



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.11.2017**

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD) No.19513 of 2017

and

W.M.P (MD) Nos.15810 and 15811 of 2017

M.Mohan

: Petitioner

.vs.

1. The District Collector,
Thoothukudi,
Thoothukudi District.

2. The Tahsildar,
Srivaikundam Taluk,
Tuticorin District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorari calling for the records pertaining to Na.Ka.No.A7-4596-2016, dated 18.09.2017 passed by the Second Respondent and to quash the same as illegal and arbitrary.

For Petitioner

: Mr.R.Anand

for M/s.P.Samuel Gunasingh

For Respondents

: Mr.T.R.Janarthanan

Additional Govt.Pleader

O R D E R

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

This Writ Petition has been filed seeking issuance of a Writ of Certiorari calling for the records pertaining to Na.Ka.No.A7-4596-2016, dated 18.09.2017 passed by the Second Respondent and to quash the same as illegal and arbitrary.

2.Heard both sides.

3.By consent, the main Writ Petition itself is taken up for final disposal.

4.According to the Petitioner, one Ayyadurai encroached in the Government land situated in S.No.1013, North Karaseri Village. As a matter of fact, the Petitioner had made periodical representation to the First Respondent/The District Collector,



Thoothukudi and made a request for removing the encroachment in the Government land. Since no concrete steps were taken, a Writ Petition in W.P.No.11500 of 2012 was filed before this Court by the Petitioner's father namely, Mookan. Pending the Writ Petition, the Second Respondent by way of proceedings, dated 25.09.2012, had stated that the Periyakulam situated in S.No.1013, North Karaseri Village comes under the control of the Commissioner, Karungulam Panchayat and it has not come under his control. Subsequently, this Court on 8.9.2016, had disposed of the Writ Petition by issuing necessary direction to proceed against the Second Respondent, in accordance with Law.

5.At this stage, the Learned Counsel for the Petitioner points out that a Contempt Petition in Cont.P(MD)No.278 of 2017 was filed before this Court by the Petitioner(after obtaining leave consequent to the death of his father) and on 10.08.2017, the Contempt Petition was closed after recording the steps taken by the Second Respondent/The Tahsildar, Srivaikundam Taluk, Thoothukudi District.

6.The real grievance of the Petitioner is that aggravated of the Petitioner's Contempt complaint, to wreck vengeance, the Second Respondent had issued the impugned notice, dated 18.09.2017 to him. In this connection, the Learned Counsel for the Petitioner points out that in the instant case, the Tamil Nadu Land Encroachment Act, 1905 is not applicable and only Section 131 of the Tamil Nadu Panchayat Act, 1994 clearly applies. As such, the concerned authority, who issued the impugned notice, dated 18.09.2017 has no jurisdiction to issue notice to the Petitioner requiring him to remove the encroachment in the land in question within the time adumbrated therein.

7.The Learned Counsel for the Petitioner relies on a decision in the case of **A.R.Meenakshi and others .vs. 1.State of Tamil Nadu, represented by the Principal Secretary and Commissioner of Land Administration, Eshilagam, Chepauk, Chennai-5 and 3 others reported in 2013-4-L.W.76**, at special page 82, wherein, at paragraphs 8 and 9, it is mentioned as under:

'8.The main grievance of the writ petitioners is that the lands over which their residential buildings were constructed, were originally classified as natham lands, that their predecessors in title purchased those lands from a Government Servants' Cooperative Society and that therefore, the provisions of the Tamil Nadu Land Encroachment Act, 1905 could not have been invoked against the petitioners. If the lands could not be termed as Government Poramboke lands and if the petitioners or their predecessors in title could not be classified as encroachers, then they could



not also be evicted from their lands without the initiation of appropriate proceedings under any of the Land Acquisition Laws.

9. In support of the above contentions, Mr. M. S. Subramanian, learned counsel for the petitioners relied upon:

- (I) the provisions of the Tamil Nadu Land Encroachment Act, 1905;
- (II) the provisions of the Revenue Standing Orders; and
- (III) certain decisions, which I shall advert to later.

The learned counsel also brought to my attention the fact that the Competent Authority under the Tamil Nadu Urban Land (Ceiling and Regulation) Act levied urban land tax upon the petitioners for the land in question. Therefore, it is his contention that the land could not have been a Government Poramboke land.'

8. That apart, the Learned Counsel for the Petitioner refers to para 23 of the afore-said decision at special page 86, wherein, it is observed as under:

'23. All the petitioners herein have traced title to the land from a Cooperative Society by name Villivakkam Government Servants' Co-operative Building Society. The Petitioners have produced-

- (i) urban land tax assessment orders for the land;
- (ii) property tax payment cards;
- (iii) family cards
- (iv) water and sewerage tax cards
- (v) family cards
- (vi) building plan permits; and
- (vii) approved building plans.

All these documents show that the lands have been in possession and enjoyment of the petitioners and their predecessors for over 70 years and that the petitioners have put up constructions with approved building plans. The Petitioners have also produced proof to show that steps were taken for the issue of patta in favour of the petitioners, but it was abandoned halfway through, after the proposal for the subway project was mooted. As rightly contended by Mr. M. S. Subramanian, learned counsel for the Petitioners, no urban land tax could be levied, if the land in question belonged to the Government.'



9.The Learned Counsel for the Petitioner refers to the Counter of Second Respondent/The Tahsildar, Srivaikundam Taluk, Tuticorin District, wherein, it is mentioned that encroachment made by the Writ Petitioner is in S.No.1021/1 Street. Further, S.No.1013 is a Tank/Kulam Poramboke.

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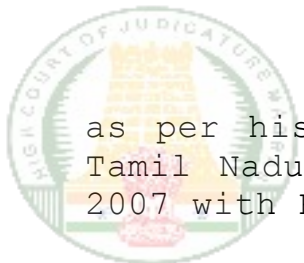
10.It appears that the Writ Petitioner had appeared before the Second Respondent on 14.10.2017 and gave a statement stating that he would clear the encroachment on the next date of Deepavali and in fact, the notice was received by the Petitioner on 21.09.2017.

11.It transpires that on information of the encroachment, the land in question was inspected by the Second Respondent/The Tahsildar, Srivaikundam Taluk, Thoothukudi District, the Zonal Deputy Tahsildar-II, The Revenue Inspector, Deivaseyalpuram, The Firka Surveyor, Deivaseyalpuram along with the Village Administrative Officer, North Karaseri on 13.07.2017 in the presence of the Writ Petitioner and it was found out that there was encroachment measuring an extent of 7.2 sq.mtr and a request was made before the Second Respondent to proceed against the encroachment on the basis of issuance of prior notice to him and only thereafter, a notice under Section 6 was issued to the Writ Petitioner by the Second Respondent under the ingredients of the Tamil Nadu Land Encroachment Act, 1905.

12.The contra stand taken on behalf of the respondents is that, in reality, the Writ Petitioner has encroached an extent of 7.20 sq.mtr of land in S.No.1021/1 of North Karaseri Village by constructing a compound wall and a ramp and in short, the Writ Petitioner is quite aware about the encroachment he made in S.No.1021/1.

13.The Learned Additional Government Pleader appearing for the respondents proceeds to point out that the Writ Petitioner had obtained a Building Plan approval from North Karaseri Village Panchayat for constructing a house in S.No.1021/6 during February 2009. As a matter of fact, the land in S.No.1021 locates south of the land in S.No.1013 Tank Poramboke. That apart, the land in S.No.1021/26 is bounded by S.No.1021/1 at northern side, south by S.No.1021/4, west by S.No.1021/29 and east by S.No.1021/27.

14.By way of reply, the Learned Counsel for the Petitioner opts on the fact that the Second Respondent/The Tahsildar, Srivaikundam Taluk, Thoothukudi District in his counter at paragraph (d), had categorically mentioned that since the eviction proceedings over, the encroachment of Thiru Ayyadurai in 'Kulam Poramboke' land were completed by the Officials and the Contempt Petition was closed on 10.08.2017 and the encroachment case was decided by actual measurement of the area in question by the Officials in the presence of the Writ Petitioner, which was accepted by the Writ Petitioner himself,



as per his statement, dated 13.07.2017 and the ingredients of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 with Rules thereto will squarely apply.

15. It is not in dispute that the Petitioner had subjected himself to the jurisdiction of the Second Respondent and had also given a statement before the Second Respondent and a perusal of the same would latently and patently indicate that he had constructed a compound wall and ramp in the northern portion of his house on the eastern side measuring 0.9 metres and on the upper portion 0.7 metres etc. However, the statement given by the Petitioner, which was recorded by the Second Respondent on 13.7.2017, is very much disputed by the Learned Counsel for the Petitioner.

16. At this stage, this Court while perusing the contents of the representation of the Petitioner, dated 25.07.2017 addressed to the First Respondent/The District Collector, Thoothukudi District is of the considered view that the Petitioner had taken a plea that the patta lands were not measured in S.Nos.1021/24 and 1021/34 and also he had categorically mentioned that he had constructed a house after getting proper approval and also by paying necessary tax, is residing in his house in S.No.1021/26.

17. On a careful consideration of the respective contentions and in view of the stand taken by the Petitioner that the Tamil Nadu Land Encroachment Act, 1905 is not applicable to the case of the Petitioner and that the Tamil Nadu Panchayat Act, 1994, The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 only apply, but the same being not controverted on the side of the Respondents and according to the Respondents, the Petitioner has a viable and alternative remedy under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, whereby and whereunder, the Petitioner can seek interim relief also and also this Court considering the over-all assessment of the facts and circumstances of the present case in an integral manner, at this stage, without expressing any opinion on the merits and contents of the representation of the Petitioner, dated 25.07.2017, the statement of the Petitioner recorded before the Second Respondent on 13.07.2017 etc., simpliciter, directs the Petitioner to prefer an appeal under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 and to point out before the First Respondent/The District Collector, Thoothukudi District to the effect that the Tamil Nadu Land Encroachment Act, 1905 is not applicable and only the Tamil Nadu Panchayat Act, 1994 or the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 applies to the case of the Petitioner and to seek appropriate remedy by raising all factual and legal pleas or airing all his grievance, of course, in accordance with Law and in accordance with Law, within a period of two weeks from the date of receipt of a copy of this order. Soon after the receipt of appeal preferred by the



Petitioner within the time adumbrated by this Court, the First Respondent/The District Collector, Thoothukudi District is directed to take up the said appeal for hearing within a period of four weeks thereafter and dispose of the said appeal, by passing a reasoned speaking order on merits, by providing necessary opportunity to the Petitioner/appellant and others concerned, if any, of course, after adhering to the Principles of Natural Justice. It is very much open to the Petitioner to raise all factual and legal pleas before the First Respondent/The District Collector, Thoothukudi District as to which of the 'Act' namely, whether the Tamil Nadu Land Encroachment Act, 1905 applies, or the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 applies or the Tamil Nadu Panchayat Act, 1994, applies. In such an event, the First Respondent shall advert to all the factual and legal pleas and to deal with the same by answering them on point by point basis, of course, strictly in accordance with Law. Till the appeal preferred by the Petitioner is disposed of by the First Respondent/The District Collector, Thoothukudi District, the possession of the Petitioner in the subject-matter land shall not be disturbed by anyone, in any manner.

18. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Thoothukudi,
Thoothukudi District.

2. The Tahsildar,
Srivaikundam Taluk,
Tuticorin District.

+1cc to Mr.P.Samuel Gunasingh, Advocate Sr.No.85876

+1cc to Spl.Government Pleader Sr.No.85957

VSN

VB/KP/SAR2/20.11.2017/6P/5C

**ORDER MADE IN
W.P. (MD) No.19513 of 2017
and
W.M.P (MD) Nos.15810 and
15811 of 2017
07.11.2017**