



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MRS. JUSTICE R. THARANI

W.P. (MD) No. 15576 of 2013
and
M.P (MD) Nos. 1 and 2 of 2013
and
W.M.P (MD) No. 14403 of 2016

V. Perumal : Petitioner

.vs.

1. The State of Tamil Nadu,
represented by its Secretary to Government,
Revenue Department,
Fort St. George,
Secretariat,
Chennai - 600 009.

2. The Special Commission and Commissioner of
Land Reforms,
Chepauk,
Chennai - 600 005.

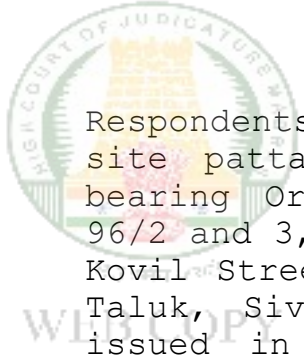
3. The District Collector,
Sivagangai District,
Sivagangai.

4. The Tahsildar,
Taluk Office,
Devakkottai Taluk,
Sivagangai District.

5. The Commissioner,
Devakkattai Municipality,
Devakkottai,
Sivagangai District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorarified and a writ of mandamus for the records pertaining to the impugned notice issued by the Fifth Respondent herein in Na.Ka.No.2576/13/F1, dated 30.7.2013 and to quash the same and consequently to direct the



Respondents 1 to 4 herein to expedite the issuance of free house site patta to the Petitioner in respect of the house property bearing Original Survey Number 94, Sub-divided as T.S.No.94/2,3, 96/2 and 3, Ward No.J, present Ward No.22, Block Number 16, Kaliasman Kovil Street, Jeeva Nagar, Devakkottai Nagar, Devakkottai Town and Taluk, Sivagangai District in the light of the Government Order issued in G.O.(Standing) No.854, Revenue Ni.Mu.1(2) Department, dated 30.12.2006 and subsequent similar orders.

For Petitioner : Mr.G.Ravisankar
for M/s.N.Ramji

For Respondents : Mr.T.R.Janarthanan
1 to 4 Additional Govt.Pleader

For Respondent-5 : M/s.H.Mohammed Imran

O R D E R

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

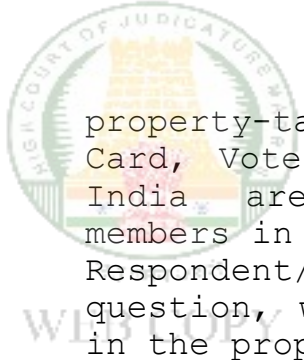
This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned notice issued by the Fifth Respondent herein in Na.Ka.No.2576/13/F1, dated 30.7.2013 and to quash the same and consequently to direct the Respondents 1 to 4 herein to expedite the issuance of free house site patta to the Petitioner in respect of the house property bearing Original Survey Number 94, Sub-divided as T.S.No.94/2,3, 96/2 and 3, Ward No.J, present Ward No.22, Block Number 16, Kaliasman Kovil Street, Jeeva Nagar, Devakkottai Nagar, Devakkottai Town and Taluk, Sivagangai District in the light of the Government Order issued in G.O.(Standing) No.854, Revenue Ni.Mu.1(2) Department, dated 30.12.2006 and subsequent similar orders.

2.Heard both sides. No counter is filed on behalf of the respondents 1 to 4.

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

4.According to the Petitioner, he is in occupation of the house site together with his family members, measuring an extent of five cents of land situate in S.No.94, sub-divided as T.S.Nos.94/2,3, 896/2 and 3, Ward Number J, present Ward No.22, Block No.16, Kaliasman Kovil Street, Jeeva Nagar, Devakkottai Town and Taluk, Sivagangai District, for about more than 34 years. The Petitioner and his son and daughter have put up a small tiled house in the said property by spending their own hard-earned money.

5.It comes to be known that the property in question is assessed to tax by the Fifth Respondent/Municipality under the Tax Assessment No.6615 and that the Petitioner has also remitted the



property-tax and house-tax to the authorities till date. Family Card, Voters Identity Card issued by the Election Commission of India are all issued in favour of the Petitioner and his family members in the aforesaid property. As a matter of fact, the Fifth Respondent/Municipality had assigned Door Numbers to the houses in question, where the Petitioner and his family members are residing in the property in question.

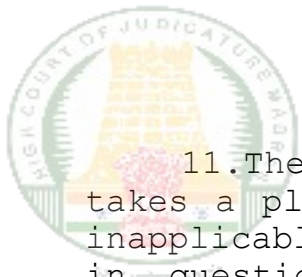
6.It is the version of the Petitioner that his occupation of the house property in question is for the past more than 34 years and patta can be issued to and in his favour. Further, due to the pressure from the third parties, the Fifth Respondent/Municipality is taking steps to dispossess the Petitioner from the property in question. Moreover, the Petitioner had already applied before the Respondents 1 to 4 for issuance of free house site patta and the same is under consideration.

7.At this stage, the Learned Counsel for the Petitioner submits that the Notice issued by the Fifth Respondent/Municipality is an one-sided one and as a matter of fact, the Fifth Respondent/Municipality had resolved in its Resolution No.152, dated 30.08.2011 and decided to recommend for issuance of free house site patta for the property in question. The Learned Counsel for the Petitioner points out that on 19.07.2013, the Fourth Respondent had already called for guideline value of the property in question from the Sub-Registrar, Devakkottai, in order to issue patta to and in favour of the petitioner.

8.The grievance of the Petitioner is that though, in principle, the Fifth Respondent/Municipality cannot suo-motu decide that the property in question is an encroachment and issued the impugned notice, is not correct in the eye of law.

9.Lastly, it is the submission of the Learned Counsel for the Petitioner that the house property in question occupied by him and his family members is classified as 'Natham Poramboke' and R1 to R4 alone are to take appropriate decision in regard to the Petitioner's occupation.

10.A perusal of the notice, dated 30.7.2013 issued by the Commissioner of Devakkottai Municipality/Fifth Respondent, to and in favour of the Petitioner shows that the Petitioner was required by the Notice in question to remove the encroachment within a period of seven days in T.S.Nos.94/2,3, 896/2 and 3, Ward Number J, present Ward No.22, Block No.16, Kaliyamman Kovil Street, Jeeva Nagar, Devakkottai Town and Taluk, Sivagangai District. The Petitioner was issued with the said notice, dated 30.7.2013 by the Fifth Respondent/Municipality and he was informed that the encroachment in question (by way of constructing houses) would be removed with the assistance of the Municipality employers at his



11.The Learned Counsel for the Fifth Respondent/Municipality takes a plea that the Tamil Nadu Land Encroachment Act, 1905 is inapplicable to the present case, because of the fact that the land in question is admittedly a public road owned by the Fifth Respondent/Municipality. Moreover, it is projected on the side of the Fifth Respondent/Municipality that the Municipality had not recommended for issuance of patta to the Petitioner and in fact, the Petitioner is not residing for the past 32 years, in the property in question. The Learned Counsel for the Fifth Respondent/Municipality contends that the Government has no jurisdiction to issue patta in respect of a public street, because of the reason that issuance of house site patta will arise only in respect of Government Poramboke land.

12.Lastly, it is the plea of the Learned Counsel for the Fifth Respondent/Municipality that the Petitioner is an encroacher and that the property in question is a road and as such, it would be a futile exercise to issue any kind of notice before passing the impugned order. Besides this, the Petitioner has not sent any explanation for the encroachment in question and at best, the issuance of prior notice, is only an empty ritualistic formality.

13.It is to be noted that Section 180 of the Tamil Nadu District Municipalities Act, 1920 speaks of 'Prohibition against obstruction in or over streets'. As per Section 180 of the Tamil Nadu District Municipalities Act, 1920, 'no obstruction in or over streets should be constructed and no building or any arches should be constructed, except as provided therein', as per the decision in the case of N.G.Karunakaran and another .vs. National Highways Authority of India, New Delhi and another reported in 2005(2) MLJ 46 (Mad). Section 180-A of the Tamil Nadu District Municipalities Act, 1920 refers to 'Public streets open to all', irrespective of caste or creed.

14.It is to be noted that if an individual is in established possession, he is always entitled to move the Civil Court seeking necessary relief of injunction. Indeed, to evict him, the Municipality is to invoke the provisions of Law, to take possession, as per the decision in the case of Tiruchirappalli Municipal Corporation .vs. Senthil Kumar reported 2012(1) LW834(Mad). Section 182 of Tamil Nadu District Municipalities Act, 1920 deals with 'Removal of Encroachment'. Ordinarily, an order directing removal of encroachment must contain reasons. If there is any dispute regarding the rights and title to a property, it is to be decided in a regular Suit. However, if licence or patta was issued, it is for the authority to cancel such licence or patta, after notice. Only after deciding whether it is an encroachment or not, it should be removed as per decision in the case of M.Kaliyamoorthy .vs. R.Krishnamoorthy reported in 2008(3) MLJ 489(Mad).



15.As far as the present case is concerned, the Fifth Respondent/Municipality had issued notice to and in favour of the Petitioner under Sections 182(1), 313 and Section 340 of the 'Act', 1920, he was required to remove the encroachment in question within seven days, failing which, he was informed that the encroachment would be removed with the assistance of employees of the Municipality at his costs.

16.It transpires that the Petitioner had given a reply, dated 10.09.2013 subsequent to the issuance of notice, dated 30.7.2013 issued by the Fifth Respondent/Municipality. A perusal of the reply of the Petitioner, dated 10.09.2013 addressed to the Commissioner of Fifth Respondent/Municipality points out that the Petitioner had mentioned about the Resolution being passed by the Devakkottai Municipal Council insofar as the Petitioner and others concerned who are residing in T.S.Nos.94/2,3, 896/2 and 3, Ward Number J, present Ward No.22, Block No.16, Kalamman Kovil Street, Jeeva Nagar, Devakkottai Town and Taluk, Sivagangai District.

17.In short, the reply/representation of the Petitioner, dated 10.09.2013 only speaks of his residence at the address mentioned in the impugned notice, dated 30.7.2013 for the last 34 years and payment of tax to the Fifth Respondent/Municipality. No-where, the Petitioner had referred to the aspect of encroachment in his representation, dated 10.09.2013 addressed to the Fifth Respondent/Municipality.

18.Considering the fact that the Petitioner had not mentioned about the aspect of his encroachment in question and had not spelt out as to how he is in occupation of the property in question for over 34 years, by assigning plausible or justifiable reason, this Court deems it fit and proper to provide an opportunity to the Petitioner to submit his written explanation to the impugned notice, dated 30.7.2013, within a period of one week from the date of receipt of a copy of this order. Thereafter, the Fifth Respondent/Municipality shall look into the written explanation and if it he finds any substance or form in it, then he has to consider the same and pass appropriate orders, after affording an opportunity of hearing to the Petitioner and others concerned, if any, in the subject-matter in issue, within a period of four weeks thereafter. It is open to the Petitioner to raise all factual and legal pleas before the Fifth Respondent/Municipality and it is open to the Commissioner of Fifth Respondent/Municipality to pass appropriate orders, based on written explanation to be submitted by the Petitioner, within the time adumbrated by this Court. It is made clear that the possession of the property in question by the Petitioner and his family members, shall not be disturbed by any one, in any manner, whatsoever.



19. 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 (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu,
Revenue Department,
Fort St. George,
Secretariat,
Chennai - 600 009.

2. The Special Commission and Commissioner of
Land Reforms,
Chepauk,
Chennai - 600 005.

3. The District Collector,
Sivagangai District,
Sivagangai.

4. The Tahsildar,
Taluk Office,
Devakkottai Taluk,
Sivagangai District.

+1cc to M/S.N.RAMJI, Advocate SR.No.93253.

+1cc to M/S.H.MOHAMMED IMRAN, Advocate SR.No.92947.

+1cc to Special Government Pleader in SR.No.93155.

ORDER MADE IN
W.P. (MD) No.15576 of 2013
and
M.P (MD) Nos.1 and 2 of 2013
and
W.M.P (MD) No.14403 of 2016
14.12.2017

vsn

SDS/SKN:RSK/SAR 4/04.01.2018/6P/8C