

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3546 of 2018
and
W.M.P.No.4348 of 2018

Dhanapal

.. Petitioner

Vs.

1. The District Collector,
Thiruvallur District.

2. The Revenue Inspector,
Gummidipoondi Taluk,
Thiruvallur District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the notice of the second respondent, dated 04.01.2018 issued to the petitioner for removal of encroachment in Survey No.988-3, in the village in No.37, Mettu Street, Suravarikandikai, Sirupulalpettai, Gummidipoondi Taluk, Thiruvallur District and quash the same.

For Petitioner : Ms.G.Gayathri for M/s.P.Chandrasekar
For Respondents: Mr.A.N.Thambidurai, Spl.G.P.

ORDER

(The Order of the Court was made by M.Venugopal, J)

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorari to call for the notice of the second respondent, dated 04.01.2018 issued to the petitioner for removal of encroachment in Survey No.988-3, in the village in No.37, Mettu Street, Suravarikandikai, Sirupulalpettai, Gummidipoondi Taluk, Thiruvallur District and quash the same.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record. By consent, the Writ Petition itself is taken up for final disposal.

3. According to the petitioner, he has constructed a house in No.37, Mettu Street, Suravarikandikai, Sirupulalpettai, Gummidipoondi Taluk, Thiruvallur District, which is situated in Survey No.988-3, during the year 2000 and his property is assessed to property tax by Guruvaraja Kandigai Panchayat Board. He has obtained electricity service connection to his property in Service Connection No.098-006-70, and he is issued with Ration Card and Voter Identity Card. He also possesses Aadhar Card. The stand of the petitioner is that he has paid the charges to the Revenue Department till the year 2017 and his house is situated in Meiykkal where there are number of houses and there was a proposal to grant patta to the occupants of the lands, who had constructed the house and living there for more than 20 years. He was expecting that patta will be provided to his house as it is not situated in the lake bund and the same is also not obstructing the flow of water to the lake during rainy seasons. Further, a complete Thar Road is dividing the petitioner's property and now, there is no Meiykkal Poramboke near his house property, although in the Revenue Records, the property is shown as "Meiykkal Poramboke" in the area. However, the Revenue Department has given patta in the same area. That apart, from the road and the compound wall, there are number of houses in and around the petitioner's property and in fact, there is no Meiykkal Poramboke which is under the control of the Revenue Department.

4. Learned counsel for the petitioner proceeds to point out that the Government of Tamil Nadu, taking note of the decision of this Court for removal of encroachment in the lake areas, had constituted a Committee to go into the nature of encroachments and issued direction on 30.12.2006 to grant patta to the occupants who are residing for more than ten years in the encroached portions, if the lands are not necessary and needed for the Government which will be decided by the Committee headed by the District Collector. However, the first respondent/District Collector has not issued any notice to the petitioner in regard to the encroachment and he has not determined about the usefulness of the land to the Government. When that being the fact situation, the second respondent has issued the impugned notice dated 04.01.2018 under Section 7 of the Tamil Nadu Land Encroachment Act, stating that under the possession of the petitioner, there are five shops in S.No.988-3 in an extent of 0.30.0 ares out of 23.05.0 ares. In fact, the petitioner, as per the impugned notice dated 04.01.2018, issued by the second respondent, was required to furnish a reply within 15 days. However, the petitioner has not submitted his reply to the impugned notice.

5. Therefore, this Court deems it fit and proper to pass orders directing the petitioner to submit his reply to the impugned notice, dated 04.01.2018 issued by the second respondent. Accordingly, the petitioner is directed to submit his explanation to the impugned notice dated 04.01.2018, within two weeks from the date of receipt of a copy of this order. Thereafter, the Tahsildar, Gummidipoondi Taluk, Thiruvallur District is directed to look into the objections/representation of the petitioner and pass reasoned and speaking order on the merits of the matter, of course, in the manner known to law and in accordance with law, after providing adequate opportunity of hearing to the petitioner, complainant and others, if any, by issuing notice and also by adhering to the principles of natural justice. It is open for the petitioner to raise all factual and legal pleas and produce necessary documentary evidence before the Tahsildar, which shall be taken into account by the Tahsildar at the time of passing orders and also by advertng to and meeting out the points raised by the petitioner. It is open to the Tahsildar to inspect the place in question and thereafter take a decision in the subject matter in issue. The Tahsildar shall pass appropriate orders within a period of four weeks from the date of receipt of such explanation/objections/representation. Till such orders are passed by the Tahsildar, the petitioner's possession and enjoyment in the subject land, shall not be disturbed by anyone by whatever means.

6. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.

7. Before parting with the case, this Court points out that where the impugned order assails the notice issued under Section 7 of the Tamil Nadu Land Encroachment Act (Act-III) of 1905, the petitioner has a right to furnish the reply to the said notice and after hearing the parties and the complainant, if any, necessary orders will have to be passed by the competent authority under Section 6 of the said Act. Against this order passed under Section 6, an appeal is provided under the said Act. Also that, if the appeal under Section 10 of the Act, 1905, is not filed by the aggrieved person, then, the filing of the Writ Petition without exhausting effective, efficacious, viable and alternative remedy, is a premature and otiose one, in the considered opinion of this Court. Further, if the reply is given, the petitioner must file necessary proof. If the said reply is not referred to in the order passed under Section 6 of the Act, or if there is no reference to the fact that no reply was filed by the petitioner, or if any proof for sending the reply or acknowledgement is not filed, the Office of the Registry of this Court may ask for necessary details from the

petitioner prior to the numbering of the Writ Petition. Further, the authorities must ensure that the final order passed by them refers to the reply, if any filed by the person who received the notice under Section 7 of the Act, and if the same is not adverted to in the order passed by the authority, then as against the erring/deviant authority, necessary departmental action may be taken against him for his lapse/derelection in regard to the discharge of his duties. The Registry is directed to comply with these directions in future, when the Writ Petitions are filed challenging the notices/orders passed under the provisions of the Tamil Nadu Land Encroachment Act.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector, Thiruvallur District.
2. The Revenue Inspector, Gummidipoondi Taluk, Thiruvallur District.
3. The Tahsildar, Gummidipoondi Taluk, Thiruvallur District.
4. The Registrar (Judicial), High Court, Madras (for favour of information and necessary follow up action).
5. The Section Officer, 'F' Section, High Court, Madras. For follow up action as directed in para 7 of the order)

+1cc to Mr.P.CHANDRASEKAR, Advocate, S.R.No. 12452

W.P.No.3546 of 2018

TR(28/02/2018)

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