

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.02.2017

DELIVERED ON: 10.02.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. No.16476 of 2003

C. Bangaru Rajan

Petitioner

vs.

1 The Special Commissioner
and Secretary
Land & Revenue Department
Chepauk
Chennai 600 005

2 The Collector of Vellore District
Vellore

3 The Tahsildar
Thirupathur

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to quash the order passed by the third respondent dated 03.06.2003.

For petitioner

Mr. R. Shanmugam, Sr. Advocate
for Mr. S.V. Karthikeyan

For respondents

Mr. V. Jayaprakash Narayanan
Special Government Pleader

ORDER

A rank encroacher, who is admittedly in occupation of around 3 acres of Government land, has been making every possible attempt to perfect his possession and thwart every attempt by the Government to evict him.

2 It is the case of the petitioner that he is in occupation of 3 acres of land in Survey No.62/2, Patchur Village, Tirupathur Taluk, Vellore District. He had filed a suit in O.S. No.949 of 1989 before the District Munsif Court, Tirupathur, for an order of interim injunction restraining the authorities from evicting him. According to him, the said suit was decreed and the decree was confirmed in A.S. No.37 of 1998 by the Sub-Court, Tirupathur. It is

also his contention that the panchayat has passed a resolution dated 04.01.1977 in his favour stating that they have no objection for grant of patta to him. On the strength of this, the petitioner filed W.P. No.34736 of 2002 for a direction to the authorities to grant him patta. This Court disposed of the said writ petition on 06.09.2002 by passing the following order:

"2. In my considered opinion, merely because the panchayat has no objection or the petitioner had obtained a decree for injunction, the petitioner is not entitled to grant of patta automatically. Hence, suffice it to direct the respondents to dispose of the representation of the petitioner dated 29.07.2002 within three months from the date of receipt of a copy of this order in the light of relevant Government Orders.

The writ petition is disposed of accordingly. No costs."

3 Subsequently, the third respondent issued a notice under Section 5 of the Tamil Nadu Land Encroachment Act, 1905 (for short "the Act"), which was challenged by the petitioner in W.P. No.38955 of 2002 and the said writ petition was disposed of by this Court by order dated 21.10.2002, the relevant portion of which reads as under:

"5. Having regard to the above facts, I am inclined to pass the following order:

a Since time granted to show cause to the notice under challenge had already expired, the writ petitioner will have time till 08.11.2002 to show cause for the proposed action;

b On considering the cause shown, if any, if the authority decides to proceed under the Act, then, such an action shall be only with reference to Section 5 of the Act and not under any other provision of the said Act and;

c If ultimately, the authority decides to proceed under Section 6 of the Act against the petitioner, he shall not do so without issuing a notice under Section 7 of the Act".

4 Thereafter, the third respondent issued a notice dated 03.06.2003 under Section 6 of the Act, challenging which, the petitioner filed the present writ petition and obtained an order of interim stay on 11.06.2003, which was made absolute on 13.08.2003.

5 The second respondent has filed a counter affidavit refuting the allegations made by the petitioner.

6 Mr. Shanmugam, learned Senior Counsel appearing for the petitioner contended that during the pendency of this writ petition, the authorities demolished the structure put up by the petitioner on 26.07.2015 even without any notice.

7 The aforesaid submission of the learned Senior Counsel appearing for the petitioner is strongly refuted by Mr. V. Jayaprakash Narayanan, learned Special Government Pleader appearing for the respondents.

8 This Court gave its anxious consideration to the rival submissions.

9 It is the case of the respondents that the petitioner was working as a Conductor in the Tamil Nadu State Transport Corporation and had illegally encroached upon 3 acres of prime land in Survey No.62/2 in Patchur Village. After encroaching upon the said land, the petitioner sought patta based on No Objection resolution that is said to have been passed by the local Panchayat and also on the strength of a decree of injunction granted by the District Munsif Court, Tirupathur in O.S. No.949 of 1989 and confirmed by the Sub-Court, Tirupathur in A.S. No.37 of 1998. In the meanwhile, there was a demand for the construction of a Primary Health Centre to cater to the needs of the poor in and around the village and therefore, the Government decided to alienate the poramboke land to the Health Department for the construction of a Primary Health Centre. At that juncture, the petitioner appears to have filed O.S. No.949 of 1989 and had successfully prevented the Government from putting up a Primary Health Centre. However, the Government had transferred the land to the Health Department by proceedings dated 20.08.1991 of the District Collector, Vellore. But, unfortunately, on account of the continuous litigations engineered by the petitioner, the Health Department was unable to build a Primary Health Centre in the said land.

10 The fact remains that the petitioner is a rank encroacher and is in possession of 3 acres of Government poramboke land. The said land has also been transferred by the Government to the Health Department for the purpose of building a Primary Health Centre to cater to the needs of the poor and needy. By launching litigations after litigations, the petitioner has managed to prevent the Primary Health Centre from coming up in that area. After having encroached upon the Government poramboke land, the petitioner is seeking assignment of the said land by making

representations to the Government. Admittedly, the land has been transferred by the Government to the Health Department by proceedings dated 20.08.1991 of the District Collector, Vellore and therefore, the question of assignment of land to the petitioner does not arise.

11 The learned Senior Counsel appearing for the petitioner submitted that the petitioner was not served with a notice under Section 7 of the Act and therefore, the impugned order deserves to be quashed. It is his contention that had the notice under Section 7 of the Act been served on the petitioner on 20.09.2002 as asserted in the counter affidavit, the same would have been brought to the notice of this Court in W.P. No.38955 of 2002 on 21.10.2002, when the case was finally disposed of. Therefore, he contended that the claim of the respondents that notice was served on the petitioner and that he refused to receive the same on 20.09.2002 and hence, they affixed it on the door of his house, cannot be true.

12 To appreciate Mr. Shanmugam's contention, this Court carefully perused the order dated 21.10.2002 passed by this Court in W.P. No.38955 of 2002. On a reading of the said order, this Court is able to infer that the Government had not filed any counter affidavit in that writ petition and that on the representation of Mrs. G. Kavitha, Government Advocate and after perusal of the impugned notice therein, this Court had passed the aforesaid order dated 21.10.2002.

13 It is common knowledge that on most occasions, proper instructions are neither given by the authorities nor are they obtained by counsel representing the Government during hearing of writ petitions. Several reasons ranging from bona fide errors to deliberate screening, can be attributed to such lapses. Had W.P. No.38955 of 2002 been disposed after the Government had filed its counter affidavit, then, the situation would have been materially different. Therefore, this Court does not have reasons to disbelieve the assertion in the counter affidavit filed by the District Collector, Vellore that Section 7 notice was attempted to be served on the petitioner, but, he had evaded receipt of the same on 20.09.2002 and hence, it was affixed on the door of his house.

14 Be that as it may, it is the admitted case of Mr. Shanmugam himself that on 16.07.2015, the authorities have taken possession of the land under the petitioner's occupation by demolishing the structure therein. In view of this development, nothing survives in this writ petition and therefore, on this ground also, this writ petition is liable to be dismissed.

15 The learned Senior Counsel appearing for the petitioner placed reliance on the judgment of this Court in B.M.Habibullah, etc., etc. vs. State of Tamil Nadu and others [AIR 1994 Madras 222] and submitted that the petitioner should be put back in possession of the land.

16 On a reading of the said judgment, it is seen that about 22 shops in a shopping complex were demolished by the authorities illegally and in that context, this Court ordered for a detailed enquiry and found that the entire demolition drive was illegal and consequently, ordered re-possession. In this case, the petitioner has been in illegal enjoyment of 3 acres of Government poramboke land for the last 5 decades, thereby preventing the authorities from carrying out a laudable scheme of putting up a Primary Health Centre for the benefit of the poor masses. Private interest should give way to public interest.

In the result, this writ petition is dismissed as being devoid of merits. Costs made easy.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Special Commissioner and Secretary
Land & Revenue Department
Chepauk, Chennai 600 005

2 The Collector of Vellore District
Vellore

3 The Tahsildar
Thirupathur

+1cc to M/s. D.V. Karthikeyan, Advocate, S.R.No.8557
+1cc to the Government Pleader, S.R.No.9050

AD(CO)

EU 01.03.2017

W.P. No.16476 of 2003