

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.3.2018

CORAM

The HON'BLE MR.JUSTICE M.VENUGOPAL

AND

The HON'BLE MR.JUSTICE S.VAIDYANATHAN

Writ Petition No.3491 of 2018 & WMP.Nos.4267 and 6924 of 2018

N.Ponsingh

...Petitioner

Vs

1. The State rep.by the Secretary to Government, Revenue and Disaster Management Department, Fort. St.George, Chennai-9.
2. The Commissioner of Land Administration, Revenue Department, Ezhilagam, Chepauk, Chennai-5.
3. The District Collector, Thiruvallur District, Thiruvallur.
4. The Tahsildar, Ambattur Taluk, Ambattur, Thiruvallur District.
5. R.Jayaraj

(R5 impleaded as per order of Court dated 20.2.2018 in WMP.No.4587 of 2018)

...Respondents

6. K.K.Rajendran

...Proposed Respondent/
Petitioner in WMP.No.6924 of 2018

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the 1st respondent to pass appropriate order on the revision filed by the petitioner on 13.12.2017 along with condone delay application and stay application preferred against the order of the 3rd respondent under Section 10-A(1)(c) of the Tamil Nadu Land Encroachment Act, 1908 and consequently forbear the respondents from interfering with the petitioner's peaceful possession of the property totally measuring to an extent of 7.5 cents and comprised in Survey Nos.320/2B and 320/2C situate at

Padi Village, Ambattur Taluk, Thiruvallur District till the disposal of the revision pending before the 1st respondent.

For Petitioner : Mr.C.Prabakaran

For Respondents 1 to 4 : Mr.A.N.Thambidurai, SGP

For Respondent-5 : Mr.B.Vijay

For Proposed Respondent/
Petitioner in WMP.No.
6924 of 2018 : Mr.N.A.Nissar Ahmed

Order of the Court was made by S.VAIDYANATHAN,J

Inartistically wording the prayer, the land grabber has approached this Court by way of the present writ petition.

2. In this writ petition, the petitioner has sought a direction to the official respondents not to interfere with his peaceful possession and enjoyment of the property to an extent of 7.5 cents in S.F.Nos.320/2B and 320/2C at Padi Village, Ambatur Taluk, Thiruvallur District, as he has preferred a revision under Section 10A of the Tamil Nadu Land Encroachment Act, 1908 (hereinafter called the Act), before the first respondent.

3. The petitioner and his brothers are the owners of the property situated in S.F.No.881/4, M.T.H.Road, Padi, Chennai and totally, there are eight shops in the said property. The petitioner is also in exclusive possession of the poramboke land, which are situated adjacent to the said patta land, to an extent of 7.5 cents in S.F.Nos.320/2B and 320/2C and he has been using the same for storage of construction materials such as blue metal, sand, AC cement pipe and stoneware pipes.

4. It is seen that the lands in the aforesaid two survey numbers were classified as waste lands and that they were encroached by one Mr.V.M. Chacho, who had constructed a shopping complex partly in his patta land as well as in the encroached land. Further, the Government issued an order in his favour vide G.O.Ms.No.841 dated 11.5.1988 and the lease amount was fixed at Rs.12,600/- per annum. It is also seen that the lease expired as early as 1993 and that there was no renewal thereafter.

5. As could be seen from the records, the petitioner illegally purchased the land to an extent of 375 sq.ft. by means of a registered sale deed vide Doc.No.12 of 1998 dated 02.1.1998 from the said Mr.V.M.Chacho, who had no legal title to sell the

property in question. Apart from that, the petitioner and his brothers also encroached the lands adjoining MTH Road. Therefore, a criminal complaint was lodged against the said Mr.V.M.Chacho, which was registered as Cr.No.667 of 2004 on the file of Korattur Police Station. When action was initiated, the petitioner approached this Court initially by filing three writ petitions namely W.P.Nos.17525, 19516 and 19813 of 2009 and this Court, by a common order dated 16.2.2010, dismissed the said writ petitions on the ground that the contentions of the petitioner could not be completely acceded to, since the land belonging to the Government has been encroached, that only leasehold rights were given to the said Mr.V.M.Chacho and that the lease had also expired.

6. In the common order dated 16.2.2010, this Court observed that in the writ petitions filed by the said Mr.V.M.Chacho and the father of the petitioner herein namely W.P.Nos.12352 of 1993 and 6864 of 1996 respectively, the challenge made against the termination of lease was turned down and that the only observation made therein was that the request may be considered by the Government. This Court also observed in the common order dated 16.2.2010 that no order was passed restraining the Authorities from acting in terms of the provisions of the Act. Even though a contention was raised by the petitioner that an order passed under Section 6 of the Act may not be preceded by a notice under Section 7 of the Act, the same was rejected. In fact, the petitioner admitted that the notice was already served. This Court further held that it is not a fundamental right to have the encroached land assigned in favour of any individual, that it is the discretion of the Government and that the petitioner's request had already been rejected by the Competent Authority. This Court also held that the petitioner never utilized the notice period for giving any explanation and hence, a final order under Section 6 had been passed, that the petitioner also had not challenged the said order before the Appellate Forum and that the petitioner had built up a commercial complex in the Government land and is trying to forestall the eviction from the Government land.

7. As could be seen further from the records, noticing that the lands in Korattur Area/M.T.H.Road were being encroached, one Mr.K.K.Rajendran approached this Court by filing a public interest litigation in W.P.No.29831 of 2016 and the Hon'ble First Bench of this Court passed an order on 29.8.2016 even at the admission stage that the encroachments, if any, will have to be removed in accordance with law within a period of one month after issuing notice to all concerned.

8. According to the petitioner herein, even though he was the seventh respondent in W.P.No.29831 of 2016, filed by the

said Mr.K.K.Rajendran, without even a notice being served on him, orders have been passed. However, the said order did not affect his interest.

9. There was yet another writ petition filed by the petitioner herein in W.P.No.43300 of 2016 and it was disposed of by this Court, vide order dated 15.12.2016 directing respondents 1 and 2 therein namely the Principal Secretary to Government, Revenue Department, Fort St. George, Chennai-9 and the Principal Secretary and Commissioner of Land Administration Department, Ezhilagam, Chempauk, Chennai-5, to consider the proposal for granting of lease hold rights to the petitioner in respect of the land in question, in accordance with law and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of the order.

10. Mr.C.Prabakaran, learned counsel for the petitioner has contended that even though the land belongs to the Government, the petitioner is the owner of the patta land, which is adjacent to the Government land and that he is seeking only lease for the extended portion, in which, he has kept construction materials for the purpose of carrying on his business activities. He has further contended that when a revision is pending before the Government and when the second respondent, by an order dated 05.12.2017, rejected the revision filed by the petitioner only on the ground that the person, to whom, the revision is made, is not the Competent Authority, there is no hurdle on the part of the first respondent in taking up the review/ revision under Section 10A of the Act. The learned counsel has also contended that no prejudice is caused to anyone, much less the fifth respondent, as he is also an encroacher.

11. Mr.B.Vijay, learned counsel appearing for the fifth respondent, would contend that the petitioner approached this Court earlier not once, but on more than three occasions and that the petitioner did not avail the opportunity to approach the Appellate Authority within time. According to him, the land in question is meant for constructing a police station and the entire process of constructing the building for the police has been stalled by the action of the petitioner in bringing his henchmen and because of that, the Government could not proceed further. He has drawn the attention of this Court to the photographs produced by him wherein a portion of the land abutting the petitioner's property is shown as a road. That being the case, the contention of the petitioner that the revision has got to be considered by the Authority concerned cannot be accepted. It is further pointed out that the construction of the police quarters/station could not be made in view of the hindrance caused by the petitioner.

12. Mr.N.A.Nissar Ahmed, learned counsel, who has filed WMP.No. 6924 of 2018, seeking to implead the said Mr.K.K.Rajendran, has pointed out that there was an order of eviction against the petitioner as early as 15.9.2009. According to him, when the eviction order was challenged by way of filing a writ petition, this Court had categorically rendered a finding in the common order dated 16.2.2010 in W.P.Nos.17525, 19516 and 19813 of 2009 that the petitioner did not avail the benefit of approaching the Appellate Authority within time and that stalling the entire proceedings by means of making representation after representation to various Authorities and thereby depriving the passer by to use the road, which has been encroached by the petitioner, cannot be permitted.

13. Mr.A.N.Thambidurai, learned Special Government Pleader appearing for respondents 1 to 4 would contend that the order dated 05.12.2017 has been passed by the second respondent, since the petitioner had approached the wrong forum and that the petitioner has been advised to approach the appropriate forum. He would further contend that the land belongs to the Government and that the petitioner has no right to demand lease of the property in question, as the request of the petitioner has already been rejected. He would also contend that the petitioner being not only an encroacher, he is also trying to grab the land belonging to the Government, that he shall not be shown any indulgence and that the writ petition has to be dismissed.

14. In reply, the learned counsel for the petitioner submits that the rejection of the lease is the subject matter of revision before the first respondent and that the request of the petitioner may be considered.

15. Heard all the parties.

16. It is not in dispute that there is an eviction order dated 15.9.2009 and that the petitioner filed writ petitions on more than three occasions. K.Chandru,J, vide common order dated 16.2.2010, while discussing the entire issue on facts, had held that the land had been purchased by the petitioner from the said Mr.V.M.Chacho, who was having only the lease hold right and that when the said Mr.V.M.Chacho had no title to the property in question, he cannot sell away the property to the petitioner. The learned Judge observed that the petitioner, being a land grabber, did not avail the opportunity of approaching the Appellate Authority even after receipt of the notice under Section 7 of the Act and that as the petitioner did not utilize the opportunity by giving any explanation, a final order under Section 6 of the Act was passed. It was further observed that the petitioner being an encroacher and when the doors are shut, he would not be entitled to pursue the remedy under Sections 10

and 10A of the Act either by filing an appeal or by filing a revision.

17. In our opinion, if the permission sought for by the petitioner is granted, then it would amount to allowing the petitioner to question the order of the learned Single Judge before the Authority and that will be converting the Government as one of the Appellate Authorities to the orders of the learned Single Judge. That apart, the petitioner sought similar relief in the earlier round of litigation and the same was rejected. Hence, the relief sought for is barred by the principles of constructive res judicata.

18. When this Court expressed its view that the petitioner is not entitled to any relief, the learned counsel for the petitioner submits that the petitioner may be granted some time to remove the materials and hand over vacant possession to the Government. He undertakes that he will instruct the petitioner to file an affidavit to that effect before this Court within a period of one week from today. The learned counsel also submits that the petitioner may be permitted to have access to his patta land through the property in question.

19. In our considered opinion, the permission sought to have free access to his patta land through the land in question cannot be granted and that is got to be decided only by the appropriate forum.

20. As far as the time sought for by the petitioner to hand over the vacant possession of the encroached land to the Government is concerned, the undertaking given by the learned counsel for the petitioner is recorded and the petitioner is granted time till 10.6.2018 to remove his entire belongings, which are kept in the encroached land and hand over vacant possession to the Government, failing which, it is open to the Authorities concerned to take the assistance of police and remove the same. The petitioner is also directed to file an affidavit before this Court to that effect on or before 28.3.2018. It is made clear that grant of time cannot, by any stretch of imagination, be construed as if eviction proceedings by the Authority concerned are stalled till a way to enter his land is allotted.

21. The writ petition also has got to be dismissed on the sole ground that at the inception, the petitioner has not made one of the complainants as a party to this writ petition, who is none other than the said Mr.K.K. Rajendran - the petitioner in WMP.No.6924 of 2018 filed by Mr.N.A.Nissar Ahmed, learned counsel. Since we are not granting any relief in this writ petition, no further order is necessary in the impleading petition also. It is also made clear that if any third party

rights have accrued, it is not valid in the eye of law.

22. For the foregoing reasons, the writ petition is dismissed with the above observations. Consequently, WMP.Nos.4267 and 6924 of 2018 are also dismissed. No costs.

23. Post the matter on 22.6.2018 for reporting compliance.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

RS

To:

1. The Secretary to Government of Tamil Nadu,
Revenue and Disaster Management Department,
Fort.St.George, Chennai-9.
2. The Commissioner of Land Administration,
Revenue Department,
Ezhilagam, Chempauk, Chennai-5.
3. The District Collector,
Thiruvallur District, Thiruvallur.
4. The Tahsildar, Ambattur Taluk,
Ambattur, Thiruvallur District.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.18702

+1cc to Mr.B.Vijay, Advocate, S.R.No.18881

+1cc to Mr.N.A.Nissar Ahmed, Advocate, S.R.No.18920

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.19327

+1cc to the Government Pleader, S.R.No.19661

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.13153 (28/06/18)

Copy to

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

WP.No.3491 of 2018

&

WMP.Nos.4267 & 6924 of 2018

SKS (CO)

CS/03/04/18