



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

W.P. (MD) No.19879 of 2017

and

W.M.P. (MD) Nos.16149 and 16150 of 2017

1.Kamala
2.K.Vijaya

: Petitioners

-Vs-

The Tahsildar,
Devakottai Taluk,
Sivagangai District.

: Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the Respondent in Na.Ka.Aa.7-3781-2017, dated 23.10.2017 served on 25.10.2017 and quash the same and consequently, forbear the Respondent from interfering with the peaceful possession and enjoyment of the Petitioners' property in S.No.282/1 situated at Eraviyamangalam, Thiruvegampatthur Village, Devakottai Taluk, Sivagangai District.

For Petitioners	: Mr.J.Ashok
For Respondent	: Mr.M.Govindan, Special Government Pleader

O R D E R

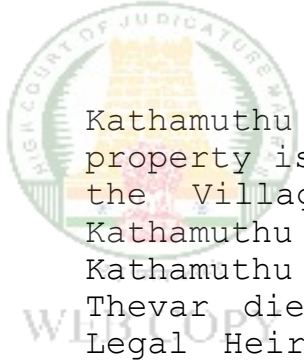
[Order of the Court was made by M.VENUGOPAL, J.]

Mr.M.Govindan, Learned Special Government Pleader, takes notice for the Respondent.

2. Heard both sides. No counter is filed on behalf of the Respondent.

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

4. According to the first Petitioner, originally, the property in Nathan Survey No.282/1, Eraviyamangalam (South Kudiyiruppu), Thiruvegampatthu Group, Devakottai Taluk, Sivagangai District, measures an extent of 10 Cents, which was in possession of



Kathamuthu Thevar and his brother Chinniah Thevar. The aforesaid property is a Natham land, which is demarcated as house site area in the Village. After a long and hostile possession, the said Kathamuthu Thevar died intestate leaving (i) Karuppiyah Thevar, (ii) Kathamuthu Thevar as his Legal Heirs. Likewise, the said Chinniah Thevar died intestate leaving his wife Kamalmarathy as his sole Legal Heir. By virtue of an unregistered partition list dated 31.05.1965, the said Karuppiyah Thevar, Kathamuthu Thevar and Kamalmarathy recorded the earlier partition took place in their family before the Village people. In terms of the partition list dated 31.05.1965, the aforesaid property was allotted to Karuppiyah Thevar. Thereafter, the said Karuppiyah Thevar was in peaceful possession and enjoyment of the Natham land by using the same as his yard for storing straw for his cows. After a long and hostile possession, the said Karuppiyah Thevar died leaving (i) Karmegam and the first Petitioner as his Legal Heirs.

5. The specific plea taken on behalf of the first Petitioner is that the property in issue belongs to his brother Karmegam and herself as aforesaid and that the second Petitioner is the wife of her brother Karmegam. As a matter of fact, the land in Natham Survey No.282/1 Eraviyamangalam (South Kudiyiruppu), Thiruvegampattu Group, Devakottai Taluk, Sivagangai District, was in her peaceful possession and enjoyment. Based on the long possession, she had applied for grant of Natham patta for the above said land before the Respondent. After enquiry, the Respondent issued the patta measuring an extent of 0.00.87 Ares in Survey No.282/45 through proceedings dated 15.06.2015, recognizing her long possession in the above said Natham Land.

6. At this stage, the Learned Counsel for the Petitioners points out that one Karmegam filed W.P.(MD)No.974 of 2017 alleging that the property in question in Survey No.282/1 was a Government poramboke land and the same was encroached by the first petitioner and sought to remove the encroachment made by her. By order dated 19.07.2017, this Court directed the Respondent to ascertain whether the said Karmegam is an encroacher or the first petitioner is an encroacher, by providing opportunity to the parties concerned.

7. The grievance of the Petitioners is that to their shock and surprise, the Respondent passed the impugned order dated 23.10.2017, which was served on them on 25.10.2017. In the said impugned order, the Respondent had directed the Petitioners to remove the encroachment made by them in the said property. Also that, the order mentioned that the property in question has been classified as 'Natham Poramboke street' (நத்தம் புறம்போக்கு பாதை) and directed the Petitioners to remove the encroachment on or before 26.10.2017.

8. The contention of the Petitioners is that the impugned order dated 23.10.2017 issued to the Petitioners is an illegal and liable to be set aside in the eye of law. Further, the impugned order, in the absence of any finding being rendered by the Respondent,



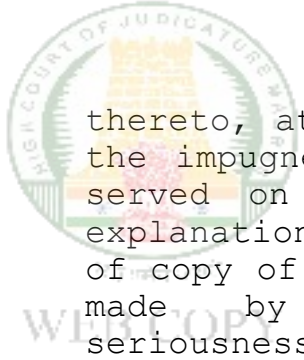
requiring the Petitioners to remove the purported encroachment, is an unlawful one.

9. The Learned Counsel for the Petitioners submits that the Petitioners are in possession of necessary documents to show that the land belongs to them and without providing an opportunity to them and without considering the documents, the respondent came to the conclusion that the Petitioners are the encroachers and the encroachment as illegal one.

10. At this stage, the Learned Special Government Pleader appearing for the Respondent submits that the Respondent/Tahsildar, Devakottai Taluk, Sivagangai District, had only issued a Memorandum on 23.10.2017 to the Petitioners and another and in the said Memorandum, the Petitioners and another were required to remove the encroachment as per the order dated 19.07.2017 passed by this Court in W.P.(MD)No.974 of 2017 and in the event of their failure to remove the encroachment voluntarily in respect of Survey No.282/1, then the Petitioners were informed that on 26.10.2017 as per the Tamil Nadu Land Encroachment Act, 1905 and in terms of G.O.(Ms) No.540, Revenue [LD6(2)] Department, dated 04.12.2014, the encroachment would be removed. Further, it is brought to the notice of this Court on behalf of the Respondent that the State Government had issued G.O.(Ms)No.540, Revenue [LD6(2)] Department, dated 04.12.2014, in and by which, if a person has any grievance, then he has to file a Original Petition at Taluk Level before the respective Tahsildars and on receipt of such petition, the Tahsildar may cause an inspection at least at the level of Deputy Tahsildar to determine whether the land is being encroached or not. Also that, the concerned Tahsildar shall serve a show cause notice to the encroacher under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and also that, other procedures, as laid down under the Tamil Nadu Land Encroachment Act, should be followed within a stipulated time.

11. As such, in sum and substance, the plea taken on behalf of the Respondent is that a detailed objection/written reply, if it is sent by the Petitioners, then the Respondent would provide an opportunity to the Petitioners and also will adhere to the procedure envisaged in G.O.(Ms)No.540, Revenue [LD6(2)] Department, dated 04.12.2014, before passing orders on the purported encroachment in respect of Survey No.282/1. Therefore, it is submitted that the Petitioners may not have any apprehension or misconception in this regard.

12. Considering the claim of the Petitioners' that the property in question in Survey No.282/1 measuring an extent of 10 cents is a Natham property, etc., and also taking note of the fact that the Respondent is to follow the procedures enshrined in G.O.(Ms)No.540, Revenue [LD6(2)] Department, dated 04.12.2014 and also required to take action in terms of the provisions of the Tamil Nadu Land Encroachment Act, 1905, by following the procedures prescribed



thereto, at this stage, this Court directs the Petitioners to treat the impugned memorandum/notice dated 23.10.2017 of the Respondent, served on 25.10.2017, as a show cause notice and offer their explanation, within a period of two weeks from the date of receipt of copy of this order. The Respondent, on receipt of the objections made by the Petitioners, shall look into the same with all seriousness and if he finds any substance in regard to the contents of the objections/representation of the Petitioners, then, after providing necessary opportunity to the Petitioners, in terms of G.O. (Ms)No.540, Revenue [LD6(2)] Department, dated 04.12.2014, pass a final order on merits, after adhering to the Principles of Natural Justice in the manner known to law and in accordance with law, within a period of four weeks thereafter. It is open to the Petitioners to raise all factual and legal pleas before the Respondent at the time of hearing of the matter and before passing of the final orders in question. Till such time, the petitioners' possession shall not be disturbed by the Respondent in any manner.

13. With the aforesaid observation(s)/direction(s), the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Tahsildar,
Devakottai Taluk,
Sivagangai District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 84549
+ 1 CC TO Mr.J.ASHOK, ADVOCATE IN SR No. 84173

SML

TE/KKR/SAR-II : 15/11/2017 : 4P/4C

Order made in
W.P. (MD) No.19879 of 2017
Dated: 30.10.2017