

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2018

Coram

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

W.P.No.4520 of 2018 and
W.M.P.No.5563 of 2018

S.Jokkin

.. Petitioner

Vs.

1.The Additional Chief Secretary /
Commissioner of Land Administration,
Chepauk, Chennai

2. The District Collector,
Kancheepuram District
Kancheepuram

3. The Tahsildar,
Cheyyur Taluk,
Kancheepuram District

4. The Revenue Inspector,
Chithamur Firka,
Cheyyur Taluk,
Kancheepuram District

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the 1st Respondent herein in her proceedings T1/6146/2016 dated 28.07.2016 thereby confirming the order of the 2nd Respondent herein in her proceedings Na.Ka.No.12581/2015/Aa3 dated 25.02.2016 and quash the same and further direct the respondents herein to regularize the Petitioner's possession and occupation of 0.45.0 Ares (1 Acre 11 Cents) out of 1.63.0 Hectares classified as Meikkal Poramboke in Survey No.198, situated at Southupakkam Village of Cheyyar Taluk of Kancheepuram District for more than 30 years, as per G.O.Ms.No.168, Revenue Department dated 27.3.2000.

For Petitioner : Mr.S.Kasirajan

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 1 to 4. No counter is filed on behalf of the Respondents 1 to 4. By consent, the main Writ Petition itself is taken up for final disposal.

2. According to the Petitioner, he is residing along with his family members at Door No.56, Vandavasi Road, Sothupakkam Village, Cheyyur Taluk, Kancheepuram District and enjoying the land to an extent of 0.45.0 Ares out of 1.63.0 Hectares in Survey No.198, situated at Sothupakkam Village, Kancheepuram District, now, the land is in his possession and enjoyment. He is cultivating the same for the past more than 30 years by paying Land Tax / Kist and the said land according to him, is not used for the purpose of Meikkal and except this property, he has no other property. He has paid 'B' Memo Charges from 1989 to 2010 for Fasli 1398 to 1419 to the Government regularly, from the year 2011 onwards, the Government had refused to receive 'B' Memo Charges from him and he is enjoying the property by way of cultivation without there being any interruption from the respondents for the past 30 years.

3. The stand of the Petitioner is that apart from cultivating the land in question, he has put up a small hut and was residing with his family members. Suddenly, the 4th Respondent issued a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 on 26.02.2015 directing the Petitioner to vacate from the Land within 15 days followed which, the 3rd Respondent herein also issued him notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 on 13.03.2015 directing him to vacate from the land. It appears that on 27.04.2015 when the Petitioner was ploughing the land, so as to raise the ground nut crop, the 3rd Respondent suddenly came and trespassed into the land and forcibly evicted him and warned not to enter into the cultivate land. Assailing the Eviction Order of the 3rd Respondent dated 13.03.2015, the Petitioner filed an Appeal before the 2nd Respondent herein under

the Section 10 of the Tamil Nadu Land Encroachment Act, 1905 praying to issue patta, as per G.O.Ms.No.168, Revenue Department dated 27.03.2000 (One time Scheme) in his favour, since he is residing in the said land for more than three decades.

4. That apart, the 2nd Respondent after hearing the Petitioner as well as Village Administrative Officer, Sothupakkam, through his proceedings dated 25.02.2016 had simply rejected his Appeal on the ground that the land in question belongs to Animal Husbandry Department and the said Meikal Land would be required for local cattle as well as for the welfare measures of the Government etc., All the encroachments in the said land were already evicted during the year 2015 and there is no encroachment existing in the said land, which is kept vacant without doing any cultivation.

5. The Petitioner aggrieved against the rejection order dated 25.02.2016 preferred Second Appeal, instead of Revision Petition before the 1st Respondent herein praying to set aside the order of the 2nd Respondent dated 25.02.2016 and for a further direction to the 2nd Respondent herein to issue patta with respect to the land under his continuous possession and cultivation for more than 30 years.

6. The Learned Counsel for the Petitioner submits that the 1st Respondent without going into merits of the case dated 28.07.2016 had simply rejected his Appeal Petition by observing as under:

"6. In this case, the petitioner has filed second appeal petition before this forum against the rejection order of the District Collector, Kancheepuram. Under Section 10(c) of the Tamilnadu Land Encroachment Act, 1905, "an appeal provision to the Commissioner of Land Administration is allowed against any decision (or) order of a District Collector passed otherwise than on appeal". In the present case, the order being appealed is an appellate order of the District Collector, Kancheepuram and this forum has no jurisdiction to entertain second appeal against such appellate orders of the District Collector. Any revision against such appellate orders will lie before the Government only. In such circumstances, the District Collector's order cannot be interfered with and the petition is disposed of accordingly."

7. Being dis-satisfied against the Impugned Order of the 1st Respondent dated 28.07.2016, the Petitioner has filed the present Writ Petition seeking to quash the said order and also for issuance of direction by this Court in directing the

Respondents to regularise the Petitioner's possession and occupation of 0.45.0 Ares (1 Acre 11 Cents) out of 1.63.0 Hectares classified as Meikkal Poramboke in Survey No.198, situated at Sothupakkam Village of Cheyyur Taluk of Kancheepuram District for more than 30 years, as per G.O.Ms.No.168, Revenue Department dated 27.03.2000.

8. It is not out of place for this Court to make a pertinent mention that Section 10 of the Tamil Nadu Land Encroachment Act, 1905 speaks of 'Filing of Appeal' to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar under this Act, and to such officer as may be specified by the State Government in this regard etc.,

9. Section 10(c) of the Tamil Nadu Land Encroachment Act, 1905 also deals with the aspect of filing of an Appeal to the Commissioner [Land Administration] in respect of any decision or order of a District Collector passed otherwise than on appeal.

10. Section 10-A of the Act enjoins 'Filing of Revision' in respect of any decision or order passed under this Act may be revised either suo motu or on application -

(a) by the District Collector, if such decision or order was passed by a Deputy Tahsildar, Tahsildar or Collector.

(b) by the [Commissioner of Land Administration], if such decision or order was passed by any officer other than the appellate authority;

(c) by the State Government, if such decision or order was passed by the appellate authority or the [Commissioner of Land Administration].

(2). The power conferred by sub-section (1) shall not be exercised except on the ground that the officer or authority whose decision or order is sought to be revised appears to have exercised a jurisdiction not vested in him or it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of his or its jurisdiction illegally or with material irregularity.

(3) No decision or order shall be passed under sub-section(1) prejudicial to any person without giving such person a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration, before such decision or order is passed."

11. Added further, Section 10-B of the Tamil Nadu Land Encroachment Act, 1905 pertains to 'Stay Pending Decision in Appeal or Revision'. Section 11 of the Tamilnadu Land Encroachment Act, 1905 relates to 'Limitation for Appeal and Revision' and also speaks of Power of the Authority Concerned to condone the delay provided the concerned aggrieved party makes out a sufficient case in not preferring an appeal or the application within the specified period.

12. As far as the present case is concerned, it is quite evident from the proceedings of the Additional Chief Secretary / Commissioner of Land Administration, Chennai in Ref. No.T1/6146/2016 dated 28.07.2016 that in the present case, an order being appealed is the Appellate Order of the 2nd Respondent / District Collector, Kancheepuram and hence he has no jurisdiction to entertain the Second Appeal against the said orders of the District Collector. Further, from the proceedings of the Additional Chief Secretary / Commissioner of Land Administration, Chepauk dated 28.07.2016, it is lucidly made clear that Revision against such Appellate Orders will lie before the Government only etc., Therefore, there is no material irregularity or patent illegality in the impugned order passed by the 1st Respondent / Additional Chief Secretary / Commissioner of Land Administration dated 28.07.2016. Consequently, Writ Petition fails. In fine, Writ Petition is dismissed leaving the parties to bear their own costs.

Before parting with the case, this Court makes it very clear that the dismissal of the Writ Petition will not preclude the Writ Petitioner to approach the Revisional Authority within a period of two weeks from the date of receipt of a copy of this Order in accordance with Law and in the manner known to Law and to seek redressal of grievances, if he so desires / advised. It is open to the Petitioner to file Interlocutory application or make an application before the competent authority and to seek necessary interim relief. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssd

To

1.The Additional Chief Secretary /
Commissioner of Land Administration,
Chepauk, Chennai

2. The District Collector,
Kancheepuram District
Kancheepuram

3. The Tahsildar,
Cheyyur Taluk,
Kancheepuram District

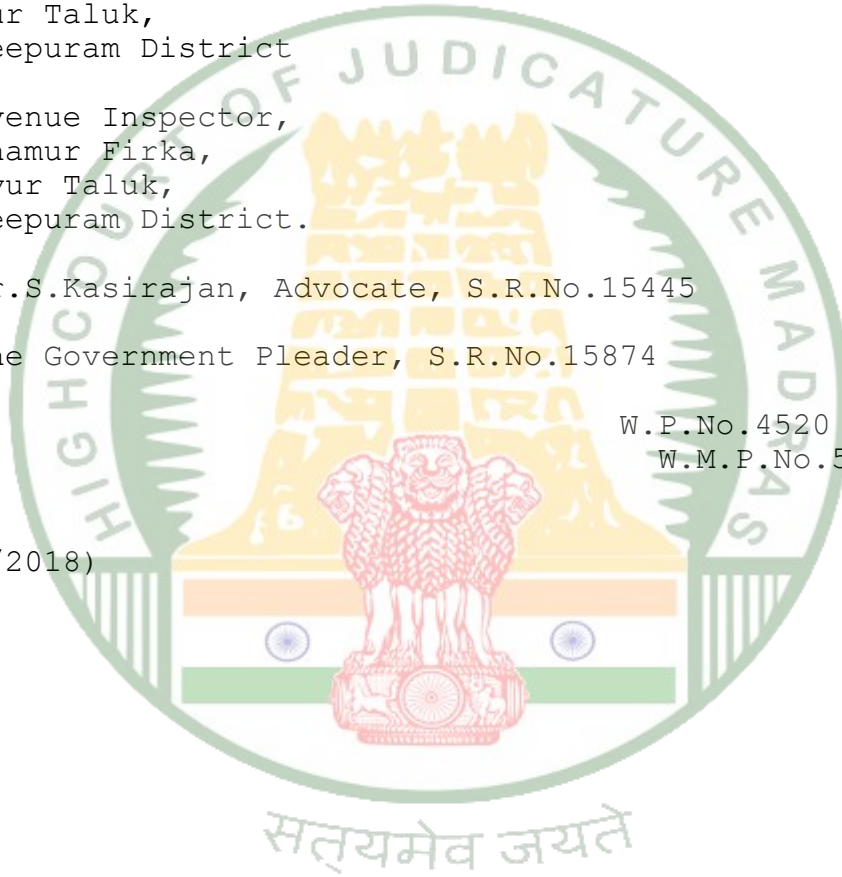
4. The Revenue Inspector,
Chithamur Firka,
Cheyyur Taluk,
Kancheepuram District.

+1cc to Mr.S.Kasirajan, Advocate, S.R.No.15445

+1cc to the Government Pleader, S.R.No.15874

W.P.No.4520 of 2018 and
W.M.P.No.5563 of 2018

KAN(CO)
RRK(02/03/2018)



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