitioner chooses to file, shall be filed within sixteen (16) days from the date of receipt of a copy of this order in this writ petition as fourteen days out of thirty days limitation has already been exhausted.

(c) From the dates set out supra, it is obvious that the writ petitioner would be entitled to exclusion of time spent in this writ petition, i.e., time from 15.9.2004 to the date of receipt of copy of the order in this writ petition, under Section 14 of the Limitation Act, 1963.

(d) However, if the writ petitioner chooses to file an appeal under Section 10 of the said Act, the same shall be accompanied by an application under Section 14 of the Limitation Act, setting out inter-alia the above said dates

and the appellate authority, after satisfying himself with the reasons, should pass a suitable order and then entertain the appeal subject to his decision in the Section 14 application.

(e) If the prayer in the Section 14 application is acceded to and if the appeal is taken up on merits, the jurisdictional District Collector, who is the appellate authority, shall dispose of the appeal within a period of three months from the date of filing of the appeal.

(f) This Court had granted an order of interim stay on 16.9.2004 for a period of four weeks and the same had not been extended subsequently. The stay petition had been closed on 11.3.2009. Therefore, it is open to the writ petitioner to seek an interim order before the appellate authority.

(g) If the order of the appellate authority in the statutory appeal under Section 10 of the said Act is adverse to the writ petitioner, it is also open to the petitioner to seek an interim stay of that order before the appellate authority for a further period of sixty days therefrom to enable the writ petitioner to work out his remedy if any, if the writ petitioner chooses to do so.

(h) Though obvious, it is made clear that if the statutory appeal is preferred, the appellate authority, namely, jurisdictional District Collector, shall decide the appeal on merits and in accordance with law, after giving an opportunity to all concerned, uninfluenced by anything that has been said in this order.

14 It is seen from the array of respondents that the statutory appellate authority, namely, jurisdictional District Collector is not a respondent herein. Therefore, a copy of this order shall be sent by the Registry to the jurisdictional District Collector, namely, District Collector, Nagapattinam.

15 The writ petition is disposed of with the above directions. No costs. This being a writ of certiorarified mandamus, the original impugned order dated 31.8.2004 made by the first respondent, jurisdictional Tahsildar, has been filed with the writ petition. Along with the certified copy of this order, the Registry is directed to return the said original impugned order to the counsel for the writ petitioner.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Tahsildar,
Mayiladuthurai,
Nagapattinam District.

2.The Revenue Divisional Officer,
Mayiladuthurai,
Nagapattinam District.

3.The District Collector,
Nagapattinam.

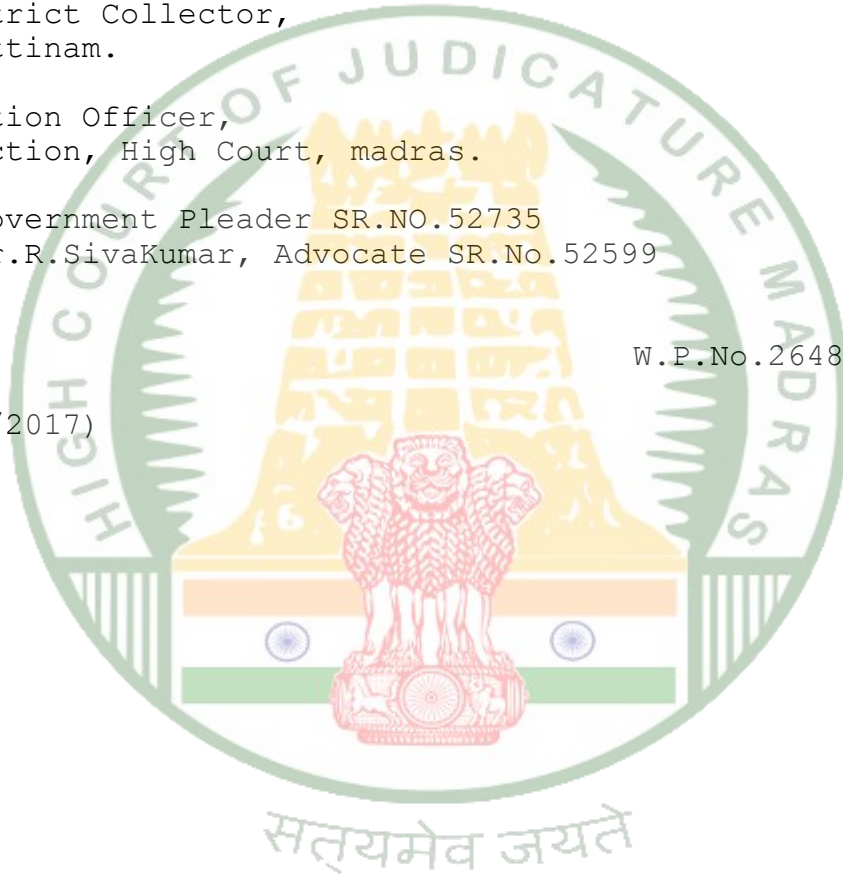
4.The Section Officer,
Writ Section, High Court, madras.

+lcc to Government Pleader SR.NO.52735

+lcc to Mr.R.SivaKumar, Advocate SR.No.52599

SSI(CO)
GN(04/08/2017)

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