



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2017

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL

and

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD) No.21544 of 2017

and

W.M.P. (MD) Nos.17829 & 17830 of 2017

Seenisamy

.. Petitioner

vs.

1.The District Collector,
Madurai.

2.The Thasildar,
Peraiyur Taluk,
Madurai District.

3.Revenue Divisional officer,
Usilampatti, Madurai District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus calling for the records relating to the undated order of the second Respondent annexing the proceeding in %%.No.271/2017/AA4, dated 09.08.2017 of the third Respondent and quash the same and direct the Respondents 1 to 3 to pass orders on the Petitioner's application for grant of patta on the basis of the partition deed in document No.258/91 Elumalai Sub-Registrar District through application dated 20.03.1991 in so far as the Petitioner is concerned.

For Petitioner : Mr.P.Sivachandran

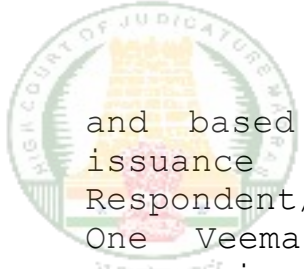
For Respondents : Mr.M.Govindhan
Special Government Pleader

O R D E R

Heard both sides.

2.No counter is filed on behalf of the Respondents. By consent, the main Writ Petition itself is taken up for final disposal.

3.According to the Petitioner, he became the owner of the property by means of registered partition deed, dated 20.03.1991



and based upon the said partition deed, he had applied for issuance of patta on the same day before the Second Respondent/Tahsildar and the matter is still pending as on date. One Veemaraj and 13 others, who are coparcenaries and in possession of the adjacent land created trouble by demanding the entire portion from the Petitioner's possession. It appears that a First Information Report in Crime No.3 of 2017, dated 02.01.2017 under Section 145 of Cr.P.C. was registered against 'A' and 'B' parties, as if there is a dispute relating to public pathway in Survey No.829/1, Mallapuram, M.Ayyampatti, Madurai District.

4.It comes to be known that the Third Respondent/Revenue Divisional Officer, Usilampatti, Madurai District by the proceedings, dated 11.01.2017, had directed the Petitioner and eight others as well as Veemaraj and six others to appear for an enquiry on 30.01.2017. The Petitioner on the same day, filed his counter and furnished necessary documents along with Survey plan showing the area in possession as Kalam viz., the patta for the portion under his possession as well as the partition deed effected between himself and Veemaraj and his family.

5.The plea of the Petitioner is that the Third Respondent/Revenue Divisional Officer, passed an order under Section 145 of Cr.P.C. on 09.08.2017, enclosing an order passed under Section 6 of the Tamil Nadu Land Encroachment Act, 1905.

6.The Petitioner comes out with the plea that the report of the Block Development Officer, dated 03.07.2017 and the Village Administrative Officer's report, dated 03.07.2017 were not served to him at any point of time and not even during the enquiry of proceedings. As such, he was forced to submit a representation on 30.10.2017 before the First Respondent/District Collector to reconsider the impugned order, dated 09.08.2017.

7.The grievance of the Petitioner is that without furnishing a copy of whatever documents relied on by the Third Respondent/Revenue Divisional Officer, without providing necessary opportunity and also without looking into any of the documents and the survey plan submitted by the Petitioner together with his counter, had passed an undated order under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 directing the Petitioner alone to remove the fencing in the so called encroachment in the pathway in Survey No.829/1 in Mallapuram, M.Ayyampatti, Madurai District.

8.At this stage, the Learned Special Government Pleader for the Respondents submits that the undated notice of the Second Respondent/Tahsildar, Peraiyur Taluk, Madurai District, issued under Section 6 of the Act, 1905, can be treated as a show cause notice by the Petitioner to be a notice issued under Section 7 of the Act, 1905 and if the Petitioner submits any representation by putting forth his pleas/objections/remarks, then the same will be considered by the Second Respondent and in this regard necessary



time limit may be determined by this Court by requiring the Petitioner to submit his remarks or objections, as the case may be.

9. Considering the fact that the Second Respondent had issued the impugned notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, to the Petitioner instead of issuing the correct notice under Section 7 of the Act, this Court, without precipitating the subject matter in issue any further and no elongating the proceedings, at this stage, directs the Petitioner to treat the impugned undated notice issued under Section 6 of the Act to be a show cause notice issued under Section 7 of the Act, 1905 and to offer his explanation/submission within a period of two weeks from the date of receipt of a copy of this order. Soon after receipt of the objection/response from the Petitioner, the Second Respondent shall look into the said representation of the Petitioner and if he finds any substance in the said representation, he is to take note of the same and to pass a reasoned speaking order on merits after providing necessary opportunity of personal hearing to the Petitioner and others concerned and to pass necessary final orders within a period of four weeks thereafter. It is open to the Petitioner to raise all factual and legal pleas before the Second Respondent, who shall advert and answer the same in the final orders to be passed by him. It is abundantly made clear that till the date of passing of the final orders by the Second Respondent, a status quo prevailing as on date in respect of the subject property shall not be disturbed by any one.

10. With the aforesaid Direction(s) and Observation(s), the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To:

1. The District Collector, Madurai.

2. The Thasildar,

Peraiyur Taluk, Madurai District.

3. Revenue Divisional officer,

Usilampatti, Madurai District.

+1cc to Mr. P. SIVACHANDRAN, Advocate, SR. 88726

+1cc to M/S. Special Government Pleader, SR. 89068

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