

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.03.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

AND

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.5132 of 2018 and

W.M.P.No. 6304 of 2018

A.Dhasaradhan .. Petitioner

Vs.

1. District Collector,
Thiruvallur District

2. The Tahsildar
Madhuravoyal Taluk,
Thiruvallur District ..Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the Respondents not to interfere with the Petitioner's peaceful possession and enjoyment of land comprised in Survey No.552/2 measuring to an extent of 0.00.50 hectares & 0.02.50 hectares situated at Ayanambakkam village, Maduravoyal Taluk, Thiruvallur District except under due process of Law.

For Petitioner : Mr.R.Ragavendran

For Respondents : Mr.R.Udhayakumar
Additional Government Pleader

O R D E R

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

Heard the Learned Counsel for the Petitioner and the Learned Additional Government Pleader for the Respondents. By consent, the main Writ Petition itself is taken up for

disposal.

2. No counter is filed on behalf of the Respondents.

3. According to the Petitioner, the land in Survey No.551/1 measuring an extent of 0.20.00 situated at Ayanambakkam Village, Maduravoyal Taluk, Thiruvallur District was owned by his father, Arjunan, who was in absolute possession and enjoyment of the same without any hindrance. His father, Arjunanan was also in enjoyment of the said land along with the land comprised in Survey No.552/2, situated at Ayanambakkam Village, Maduravoyal Taluk, Thiruvallur District.

4. In the year 1987, some third party identified to interfere with the right and possession in Survey No.570 and his father, Arjunan, filed a suit in O.S.No.625 of 1987 on the file of District Munsif, Poonamallee and compromise was arrived at between his father and one Arumugham and based on the said terms decree was passed on 24.10.1991, as such, it is the stand of the Petitioner that his father is in possession and enjoyment of the lands in Survey Nos.551/1 and 552/2 along with family members with several decades.

5. The plea taken on behalf of the Petitioner is that the land in Survey Nos.551/1 and 552/2 was assessed by the Revenue Authorities for the purpose of collecting tax and the same was diligently paid by his father, Arjunan. On 07.04.2004, the Petitioner's father had settled the Survey No.551/1 measuring to an extent of 0.49 cents situated at Ayanambakkam Village, Maduravoyal Taluk, Thiruvallur District upon him and by means of Settlement Deed dated 07.04.2004 (vide Document No.4379 of 2004 before SRO, Ambattur), from that date of settlement, he is in possession and enjoyment of the said land along with land comprised in Survey No.552/2 without any hindrance.

6. While that being so, the Revenue Inspector, had issued a Form 7 Notice dated 12.02.2018 alleging the the Petitioner has encroached a land in Survey No.552/2 measuring an extent of 0.00.50 hectares and 0.02.50 hectares situated at Ayanambakkam Village, Maduravoyal Taluk, Thiruvallur District and directed him to offer his objections within a period of 15 days from the date of receipt of said notice and on failure to do so, he would be evicted from the said land.

7. The contention of the Learned Counsel for the Petitioner is that although in the notice dated 12.02.2018, the said land was classified as 'Pond', but, the same is contra to the actual position of the land and the said land was never been a 'Pond' and the said land is barren one, which

is possessed and enjoyed by them for several decades. He accordingly submitted a reply on 21.02.2018 and sought for four weeks time to submit his detailed reply along with requisite documents to prove his right, interest and title over the same.

8. The grievance of the Petitioner is that without conducting an enquiry, the Respondent had arbitrarily chosen to remove him from the land, which is a clear violation of Tamilnadu Land Encroachment Act, 1905.

9. The Petitioner has averred in the Writ Affidavit that it is not correct to state that the land in question is classified as 'Pond'. Apart from that, the very fact that the Petitioner prays for issuance of patta by way of his detailed representation dated 26.02.2018 before the 1st Respondent, itself shows in lucid terms that he is not the owner of the land.

10. It is not in dispute that the Petitioner's detailed representation dated 26.02.2018 addressed to the 1st Respondent seeking issuance of Patta for the said land in Survey No.552/2 was forwarded to the 2nd Respondent for taking necessary suitable action, notwithstanding the said detailed representation of the Petitioner dated 26.02.2018, the earlier reply dated 21.02.2018, for issuance of Section 7, Notice is pending on the file of the 2nd Respondent. A detailed order after taking into account of the objections of the Petitioner by means of his representation dated 26.02.2018 has not been passed by the 2nd Respondent. Therefore, this Court, by taking into account that the Petitioner's reply dated 21.02.2018 and representation dated 26.02.2018 is pending on the file of the 2nd Respondent, at this stage, without delving deep into the merits and contentions of the Petitioner's representation / reply mentioned supra, at this juncture, simpliciter, directs the 2nd Respondent in the interest of justice, fair play, good conscience and even as a matter of prudence, to look into the Petitioner's representation dated 28.02.2018 within a period of four weeks from the date of receipt of copy of this order, of course, after providing adequate opportunities to the Petitioner (inclusive of personal hearing) and the complainant and others concerned, by adhering to the Principles of Natural Justice. It is open to the Petitioner to raise all factual and legal pleas centering around the controversies in respect of the subject land in question and at the time of passing orders, the 2nd Respondent shall advert to both the factual and legal pleas raised by the Petitioner. Till such time, the Petitioner shall not be disturbed of his possession by any one and in any manner in respect of the subject property.

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

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The District Collector,
Thiruvallur District
2. The Tahsildar
Madhuravoyal Taluk,
Thiruvallur District

+1cc to the Government Pleader SR.No.18113

+1cc to Mr.R.Murali Advocate SR.No.18203

SDR 28.03.2018

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