



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2017

CORAM:

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

W.P.(MD)No.20089 of 2017

and

W.M.P(MD)Nos.16375 and 16376 of 2017

N.Kumarasamy

: Petitioner

.vs.

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Revenue Divisional Officer,
Devakkottai,
Sivagangai District.

3.The Tahsildar,
Karaikudi,
Sivagangai District.

4.The Regional Deputy Tahsildar,
Taluk Office, Karaikudi,
Sivagangai District.

5.Karuppaiah

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorarified Mandamus calling for the records of the fourth respondent by his impugned proceedings dated 28.09.2017 and that of the proceedings of the third respondent, dated 20.10.2017 and to quash the same and consequently to forbear the respondents 1 to 4 from demolishing the sunshade of the Petitioner's house in S.No.150/19, Devapattu Village.

For Petitioner :M/s.R.Devaraj

For Respondents :Mr.M.Govindan

1 to 4 Additional Govt.Pleader

<https://hcservices.ecourts.gov.in/> For Respondent-5 : Notice Dispensed with



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 Writ of Certiorarified Mandamus calling for the records of the fourth respondent by his impugned proceedings dated 28.09.2017 and that of the proceedings of the third respondent dated 20.10.2017 and to quash the same and consequently to forbear the respondents 1 to 4 from demolishing the sunshade of the Petitioner's house in S.No.150/19, Devapattu Village.

2.Heard the Learned Counsel for the Petitioner and the Learned Special Government Pleader appearing for the Respondents 1 to 4. No counter is filed on behalf of the respondents 1 to 4. To avoid an avoidable delay, notice to the fifth respondent is dispensed with.

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

4.According to the Petitioner, he is the absolute owner of S.No.150/19 and 150/7 in Devapattu Village, a small and tiny village, having population around 300 people. The Petitioner's ancestors are residing from time immemorial in the present property and elder brother of the Petitioner's father is the absolute owner of S.No.150/18.The Petitioner is one, owning a house plot in S.No.150/8. As such, for the convenience of the family members of the Petitioner and his close relatives, there is a pathway which belongs to his relatives. The said pathway is situated in S.No.150/13 and the same is used by the Petitioner's relatives from time immemorial.

5.The version of the Petitioner is that out of his hard-earned money, he had constructed a house without any encroachment in the pathway. Now, it is learned that the said pathway is classified as 'Government Poramboke Pathway'. As a matter of fact, the Fifth Respondent out of envy and who is the owner of the house plot in S.No.150/9, which consist of an incomplete cattle shed, which is on the west facing north to south main road. At any point of time, the Fifth Respondent had used the said pathway taking advantage of the Petitioner's absence who was working in abroad and permanently residing in Thuvarankurichi and with a view to encroach and grab the property of the Petitioner, has given a representation, dated 19.6.2016 before the First Respondent and on 10.8.2016 to the President of Devapattu Panchayat, as if the Petitioner had encroached the public pathway, which is not a correct one.

<https://hcservices.courts.gov.in/hcservices> 6.At this stage, the Learned Counsel for the Petitioner points out that the authorities concerned had inspected the property in question and being satisfied that the Petitioner has not



encroached any portion in the pathway, has not taken any action against the Petitioner. Only with a view to harass the Petitioner, the Fifth Respondent had filed W.P(MD)No.11728 of 2017, as Public Interest Litigation(PIL) and the said Writ Petition is only a private litigation between the Petitioner and Fifth Respondent, who is residing nearby the Petitioner's house. The Fifth Respondent instead of approaching the Civil Court, had come forward with the said Writ Petition as PIL impleading the Petitioner as Fourth Respondent. The Petitioner in the aforesaid Writ Petition had filed his counter denying all the allegations and narrated all the facts and circumstances of the case.

7.It comes to be known that without going into the merits and the contentions in the said Writ Petition raised by either side, directed the Third Respondent therein/The Tahsildar, Karaikudi, Sivagangai District to conduct an enquiry after issuing notice to both the parties by surveying the land in question and in case, there is any encroachment and the same could be removed and directed the Third Respondent to complete the process within three months from the date of receipt of a copy of this order.

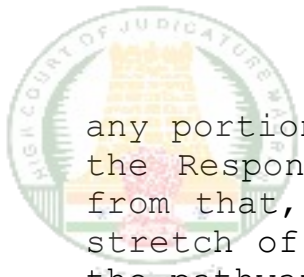
8.The grievance of the Petitioner is that the Respondents 1 to 4/authorities without considering the ambit of the order passed by this Court in W.P(MD)No.11728 of 2017, dated 18.07.2017 and notwithstanding the fact a direction was issued to the Third Respondent, the Third Respondent had not conducted any enquiry on survey and the Petitioner has not received any notice as directed by the Division Bench of this Court, instead the Fourth Respondent had unilaterally passed the present impugned proceedings, dated 28.09.2017 under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. That apart, neither the enquiry notice nor the impugned proceedings was served on the Petitioner.

9.Advancing his arguments, the Learned Counsel proceeds to point out that the Fourth Respondent/The Regional Deputy Tahsildar, Taluk Office, Karaikudi, Sivagangai District without applying his mind, with a pre-determined view, had issued Section 7 notice, dated 28.09.2017 even without making any reference to the order passed by this Court in the earlier Writ Petition in W.P(MD)No.11728 of 2017.

10.The pivotal contention projected on the side of the Petitioner is that the Fourth Respondent herein has no jurisdiction to issue the present impugned proceedings, dated 28.09.2017 in view of the fact that this Court in W.P(MD)No.11728 of 2017, dated 18.7.2017 had specifically directed the Third Respondent to issue notice before passing the orders.

<https://hcservices.ecourts.gov.in/hcservices/>

11.Continuing further, it is the submission of the Learned Counsel for the Petitioner that the Petitioner had not encroached



any portion in the alleged pathway and this was not appreciated by the Respondents 3 and 4 in a proper and real perspective. Apart from that, a plea is taken on behalf of the Petitioner that by no stretch of imagination, it can be construed as an encroachment in the pathway.

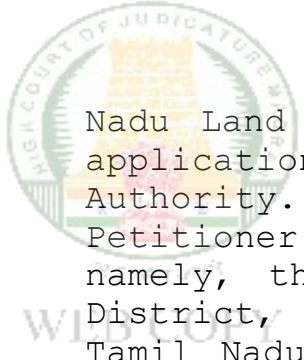
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12. It is the contention of the Learned Counsel for the Petitioner that the alleged encroachment of lintel sunshade is 11 feet height from the ground level. Lastly, it is submitted on behalf of the Petitioner that the impugned order was passed without considering the explanation of the Petitioner, dated 11.10.2017 and therefore, the same is liable to be set aside, in the interest of justice.

13. Per contra, it is the submission of the Learned Special Government Pleader appearing for the Respondents 1 to 4 that S.No.150/13 is a 'Government Poramboke Pathway' and furthermore, a survey was conducted in the presence of the Petitioner and accordingly, Section 7 notice under the Tamil Nadu Land Encroachment Act, 1905 was issued to and in favour of the Respondents 1 to 4. Soon after the receipt of Section 7 Notice under the Tamil Nadu Land Encroachment Act, 1905, the Petitioner had caused his reply dated 11.10.2017 and in the explanation, the Petitioner had tacitly admitted that there is a projection in the pathway. Accordingly, Third Respondent had issued a notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 on 20.10.2017. Thereafter only, the impugned order came to be passed. That apart, it is projected on the side of the Learned Special Government Pleader appearing for the Respondents 1 to 4 that if really the Petitioner has got any grievance against the impugned order, dated 20.10.2017, then in Law, he has an effective, efficacious, viable and alternative statutory remedy of appeal under Section 10 of the Tamil Nadu Land Encroachment Act.

14. At this stage, a cursory perusal of the ingredients of Section 11 of the Tamil Nadu Land Encroachment Act, 1905 unerringly points out that the Petitioner has clear 30 days time from the date on which the original order was made to file an appeal. In the present case, the Petitioner has still 19 days left to prefer an appeal.

15. It is to be noted that in Law 'appeal' is a continuation of original proceedings. If the Petitioner has a real grievance that his explanation, dated 11.10.2017 was not considered by the concerned authorities and accordingly, an adverse order was passed against him, dated 20.10.2017, then as per Section 11 of the Tamil Nadu Land Encroachment Act, 1905, the Petitioner has a viable and alternative remedy to prefer an appeal. As per Section 11 of the Tamil Nadu Land Encroachment Act, 1905, he admittedly has enough time to prefer an appeal well within the time prescribed in the 'Act'. That apart, the Petitioner as per Section 10-B of the Tamil



Nadu Land Encroachment Act, 1905 is entitled to prefer a stay application seeking necessary relief from the concerned Appellate Authority. Therefore this Court, simpliciter, directs the Petitioner to prefer an appeal before the competent authority namely, the First Respondent/The District Collector, Sivagangai District, Sivagangai within the time available to him under the Tamil Nadu Land Encroachment Act, 1905 and to seek redressal of his grievance in the manner known to Law and in accordance with Law, if he so desired/advised. If such an appeal is preferred by the Petitioner before the First Respondent/The District Collector, Sivagangai, Sivagangai District, then the First Respondent shall assign number to the appeal filed by the Petitioner and to dispose of the same within a period of four weeks from the date of filing such appeal. It is open to the Petitioner to raise all factual and legal pleas before the First Respondent/The District Collector, Sivagangai, Sivagangai District, who shall take into consideration of the same and meet out the same and to pass a reasoned speaking order on merits, after applying his thinking judicial mind (even the aspect of jurisdiction of the concerned to issue notice), of course, after providing adequate opportunity to the Petitioner and others concerned, if any (including Fifth Respondent). Till such time, the Petitioner files an appeal within the time adumbrated under the Tamil Nadu Land Encroachment Act, 1905, the authorities concerned shall not disturb his enjoyment of the lintel sunshade.

16. 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 (Crl. Side)

/True Copy/

Sub Assistant Registrar.

To

1. The District Collector, Sivagangai District, Sivagangai.
2. The Revenue Divisional Officer, Devakkottai, Sivagangai District.
3. The Tahsildar, Karaikudi, Sivagangai District.
4. The Regional Deputy Tahsildar, Taluk Office, Karaikudi, Sivagangai District.

+1CC to Mr. R. Devaraj, Advocate, SR.No. 84722

+1CC to the Special Government Pleader SR.No. 85197

ORDER MADE IN
W.P. (MD) No. 20089 of 2017
and
W.M.P (MD) Nos. 16375 and
16376 of 2017
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