

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2018

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No. 20043 of 2018

&

W.M.P. No. 23505 of 2018

Marappa Gounder

..Petitioner

Vs.

1. The District Collector
Namakkal,
Namakkal District.

2. The Revenue Divisional Officer,
Rasipuram, Rasipuram Taluk,
Namakkal District.

3. The Thasildhar,
Rasipuram,
Rasipuram Taluk Office,
Namakkal District.

...Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the 1st Respondent herein in Na.Ka.No. 20785/2016/L5 dated 09.02.2018, quash the same, further direct the 3rd Respondent herein to issue patta to the Petitioner in respect of the property comprised in Survey No.492/1, and Sub Survey No.28, measuring an extent of 0.4350 sq.m situate at R.Pudupatti Village, Rasipuram Taluk, Namakkal District.

For Petitioner :: Mr.Venkataswamy Babu

For Respondents:: A.N.Thambidurai,
Special Government Pleader.

O R D E R

(Order of the Court was made by N.KIRUBAKARAN,J.)

This writ petition is filed challenging the order dated 09.02.2018 passed by the District Collector, Namakkal, dismissing the appeal filed by the petitioner, which was filed as against the notices issued by the 3rd respondent under Sections 7 and 6 of Tamil Nadu Land Encroachment Act, 1905.

2. Heard Mr.Venkataswamy Babu, learned counsel for the petitioner.

3. The petitioner would contend that his family is in possession and enjoyment of ancestral land to an extent of 6 cents. Abutting their property, there is a Natham property measuring about 400 sq.ft wherein the petitioner's father had put up a "Pandhal" (thatched roof) and after the demise of his father, the petitioner has replaced the same with asbestos roofing sheets and enjoying the same. Stating that it is a pathway, the 3rd respondent issued a notice under Section 7 of Tamil Nadu Land Encroachment Act, 1905, on 23.06.2017. Thereafter, the petitioner submitted an application to the 3rd respondent on 28.06.2017 to issue patta in respect of the above land. The notice under Section 7 of the Act was followed by Section 6 notice, issued by the 3rd respondent on 19.07.2017. Based on the said notice, the 3rd respondent tried to dispossess the petitioner, which compelled him to file W.P. No. 21866 of 2017 before this Court challenging the said notices dated 23.06.2017 and 19.07.2017 and this Court, by order dated 17.08.2017 dismissed the writ petition as not maintainable in view of effective alternative remedy available by way of an appeal and gave liberty to the petitioner to file an appeal under Section 10 of the Act before the Appellate Authority, if he is so advised and directed the 3rd respondent to defer further proceedings in terms of the notices impugned therein till the disposal of the appeal and communication of the decision in the appeal to the petitioner. Accordingly, the petitioner preferred an appeal before the 1st respondent on 24.11.2017 and the same came to be dismissed by the impugned order dated 09.02.2018. Hence, the present writ petition.

4. Admittedly, the property in question is a Natham Property and it is meant to be used as a pathway. When the petitioner is not the owner of the property measuring about 400 sq.ft, he cannot encroach upon the pathway and put up any structure. Further, the contention of the learned counsel for the petitioner that it is a Natham property and therefore, the provisions of Land Encroachment Act will not be applicable is

liable to be rejected for the simple reason that the petitioner is only an encroacher and the violator has got no right to plead law. He cannot violate law and plead that the provisions of Land Encroachment Act will not apply to him. As long as the petitioner is an encroacher, his possession of the property is illegal, irrespective of the nature or ownership of the property. Therefore, the petitioner is liable to be evicted.

5. Though it is contended by the learned counsel for the petitioner that there has been violation of principles of natural justice as no opportunity was given to the petitioner by the 1st respondent, before rejecting the appeal, the petitioner has set forth his case by filing a reply and by raising necessary grounds in the Grounds of Appeal. He cannot improve his case beyond that. Therefore, the question of setting aside the impugned order on the ground of violation of principles of natural justice does not arise. If really, the petitioner had been prejudiced by non-grant of an opportunity, then there would be some justification in pleading so. Even if an opportunity had been given, the petitioner could, in no way, improve his case. Hence, the writ petition fails and the same is dismissed. No costs. Connected W.M.P. is closed.

6. The petitioner is given four weeks' time from the date of receipt of a copy of this order to remove the structures put up by him by encroaching upon the Natham property in S.No. 492/1, and to hand over possession to the 3rd respondent.

7. Call the matter after four weeks for reporting compliance.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

vkrr/nv
To

1. The District Collector
Namakkal,
Namakkal District.
2. The Revenue Divisional Officer,
Rasipuram, Rasipuram Taluk,
Namakkal District.

3. The Thasildhar,
Rasipuram,
Rasipuram Taluk Office,
Namakkal District.

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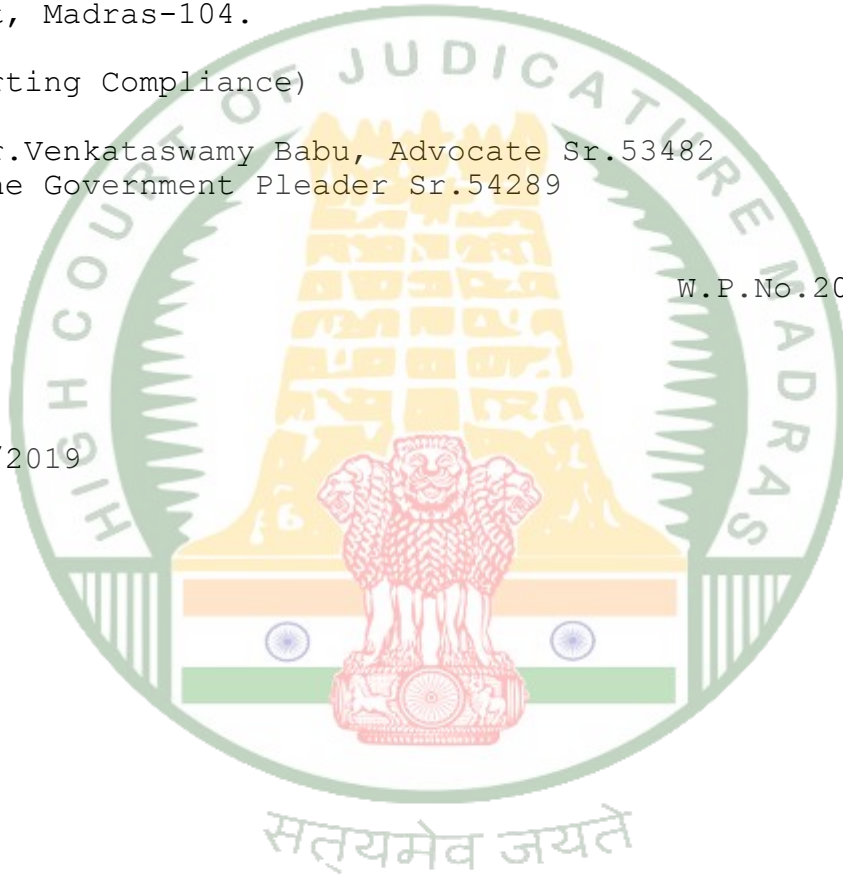
The Section Officer,
Writ Section,
High Court, Madras-104.

(For Reporting Compliance)

+1cc to Mr.Venkataswamy Babu, Advocate Sr.53482
+1cc to the Government Pleader Sr.54289

W.P.No.20043 of 2018

vg II[co]
srg 29/08/2019



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