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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD)No.23116 of 2017

and

W.M.P (MD)No.19430 of 2017

Rasu

: Petitioner

vs.

1.The Tahsildar,
Melur Taluk,
Melur, Madurai District.

2.The Revenue Inspector,
Kottampatti,
Melur Taluk,
Madurai District.

: 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 pertaining to the impugned order of the First Respondent, dated 6.12.2017 proceedings No.Nil and quash the same as illegal and consequently forbear the Respondents from evicting the Petitioner from his peaceful possession and enjoyment of the property in Natham S.F.No.124/3, measuring an extent of 0.16.0 Ares of S.Malampatty, Ayyapatty Village, Melur Taluk, Madurai District without following the due Process of law.

For Petitioner

: M/s.T.Vadivelan

For Respondents

: Mr.M.Govindan

Special 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 Certiorarified Mandamus calling for the records pertaining to the impugned order of the First Respondent, dated 6.12.2017 proceedings No.Nil and quash the same as illegal and consequently forbear the Respondents from evicting the Petitioner from his peaceful possession and enjoyment of the property in Natham S.F.No.124/3, measuring an extent of 0.16.0 Ares of S.Malampatty, Ayyapatty Village, Melur Taluk, Madurai District without following the due procedure of law.

<https://hlservices.mca.gov.in/hlservices/>

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



respondents.

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

4. The Petitioner comes out with a version that the subject-property is a Natham S.F.No.124/3, measuring an extent of 0.16.0 Ares of S.Malampatty, Ayyapatty Village, Melur Taluk, Madurai District, which is classified as 'Natham Land'. Therefore, a plea is taken on behalf of the Petitioner that the Respondents should have no jurisdiction to invoke the ingredients of the Tamil Nadu Land Encroachment Act, 1905.

5. The Learned Counsel for the Petitioner contends that the First Respondent had not issued any show-cause notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 before passing the impugned order, dated 6.12.2017. As such, the impugned order, dated 6.12.2017 passed by the First Respondent/The Tahsildar, Melur Taluk, Melur, Madurai District, is to be set aside by this Court, to secure the ends of justice.

6. The Learned Counsel for the Petitioner brings it to the notice of this Court that the impugned order, dated 6.12.2017 of the First Respondent suffers from non-application of mind, because of the reason that the order/notice does not disclose about the nature of encroachment, proceeding Number and the address of the authority, who issue the impugned order. Therefore, the petitioner prays for setting aside the impugned order in question.

7. Lastly, it is the contention of the Learned Counsel for the Petitioner that the First Respondent has no power to pass the impugned order, dated 6.12.2017 without following the due procedure enshrined under the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905).

8. Per contra, it is the submission of the Learned Special Government Pleader appearing for the Respondents 1 and 2 that the Petitioner, on an earlier occasion was served with Section 7 Notice under the Tamil Nadu Land Encroachment Act, 1905 and subsequently, only the present impugned notice/order, dated 6.12.2017 was issued by the First Respondent//The Tahsildar, Melur Taluk, Melur, Madurai District and in that, the schedule of the notice speaks of the village as Ayyapatty, Survey Number as S.No.124/3, total extent as 2.03.72.0, the total extent encroached by the Petitioner and in enjoyment is mentioned as 0.16.0 ares. In S.No.124/3, Ayyapatty Village, measuring an extent of 0.16.0 ares, the Mango Tree, Tamarind Tree and Pulses were cultivated in the land in question.

9. A perusal of the impugned order, dated 6.12.2017 issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 shall expressly point out the nature of extent of land under his enjoyment namely 0.16.0 ares at Ayyapatty Village in S.F.No.124/3



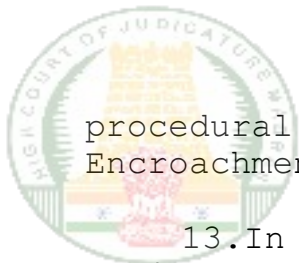
and the detail of the land is mentioned as Village Natham, vacant land, Oorani and burial ground. Therefore, when these qualitative details are very much found in the impugned order/notice, dated 6.12.2017 of the First Respondent, the contra plea taken on behalf of the Petitioner is not accepted by this Court.

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10. Further, it is pointed out that the Petitioner on 10.11.2017 had submitted his objection before the Second Respondent and the same is pending. A mere glance of his objection addressed to the Second Respondent points out that ultimately he had prayed for issuance of patta to and in his favour, just like one Natham patta granted to others, after accepting his explanation for the notice, dated 3.11.2017.

11. In this connection, it is not out of place for this Court to make a relevant mention that Section 4 of the Tamil Nadu Patta Pass-Book Act, 1983 refers to 'presumption of correctness of entries in the Patta Pass-Book'. Section 6 of the Act enjoins 'entries in the Patta Pass-Book to prima facie evidence of title'. Section 2(7) under the head of 'Patta Pass-Book' means the 'Patta Pass-Book issued under Section 3'. As per Section 2(10) of the Patta Pass-Book Act, 1983, Deputy Tahsildar means 'a Tahsildar having jurisdiction over the area in which the land is situated or any other officer of the Revenue Department not below the rank of Deputy Tahsildar authorized by the Government, by notification, to exercise the powers conferred on and discharge the duties imposed upon, the Tahsildar under this Act, for such area as may be specified in the notification'. Rule 4 of the Patta Pass-Book Act, speaks of 'Procedure on receipt of application or information'. Rule 5 deals with 'Form of Patta Pass-Book'. Rule 12 pertains to 'Application for modification of entries in Patta Pass-Book'. Rule 14 says that 'an appeal against any order of the Tahsildar passed under the Act shall be filed before the Officer in-charge of Revenue Division in whose jurisdiction the property lies within a period of thirty days from the date of receipt of the order'.

12. A mere perusal of the representation/objection of the Petitioner, dated 10.11.2017 addressed to the Second Respondent shows that the Petitioner had stated that he had produced many documents to show that the property is in his enjoyment. As against the impugned order/notice, dated 6.12.2017 of the First Respondent/The Tahsildar, Melur Taluk, Melur, Madurai District, there is an appeal remedy being provided under Section 10 of the Tamil Nadu Land Encroachment Act, 1905. The appeal shall lie to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar under this Act and such Officer as may be specified in this behalf etc., as per the ingredients of Section 10 of the Act, 1905. Therefore, the Petitioner is to avail a viable, effective, efficacious and alternative remedy of preferring an appeal against the order, dated 6.12.2017, passed by the First Respondent/The Tahsildar, Melur Taluk, Melur, Madurai District. In the instant case, the Petitioner has not filed any appeal availing the



procedural facility offered to him under the Tamil Nadu Land Encroachment Act, 1905.

13. In view of the fore-goings, this Court considering the entire conspectus of the attendant facts and circumstances of the present case in an encircling fashion, comes to an inescapable conclusion that the Petitioner is to prefer an appeal against the impugned order, dated 6.12.2017 passed by the First Respondent and in this regard, this Court grants two weeks time to the Petitioner to prefer an appeal before the District Collector, Madurai District from the date of receipt of a copy of this order. If such an appeal is filed by the Petitioner within the time adumbrated by this Court, then on receipt of such an appeal petition, the District Collector, Madurai District is directed to look into the contents of the Appeal Memorandum/Petition and to pass necessary orders, of course, after providing necessary opportunity to the Petitioner and others concerned, if any, in the subject-matter in issue by adhering to the Principles of Natural Justice. It is open to the Petitioner to raise all factual and legal pleas and to produce necessary documentary evidence before the District Collector, Madurai District, if he so desires/advised to substantiate his view points. The District Collector, Madurai District is to pass final orders on the appeal petition (to be preferred by the Petitioner) within a period of four weeks thereafter, by passing an order based on the reasoning with necessary qualitative and quantitative details. Till such time, it is made clear that the possession of the Petitioner shall not be disturbed by any one, in any manner, whatsoever.

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

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The District collector, Madurai.

2. The Tahsildar,

Melur Taluk,

Melur, Madurai District.

3. The Revenue Inspector,

Kottampatti, Melur Taluk,

Madurai District.

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No. 93718

+1cc to M/s. T. VADIVELAN Advocate in SR. No. 93041

VSN

JS/GT/SAR.4/05.01.2018/4P-6C

ORDER MADE IN

W.P. (MD) No. 23116 of 2017

and

W.M.P (MD) No. 19430 of 2017

15.12.2017